

DATED

20th May

2015

(1) MERSEYTRAVEL

AND

(2) KENYON FRASER LIMITED

**MERSEYTRAVEL CONSULTANCY SERVICES
FRAMEWORK AGREEMENT 2015 – 2019
FOR CONSULTANCY SERVICES (VARIOUS LOTS)**

Louise Outram
Merseytravel
No.1 Mann Island
Liverpool L3 1BP

Ref: LCS/RSN11548/RA

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THIS AGREEMENT is made on

2015

BETWEEN:

- (1) **MERSEYTRAVEL** a body corporate established by statute whose principal place of business is at No.1 Mann Island Liverpool L3 1BP ("**Merseytravel**"); and
- (2) **KENYON FRASER LIMITED** (Company Number: 03062986) whose registered office is at 46 Rodney Street Liverpool Merseyside L1 9AA (the "**Provider**")

BACKGROUND

- (A) On the basis of the Provider's application Merseytravel selected the Provider to enter a framework agreement to provide services to Contracting Bodies on a call-off basis in respect of the Provider's Lots in accordance with this Agreement.
- (B) This Agreement sets out the award procedure for services which may be required by Contracting Bodies, the main terms and conditions for any Call-Off Contract which Contracting Bodies may conclude and the obligations of the Provider during and after the term of this Agreement.
- (C) It is the Parties' intention that there will be no obligation for any Contracting Body to award any contracts under this Agreement during its Term.

IT IS AGREED as follows:-

1. INTERPRETATION

- 1.1 Unless the context otherwise requires the following words and expressions shall have the following meanings:-

"Application"	means the application submitted by the Provider to Merseytravel
"Award Criteria"	means the award criteria to be applied to tenders received through mini-competitions held for the award of Call-Off Contracts for Services as set out in Schedule 2
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between a Contracting Body and the Provider comprising the Call-Off Terms and Conditions (as may be amended pursuant to Clause 7.2.3)
"Call-Off Terms and Conditions"	means the terms and conditions in Schedule 4
"Commencement Date"	means 01 May 2015
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA
"Contracting Bodies"	means Merseytravel and any other contracting bodies described in the OJEU Notice

"DPA"	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Environmental Information Regulations"	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud any Contracting Body
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
"Guidance"	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000
"Intellectual Property Rights"	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country and the right to sue for passing off
"Invitation to Apply"	means the invitation to apply issued by Merseytravel
"Law"	means any applicable Act of Parliament, subordinate legislation, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
"Material Default"	means any breach of Clause 7 (Award Procedures), Clause 13 (Statutory Requirements), Clause 14 (Non-Discrimination), Clause 15 (Records and Access), Clause 17 (Data Protection), Clause 18 (Freedom of Information) and Clause 26 (Transfer and Sub-contracting)
"OJEU Notice"	means the contract notice 335374-2014 dated 03 October 2014 published in the Official Journal of the European Union
"Other Contracting Bodies"	means all Contracting Bodies except Merseytravel

"Party"	means Merseytravel and/or the Provider
"PQQ Response"	means the response submitted by the Provider to the pre-qualification questionnaire issued by Merseytravel
"Provider's Lots"	means the lots to which the Provider has been appointed under this Agreement as set out in Part C of Schedule 1
"Regulations"	means the Public Contracts Regulations 2006
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Merseytravel or Other Contracting Body
"Requests for Information"	means a request for information or an apparent request under the FOIA or the Environmental Information Regulations
"Schedules of Rates"	means the schedules of rates set out in Schedule 3 as revised under clause 12
"Services"	means the services detailed in Part A of Schedule 1
"Services Framework Lots"	means the lots advertised in the OJEU Notice and referred to in Part B of Schedule 1
"Services Framework Providers"	means the providers appointed as Services Framework providers under this Agreement
"Staff"	means all persons employed by the Provider together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Agreement or Call-Off Contracts
"Term"	means the period commencing on the Commencement Date and ending on 31 March 2019 or on earlier termination of this Agreement
"Variation Procedure"	means the procedure set out in Schedule 5
"Working Days"	means any day other than a Saturday Sunday or public holiday in England and Wales

1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.7 references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
- 1.2.8 references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
- 1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.10 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

2. POLICIES AND STATEMENT OF INTENT

- 2.1 The Provider shall comply with and shall deliver the Services to achieve the objectives of the policies of Merseytravel published annually and which are available on request from Merseytravel.
- 2.2 During the Term the Provider shall pay its staff rates of pay equal to or in excess of the National Living Wage (as set from time to time) and will not employ any staff on zero-hour contracts.
- 2.3 The Provider has been appointed and Merseytravel has entered into this Agreement on the basis of the Provider's response to the PQQ and Invitation to Apply and, in particular, the representations made by the Provider to Merseytravel in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- 2.4 Clause 2 is an introduction to this Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Agreement except and to the extent that those terms and conditions do not address a particular circumstance or are otherwise ambiguous in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

3. TERM

This Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

4. SCOPE

- 4.1 This Agreement governs the relationship between Merseytravel and the Provider in respect of the provision of the Services by the Provider to Merseytravel and to Other Contracting Bodies.
- 4.2 Merseytravel and (subject to the following provisions of this Clause 4.2) Other Contracting Bodies may at their absolute discretion and from time to time source

Services from the Provider during the Term. The Parties acknowledge and agree that the Other Contracting Bodies have the right to source Services pursuant to this Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the procedures specified in Clause 7. If there is a conflict between Clause 7 and the Regulations and the Guidance, the Other Contracting Body shall comply with the Regulations and the Guidance.

4.3 The Provider acknowledges that there is no obligation for Merseytravel and for any Other Contracting Body to purchase any Services from the Provider during the Term.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by Merseytravel and/or any Other Contracting Body in respect of the total values of the Services to be ordered by them pursuant to this Agreement and the Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

5. PROVIDER'S APPOINTMENT

Merseytravel appoints the Provider as a potential provider of the Services referred to in the Provider's Lots and the Provider shall be eligible to be considered for the provision such Services by Merseytravel and Other Contracting Bodies during the Term.

6. NON-EXCLUSIVITY

The Provider acknowledges that in entering this Agreement no form of exclusivity or guarantee has been granted by Merseytravel and/or Other Contracting Bodies for Services from the Provider and that Merseytravel and/or Other Contracting Bodies are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

7. AWARD PROCEDURES

Awards under this Agreement

7.1 If Merseytravel or any Other Contracting Body decides to source Services through this Agreement then it shall award its Services requirements following a mini-competition conducted in accordance with the requirements of the Regulations and the Guidance.

7.2 Any Contracting Body requiring Services under this Agreement shall:-

7.2.1 identify the relevant Services Framework Lot which its Services requirements fall into;

7.2.2 identify the Services Framework Providers capable of performing the Call-Off Contract for the Services requirements and where a Services Framework Provider is the sole Services framework Provider capable of performing a specific contract Merseytravel may award such contract directly to it;

7.2.3 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

7.2.4 prepare and provide the relevant Services Framework Providers with a brief or specification (including timescales) for the specific contract to be awarded;

7.2.5 invite tenders by conducting a mini-competition for its Services requirements in accordance with the Regulations and Guidance and in particular:-

- (a) consult in writing the Services Framework Providers capable of performing the Call-Off Contract for the Services requirements and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
 - (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and
 - (c) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders;
- 7.2.6 apply the Award Criteria to the Services Framework Providers' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its Services requirements; and
- 7.2.7 award its Services requirements by accepting in writing the tender of the successful Services Framework Provider upon which a Call-Off Contract shall be formed between the Provider and the relevant Contracting Body for the provision of Services referred to in that tender.
- 7.3 The Provider agrees that a tender submitted by the Provider in relation to a mini-competition held pursuant to this Clause 7 shall remain open for acceptance for ninety (90) days (or such other period specified in the tender issued by the relevant Contracting Body).
- 7.4 Notwithstanding the fact that the Contracting Body has followed the procedure set out above in this Clause 7 the Contracting Body shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Agreement shall oblige any Contracting Body to accept any tender for Services.

Responsibility for Awards

- 7.5 The Provider acknowledges that each Contracting Body is independently responsible for the conduct of its award of Call-Off Contracts under this Agreement and that Merseytravel is not responsible or accountable for and shall have no liability whatsoever in relation to:-
 - 7.5.1 the conduct of Other Contracting Bodies in relation to this Agreement; or
 - 7.5.2 the performance or non-performance of any Call-Off Contracts between the Provider and Other Contracting Bodies entered into pursuant to this Agreement.

8. WARRANTIES AND REPRESENTATIONS

- 8.1 The Provider warrants and represents to Merseytravel that:-
 - 8.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require the consent of its ultimate holding company (as defined by Section 1159 of the Companies Act 2006) of the Provider and which is either responsible directly or indirectly for the business activities of the Provider) to enter into and to perform its obligations under this Agreement;
 - 8.1.2 in entering into this Agreement or any Call-Off Contract it has not committed any Fraud;
 - 8.1.3 as at the Commencement Date, all information, statements and representations contained in the Application and the PQQ Response

(including statements made in relation to the categories referred to in Regulations 23, 24 and 25 of the Regulations) for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to Merseytravel prior to the execution of this Agreement and it will promptly advise Merseytravel of any fact matter or circumstance of which it may become aware which would render any such information statement or representation to be false or misleading;

- 8.1.4 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Agreement;
- 8.1.5 it has not caused or induced any person to enter such agreement referred to in Clause 8.1.4 above;
- 8.1.6 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under this Agreement;
- 8.1.7 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916;
- 8.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with Merseytravel or Other Contracting Bodies;
- 8.1.9 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with Merseytravel or Other Contracting Bodies; and
- 8.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

8.2 The Provider warrants and represents to each of the Other Contracting Bodies the statements in Clause 8.1 above.

9. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 9.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of Merseytravel or any other public body or person employed by or on behalf of Merseytravel or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Agreement, any Call-Off Contract or any other contract with Merseytravel or any other public body or person employed by or on behalf of Merseytravel or any other public body (including its award to the Provider, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

9.2 The Provider warrants that it has not paid commission nor agreed to pay any commission to Merseytravel or any other public body or any person employed by or on behalf of Merseytravel or any other public body in connection with this Agreement, any Call-Off Contract or any other contract with Merseytravel or any other public body or person employed by or on behalf of Merseytravel or any other public body.

9.3 If the Provider, its Staff or any person acting on the Provider's behalf, engages in conduct prohibited by Clauses 9.1 or 9.2 above or commits any offence under the Prevention of Corruption Acts 1889 to 1916 Merseytravel may:-

9.3.1 terminate this Agreement with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by Merseytravel resulting from the termination; or

9.3.2 recover in full from the Provider and the Provider shall indemnify Merseytravel in full from and against any other loss sustained by Merseytravel in consequence of any breach of this Clause whether or not this Agreement has been terminated.

10. CONFLICTS OF INTEREST

10.1 The Provider shall during the Term:

10.1.1 take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of Merseytravel) there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider or Staff and the duties owed to Merseytravel and Other Contracting Bodies under the provisions of this Agreement or any Call-Off Contract;

10.1.2 promptly notify and provide full particulars to Merseytravel or the relevant Other Contracting Body if such conflict referred to in Clause 10.1.1 above arises or is reasonably foreseeable to arise.

10.2 Merseytravel reserves the right to terminate this Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of Merseytravel, there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Provider and the duties owed to Merseytravel under the provisions of this Agreement or any Call-Off Contract. The action of Merseytravel pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to Merseytravel.

11. CALL-OFF CONTRACT PERFORMANCE

11.1 The Provider shall perform all Call-Off Contracts entered into with Merseytravel or any Other Contracting Body in accordance with:-

11.1.1 the requirements of this Agreement; and

11.1.2 the terms and conditions of the respective Call-Off Contracts.

11.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Agreement and the terms and conditions of a Call-Off Contract the terms and conditions of this Agreement shall prevail.

12. RATES FOR SERVICES

12.1 Subject to clauses 12.2 and 12.3 the rates offered by the Provider for Call-Off Contracts to Contracting Bodies for Services shall be the rates set out in the

Schedules of Rates for the relevant Provider's Lot (and tendered in accordance with the requirements of the mini-competition held pursuant to Clause 7).

12.2 The rates set out in the Schedules of Rates shall be revised as of 1st April of each year during the Term (commencing on 1st April 2016) in accordance with the percentage Retail Price Index (positive or negative) published by the Office of National Statistics (or its successor from time to time) for the previous year taken at the nearest publication date to 1st April in such year. The rates shall be revised in accordance with this clause regardless as to whether a Call-Off Contract is in the process of being performed or not save where the Provider is in breach of the terms of either this Agreement or the Call-Off Contract.

12.3 Should the Provider deem it appropriate given the circumstances of a particular Call-Off Contract the Provider shall be entitled to offer to the Contracting Body rates for Services that are at a discount to the rates set out in the Schedule of Rates for the relevant Provider's Lot.

13. STATUTORY REQUIREMENTS

The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Call-Off Contract.

14. NON-DISCRIMINATION

14.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).

14.2 The Provider shall take all reasonable steps to secure the observance of Clause 14.1 by all servants employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of this Agreement.

15. RECORDS AND ACCESS

15.1 The Provider shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, the Call-Off Contracts entered into with Contracting Bodies and the amounts paid by each Contracting Body.

15.2 The Provider shall keep the records and accounts referred to in Clause 15.1 above in accordance with good accountancy practice.

15.3 The Provider shall afford Merseytravel (or relevant Contracting Body) such access to such records and accounts as may be required from time to time.

15.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) (in electronic as well as paper format) during the Term and for a period of twelve (12) years after expiry of the Term to Merseytravel (or relevant Contracting Body).

15.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15.

16. CONFIDENTIALITY

16.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

16.2 Clause 16.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- (e) it is independently developed without access to the other party's Confidential Information.

16.3 The Provider may only disclose Merseytravel's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

16.4 The Provider shall not and shall procure that its Staff do not use any of Merseytravel's Confidential Information received otherwise than for the purposes of this Agreement.

16.5 At the written request of Merseytravel the Provider shall procure that those members of the Staff identified in Merseytravel's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

17. DATA PROTECTION

The Provider shall (and shall procure that its Staff) comply with any notification requirements under the DPA and shall duly observe all of its obligations under the DPA which arise in connection with this Agreement.

18. FREEDOM OF INFORMATION

The Provider acknowledges that Merseytravel is subject to the requirements of the FOIA and the Environmental Information Regulations and agrees that any information provided by the Provider may need to be disclosed to third parties under the provisions of such legislation and shall assist and cooperate with Merseytravel to enable Merseytravel to comply with its Information disclosure obligations.

19. PUBLICITY

19.1 Unless otherwise directed by Merseytravel the Provider shall not make any press announcements or publicise this Agreement in any way without Merseytravel's prior written consent.

19.2 Merseytravel shall be entitled to publicise this Agreement in accordance with any legal obligation upon Merseytravel.

19.3 The Provider shall not do anything which may damage the reputation of Merseytravel or bring Merseytravel into disrepute.

20. TERMINATION

Termination on Default

20.1 Merseytravel may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice:-

20.1.1 where the Provider commits a Material Default and:-

(a) the Provider has not remedied the Material Default to the satisfaction of Merseytravel within twenty (20) Working Days or such other period as may be specified by Merseytravel, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

(b) the Material Default is not, in the reasonable opinion of Merseytravel, capable of remedy; or

20.1.2 where any Contracting Body terminates a Call-Off Contract awarded to the Provider under this Agreement as a consequence of default by the Provider.

Termination on Financial Standing

20.2 Merseytravel may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of Merseytravel) there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply Services under this Agreement.

Termination on Insolvency and Change of Control

20.3 Merseytravel may terminate this Agreement with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:-

20.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

20.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

20.3.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

20.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

20.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

- 20.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 20.3.7 being a "small company" within the meaning of Sections 382 and 465 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 20.3.8 any event similar to those listed in Clause 20.3.1 to Clause 20.3.7 occurs under the law of any other jurisdiction.
- 20.4 The Provider shall notify Merseytravel immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). Merseytravel may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) months of:-
- 20.4.1 being notified that a Change of Control has occurred; or
 - 20.4.2 where no notification has been made, the date that Merseytravel becomes aware of the Change of Control.

Termination by Merseytravel

- 20.5 Merseytravel shall have the right to terminate this Agreement or to terminate the provision of any part of this Agreement at any time by giving three months' written notice to the Provider.

21. SUSPENSION OF PROVIDER'S APPOINTMENT

Without prejudice to Merseytravel's rights to terminate this Agreement in Clause 20, if a right to terminate this Agreement arises in accordance with Clause 20 Merseytravel may suspend the Provider's appointment to supply Services to Contracting Bodies in any or all Provider's Lots by giving notice in writing to the Provider. If Merseytravel provides notice to the Provider in accordance with this Clause 21 the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by Merseytravel in writing from time to time.

22. CONSEQUENCES OF TERMINATION AND EXPIRY

- 22.1 Notwithstanding the service of a notice to terminate this Agreement the Provider shall continue to fulfil its obligations under this Agreement until the date of expiry or termination of this Agreement or such other date as required under this Clause 22.
- 22.2 Termination or expiry of this Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 22.3 Within thirty (30) Working Days of the date of termination or expiry of this Agreement the Provider shall return to Merseytravel any data and Confidential Information belonging to Merseytravel in the Provider's possession power or control and any other information and all copies thereof owned by Merseytravel save that it may keep one copy of any such data or information for such period as is necessary to comply with its obligations under this Agreement.
- 22.4 Termination or expiry of this Agreement shall be without prejudice to any rights remedies or obligations of either Party accrued under this Agreement prior to termination or expiry.

- 22.5 The provisions of Clauses 8, 9, 10, 15, 16, 17, 22, 23, 24 and 35 shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

23. LIABILITY

- 23.1 Neither Party excludes or limits its liability for:-

- 23.1.1 death or personal injury caused by its negligence, or that of its Staff;
- 23.1.2 fraud or fraudulent misrepresentation by it or its Staff; or
- 23.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

- 23.2 Subject to Clause 23.1 each Party's total aggregate liability in connection with this Agreement in each twelve (12) month period during the Term (whether in contract tort including negligence breach of statutory duty or howsoever arising) shall be limited to £1,000,000. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 23 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

- 23.3 Subject to Clause 23.2 the Provider shall indemnify and keep indemnified Merseytravel in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of or in respect of or in connection with this Agreement including in respect of any death or personal injury loss of or damage to property financial loss arising from any advice given or omitted to be given by the Provider or any other loss which is caused directly or indirectly by any act or omission of the Provider. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury or loss or damage was not caused or contributed to by its negligence or default or the negligence or default of its Staff or by any circumstances within its or their control.

24. INSURANCE

- 24.1 The Provider shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider either under this Agreement or under a particular Call-Off Contract to include death or personal injury or loss of or damage to property.

- 24.2 Subject to clause 24.1 and unless otherwise set out in a Call-Off Contract the Provider shall be required to effect and maintain (as appropriate) the following insurances for the duration of a Call-Off Contract and for a period of six (6) years thereafter:-

- 24.2.1 public liability insurance adequate to cover all risks in the performance of the Call-Off Contract subject to a minimum cover of £3,000,000;
- 24.2.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time; and
- 24.2.3 professional indemnity insurance with a minimum limit of indemnity of £3,000,000 for each individual claim or such higher limit as Merseytravel may reasonably require (and as required by law) from time to time.

- 24.3 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under this Agreement or a Call-Off Contract.

- 24.4 The Provider shall produce to Merseytravel, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate

that the appropriate cover is in place together with receipts or other evidence of payment of the latest premiums due under those policies.

- 24.5 If for whatever reason the Provider fails to give effect to and maintain the insurances required by this Agreement then Merseytravel may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

25. COLLATERAL WARRANTY GUARANTEE AND BOND

- 25.1 The Provider may be required under the terms of a Call-Off Contract to enter into:

- 25.1.1 one or more collateral warranties in the form set out in Schedule 6 or in a form reasonably required by Merseytravel or third party;
- 25.1.2 a parent company guarantee in the form set out in Schedule 7 or in a form reasonably required by Merseytravel;
- 25.1.3 a performance bond in the form set out in Schedule 8 or in a form reasonably required by Merseytravel.

26. TRANSFER AND SUB-CONTRACTING

- 26.1 This Agreement is personal to the Provider and the Provider shall not assign novate mortgage charge or otherwise dispose of any of its rights or obligations under this Agreement or any part thereof without the previous consent in writing of Merseytravel. The Provider shall not be entitled to sub-contract any of its rights or obligations under this Agreement.

- 26.2 Merseytravel shall be entitled to:-

- 26.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Other Contracting Body; or
- 26.2.2 novate this Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by Merseytravel;

provided that such assignment, novation or disposals shall not increase the burden of the Provider's obligations under this Agreement.

27. VARIATIONS

Any variations to this Agreement must be made only in accordance with the Variation Procedure set out in Schedule 5.

28. RIGHTS OF THIRD PARTIES

Save as provided in Clauses 4, 7 and 8.2 and the rights specified in this Agreement for the benefit of Contracting Bodies a person who is not party to this Agreement ("Third Party") has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999. If the Parties rescind this Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement such rescission or variation will not require the consent of any Third Party.

29. SEVERABILITY

- 29.1 If any provision of this Agreement is held invalid illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof

shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated.

- 29.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement Merseytravel and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

30. CUMULATIVE REMEDIES

Except as otherwise expressly provided by this Agreement all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

31. WAIVER

- 31.1 The failure of either Party to insist upon strict performance of any provision of this Agreement or the failure of either Party to exercise or any delay in exercising any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 31.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 33.
- 31.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

32. ENTIRE AGREEMENT

- 32.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 32.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 32.3 Nothing in this Clause 32 shall operate to exclude Fraud or fraudulent misrepresentation.

33. NOTICES

- 33.1 Except as otherwise expressly provided within this Agreement no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party sending the communication.
- 33.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 33.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

33.3 For the purposes of Clause 33.2 the address of each Party shall be:

33.3.1 For Merseytravel:-

Address:

PO Box 1976, Liverpool L69 3HN

For the attention of: THE SECRETARY TO MERSEYTRAVEL

33.3.2 For the Provider:-

Address:

46 Rodney Street, Liverpool, Merseyside, L1 9AA

~~For the attention of:-~~

33.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

33.5 The Provider is wholly responsible for notifying Merseytravel of any change of address and Merseytravel shall have no liability for any costs expenses damages and losses suffered or incurred by the Provider arising from the Provider's failure to keep Merseytravel so informed.

34. DISPUTE RESOLUTION

34.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in Clause 33 above.

34.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

35. LAW AND JURISDICTION

Merseytravel and the Provider accept the exclusive jurisdiction of the English courts and agree that this Agreement is to be governed by and construed according to English Law.

EXECUTED AS A DEED on the date which first appears in this Agreement

EXECUTED and delivered as a deed duly
authorized for and on behalf of Merseytravel

Signed L. Outram

22 MAY 2015

Name..... LOUISE OUTRAM

Position SECRETARY TO MERSETRAVEL

EXECUTED and delivered as a deed duly)
authorized for and on behalf of the Provider)
)

Signed [Signature]

Name.....

(Director)

EXECUTED by and delivered as a deed duly)
authorized for and on behalf of the Provider)
)

Signed
.....

Name.....

(Director/Company Secretary)

SCHEDULE 1
SERVICES AND LOTS

PART A
THE SERVICES

1. As appropriate, to provide:

- a. design services;
- b. engineering consultancy services;
- c. technical consultancy services;

in each case according with the Provider's Lots on schemes up to and including final account stage.

- 2. To liaise and co-operate with and to provide specific design advice to Merseytravel, other consultants, contractors and developers retained by or co-operating with Merseytravel.
- 3. The Provider may be required from time to time to undertake or assist with site surveys on specific sites within the geographical area covered by Merseytravel.
- 4. General advice may be required from time to time including the following:-
 - (a) input to development briefs being prepared for funding bids;
 - (b) technical advice on development proposals;
 - (c) project and business case appraisals;
 - (d) to liaise with any other consultants or contractors retained by Merseytravel;
 - (e) To attend/present at forums, public meetings etc.

PART B
SERVICES FRAMEWORK LOTS

- 1 Tunnels Engineering Consultancy
- 2 Rail Engineering Consultancy
- 3 Marine – Naval Architecture Consultancy
- 4 Marine - Mechanical and Electrical Engineering Consultancy
- 5 Civil and Structural Engineering Consultancy
- 6 Mechanical and Electrical Engineering Consultancy
- 7 Architectural Consultancy
- 8 Transport Consultancy
- 9 Quantity Surveying Consultancy
- 10 Safety, Quality and Environmental Consultancy
- 11 Programme/Project Management
- 12 Highways Infrastructure Consultancy
- 13 Building Surveying Consultancy
- 14 Business Case Development
- 15 PR, Campaigning and Engagement

PART C
PROVIDER'S LOTS

PR, Campaign & Engagement

SCHEDULE 2
AWARD CRITERIA

Criterion Number	Criterion	Percentage Weightings (or rank order of importance where applicable)
1	Price	to be set by Contracting Body conducting mini-competition
2	Quality: Team-working Arrangements	to be set by Contracting Body conducting mini-competition
3	Quality: Aesthetic and Functional Characteristics	to be set by Contracting Body conducting mini-competition
4	Quality: Contract Management	to be set by Contracting Body conducting mini-competition
5	Quality: Project Team Organization	to be set by Contracting Body conducting mini-competition
6	Quality: Technical Merit	to be set by Contracting Body conducting mini-competition

- a) The Award Criteria listed above are not comprehensive or exhaustive and are an indication only of the criteria that are likely to be set and evaluated in a mini-competition.
- b) The Award Criteria listed above will be subject to a price/quality ratio to be set by the Contracting Body conducting the mini-competition and the percentage weightings or rank order of importance (where applicable) will be set at the time of a mini-competition.
- c) The relevant Contracting Body will award its Services requirements to the Services Framework Provider with the most economically advantageous tender according to the Award Criteria.

SCHEDULE 3
SCHEDULES OF RATES

Kenyon Fraser - PR, C & E

Staff Grade	Rate per hour £			* Rate per Day £			# Rate per Month £		
	Site Office	Consultants Office	Merseytravel Office	Site Office	Consultants Office	Merseytravel Office	Site Office	Consultants Office	Merseytravel Office
Director/Partner	£	£	£	£	£	£	£	£	£
Account Director	£	£	£	£	£	£	£	£	£
Account Managers	£	£	£	£	£	£	£	£	£
Designers	£	£	£	£	£	£	£	£	£
Web Designers	£	£	£	£	£	£	£	£	£
PR Execs	£	£	£	£	£	£	£	£	£
PR Engagement Staff	£	£	£	£	£	£	£	£	£

State the % uplift to be applied for out of hours working at Merseytravel Office	^Percentage Uplift %
Weekday Night shift (19:00 - 07:00)	
Sat (00:00 - 23:59)	
Sun (00:00 - 23:59)	

*Rate per day based on 8 hours

Rate per month based on 172 hours

^ This should be one percentage uplift to cover all staff grades.

SCHEDULE 4
CALL-OFF TERMS AND CONDITIONS

PR, Campaign, Engagement Services
Call-Off Terms and Conditions

The Call-Off Terms and Conditions comprise the Standard Consultancy Agreement as follows:

Dated

20th Nov

201⁷

[Contracting Body]

- and -

[Consultant]

[Insert Title] Consultancy Services Agreement

Ref: LCS/STD/Consultant/[Date]

AN AGREEMENT made the 2nd day of May

201[]

BETWEEN

(1) **[CONTRACTING BODY]** of [] ("Contracting Body"); and

(2) Kenya Power
("the Consultant")

WHEREAS the [Contracting Body] has requested the Consultant to perform the Services and the Consultant has agreed to perform the Services (hereinafter defined) in accordance with the Contract Documents (hereinafter defined) and on the terms herein contained

IT IS HEREBY AGREED as follows:-

1. **Definitions**

The following terms shall have the following meanings:-

Authorised Personnel - The employees of the Consultant detailed in the [Tender] **OR** [Proposal] attached hereto or such other employees of the Consultant as the Consultant may from time to time nominate with the approval of the Executive

Commencement Date -

Completion Date -

Contract Documents - [The Brief the Proposal] (excluding the Consultant's terms and conditions (if any) which are over-ridden by this Agreement) the Correspondence attached hereto and this Agreement

Contract Period - The period starting on the Commencement Date and ending on the Completion Date unless earlier determined as provided by this Agreement

Contract Price -

[EXPENSES OPTION – *where the Agreement is to deal with the Consultant's expenses include the following definition - the*

related optional clauses are included in the optional monthly invoice clauses]

- | | | |
|---------------------|---|---|
| [Expenses | - | Any reasonable travel accommodation or subsistence expenses properly and necessarily incurred by the Consultant in the provision of the Services subject to production of receipts or other appropriate evidence of payment and payable in accordance with the principles of the [Contracting Body]'s Guidance on Travel and Accommodation and Guidance on Expenses (a copy of which is available from the Supervising Officer) For the avoidance of doubt the [Contracting Body] shall not reimburse any costs incurred by the Consultant in the purchase and/or consumption of alcoholic beverage and all rail travel shall be payable on standard rate travel only] |
| Services | - | The service to be provided by the Consultant under this Agreement as detailed in the Contract Documents |
| Supervising Officer | - | The of the [Contracting Body] or such other nominated representative of the [Contracting Body] who has been notified by the [Contracting Body] to the Consultant |

Reference to any employees of the Consultant shall be deemed to include the Consultant's agents and sub-contractors unless the context otherwise requires

A reference to any Act of Parliament or to any Order Regulations Statutory Instrument or the like shall be deemed to include a reference to any amendment or re-enactment of the same

2. **Commencement and Completion**

- 2.1 The Consultant will commence the Services on the Commencement Date and shall complete all its obligations to the [Contracting Body] under this Agreement by the Completion Date
- 2.2 Time shall be of the essence of this Agreement both as regards the Commencement Date and the Completion Date and as regards any dates which may be substituted for them in accordance with this Agreement or by agreement in writing between the parties

3. **Consultant's Obligations**

3.1 **The Services**

- 3.1.1 The Consultant shall provide the Services in accordance with the provisions of this Agreement. The Consultant shall exercise reasonable skill care and diligence in the provision of the Services and shall devote such time attention and abilities to the Services as shall be deemed necessary by the [Contracting Body]
- 3.1.2 The Consultant shall keep the Supervising Officer informed of all correspondence received and sent by the Consultant during the provision of the Services
- 3.1.3 The Consultant shall provide the Services in a conscientious and timely manner in accordance with the requirements of the Supervising Officer and shall acknowledge all instructions received from the Supervising Officer or any other officers of the [Contracting Body]
- 3.1.4 The Consultant shall make such enquiries and investigations as may be necessary in the provision of the Services and shall consult the Supervising Officer and keep him/her informed in all matter connected with the Services and produce regular reports in such manner and at such times as the Supervising Officer may require

- 3.1.5 The Consultant shall notify the Supervising Officer immediately of any circumstances relating to the Consultant and/or the [Contracting Body] concerning the Services of which the Consultant is aware or anticipates which may justify the [Contracting Body] taking action to protect its interests (including its reputation and/or standing)
- 3.1.6 The Consultant shall provide the Services wherever required by the [Contracting Body] The Consultant shall not in any circumstances utilise any premises or facilities of the [Contracting Body] except as agreed with the Supervising Officer from time to time
- 3.1.7 The Consultant shall use reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the [Contracting Body] may require
- 3.1.8 Unless specifically authorised to do so by the Supervising Officer in writing, the Consultant shall not have any authority to incur any expenditure in the name of or for the account of the [Contracting Body] or hold itself out as having authority to bind the [Contracting Body]
- 3.1.9 If the Consultant is required to travel abroad in the provision of the Services the Consultant shall be responsible at its own cost for any necessary insurances, inoculations and immigration requirements
- 3.1.10 The Consultant shall not in the provision of the Services in any manner endanger the safety or unlawfully interfere with the convenience of the public

3.2 Conflict of Interest

- 3.2.1 The Consultant shall notify the Supervising Officer immediately on becoming aware of any possible conflict of interest which may arise between the interests of the [Contracting Body] and the Consultant or any other client of the Consultant

3.2.2 The Consultant shall take all reasonable action to remove or avoid the cause of any such conflict of interest to the satisfaction of the Supervising Officer

3.2.3 The Consultant shall not at any time during the Contract Period or afterwards accept instructions to act against the [Contracting Body] if the Consultant is likely to use the knowledge about the [Contracting Body] obtained as a result of the provision of the Services

3.3 Standing Orders/Financial Regulations

The Consultant and the Authorised Personnel shall comply with the Standing Orders and Financial Regulations of the [Contracting Body] A copy of the Standing Orders and Financial Regulations of the [Contracting Body] can be obtained from the [Contracting Body] website

3.4 Attendance at Meetings

The Consultant shall provide a representative approved by the [Contracting Body] to attend at any meetings as may be required by the [Contracting Body] during the Contract Period

3.5 Record Keeping

The Consultant shall maintain records of all work undertaken in the provision of the Services and shall upon request produce such records to the Supervising Officer

3.6 Statutory and Other Regulations

3.6.1 The Consultant shall in all matters arising in the provision of the Services conform with all Acts of Parliament and with all orders regulations bye-laws and EU Directives that shall be applicable to the provision of the Services The Consultant shall also observe any rules applicable to the premises of the [Contracting Body]

3.6.2 The Consultant shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010

3.6.3 The Consultant shall comply with all reasonable standards of safety and comply with the [Contracting Body]'s health and safety procedures from time to time in force at the premises where the Services are to be provided

3.6.4 In the event that either party incurs costs to which it would not otherwise be liable due to the other party's failure to comply with any law or any order regulations bye-law or EU Directive having the force of law the amount of such costs shall be reimbursed by the other party

3.7 Authorised Personnel

3.7.1 The Consultant shall provide the Authorised Personnel to provide the Services in accordance with the Contract Documents The Consultant and the Authorised Personnel shall exercise reasonable skill care and diligence in the provision of the Services and they shall devote such of their time attention and abilities to the Services as shall be deemed necessary by [Contracting Body] acting reasonably

3.7.2 The [Contracting Body] shall be entitled to request the Consultant to withdraw any of the Authorised Personnel from providing the Services if the Supervising Officer thinks in his/her reasonable opinion that such Authorised Personnel are not exercising such reasonable skill care and diligence in the provision of the Services or are not devoting such of their time and attention and abilities to the Services as shall be deemed necessary by the [Contracting Body]

3.7.3 The Consultant will make every reasonable effort to maintain continuity of personnel throughout the provision of the Services but in the event of a change in the Authorised Personnel the Consultant shall bear all

costs related thereto In the event of the Consultant requiring the engagement of personnel in the provision of the Services other than the Authorised Personnel then the prior written consent of the [Contracting Body] is required

3.7.4 If the Consultant requires the services of an employee of the [Contracting Body] to assist in the provision of the Services then the Consultant will negotiate with the [Contracting Body] for such services as are desired

3.7.5 The Consultant shall undertake to refrain from approaching or otherwise inducing the [Contracting Body] staff to leave their current employment during the Contract Period or for a period of one year thereafter

4 Status

4.1 The relationship of the Consultant to the [Contracting Body] will be that of independent contractor and nothing in this Agreement shall render the Consultant an employee, worker, agent or partner of the [Contracting Body] and the Consultant shall not hold himself out as such

4.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the [Contracting Body] for and in respect of:

4.2.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services where the recovery is not prohibited by law The Consultant shall further indemnify the [Contracting Body] against all reasonable costs, expenses and any penalty, fine or interest incurred or payable

by the [Contracting Body] in connection with or in consequence of any such liability, deduction, contribution, assessment or claim

4.2.2 any liability arising from any employment related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant against the [Contracting Body] arising out of or connection with the provision of the Services

5 Assignment

5.1 The Consultant shall not assign any of its obligations under this Agreement without the prior written consent of the [Contracting Body]

5.2 The Consultant shall not without the prior written consent of the [Contracting Body] sub-let the Services or any part thereof or make any sub-contract with any person or persons for the provision of any part of the Services Any such consent shall not relieve the Consultant from any of its obligations under this Agreement

6 Confidentiality/Advertising

6.1 The Consultant acknowledges that the [Contracting Body] is subject to the provisions of the Freedom of Information Act 2000 and that any information provided by the Consultant to the [Contracting Body] under this Agreement may need to be disclosed to third parties under the provisions of such legislation (and/or any accompanying codes of practice issued under the Freedom of Information Act 2000)

6.2 The Consultant shall keep confidential all information of the [Contracting Body] designated as confidential obtained under or in connection with this Agreement and shall not divulge the same to any third party without the prior written consent of the [Contracting Body]

6.3 The provisions of Clause 6.2 shall not apply to:-

6.3.1 any information in the public domain otherwise than by breach of this Agreement

6.3.2 information obtained from a third party who is free to divulge the same

6.4 The Consultant shall divulge confidential information only to those employees who are directly involved in this Agreement and shall ensure that such employees are aware of and comply with these obligations as to confidentiality

6.5 The Consultant shall ensure that any sub-contractors approved under sub-clause 5.2 hereof are bound by the requirements of this Clause

6.6 Neither the Consultant nor any sub-contractor approved under sub-clause 5.2 hereof shall without the prior written consent of the [Contracting Body] advertise or publicly announce that it is undertaking work for the [Contracting Body]

7 Payment

7.1 ***[EITHER:***

PAYMENT ON COMPLETION]

[The [Contracting Body] shall pay the Contract Price to the Consultant within 30 days following the completion of the Services to the satisfaction of the Supervising Officer]

[OR:

PAYMENT ON MONTHLY INVOICES]

[The [Contracting Body] shall pay the Consultant the Contract Price for the provision of the Services on the terms set out in this clause 7.]

[IF PAYMENT IS ON MONTHLY INVOICE THEN ALSO USE THE FOLLOWING 3 CLAUSES]

[7.2 The Consultant shall submit to the Supervising Officer invoices at monthly intervals during the Contract Period in respect of the provision of the Services the first of which shall be submitted [[one month in arrears following][upon] signature of this Agreement]

- 7.3 The invoices shall be accompanied by details of the time spent by the Consultant in the provision of the Services and the date of performance together with details of the tasks undertaken during that period [Such invoice shall also detail all Expenses incurred in the provision of the Services and be accompanied by evidence of the same]
- 7.4 The [Contracting Body] shall pay to the Consultant the amount stated in such invoice [together with any Expenses detailed therein] within 30 days of receipt of invoice thereof subject to the accuracy of the account and to the satisfactory performance of the Services in the opinion of the Supervising Officer
- 7.[2/5] The fee to be paid in respect of any additional work required under Clause 11 hereof which is not part of the Services shall be subject to the prior approval of the Supervising Officer
- 7.[3/6] All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums
- 7.[4/7] Whenever under this Agreement any sum of money shall be recoverable from or payable by the Consultant the same may be deducted from any sum then due or which at any time thereafter may become due to the Consultant under this Agreement or any other agreement with the [Contracting Body]
- 7.[5/8] Exercise by the [Contracting Body] of its rights under Sub-Clause 7.[4/7] hereof shall be without prejudice to any other rights or remedies available to the [Contracting Body] under this Agreement

8. **Variations**

- 8.1 In the event that the [Contracting Body] shall require any reasonable alteration or addition to or omission from the Services or any part thereof (hereinafter referred to as "a Variation") the Consultant shall state in writing the effect such Variation will have on the Services and what adjustment if any

will be required to the Contract Price The Consultant shall furnish such details within 14 days of receipt of the [Contracting Body]'s written request or such other period as may be agreed

8.2 A Variation under Sub-Clause 8.1 hereof shall not invalidate this Agreement but if such Variation involves an increase or decrease in the cost to the Consultant of providing the Services an adjustment to the Contract Price shall be made with effect from the date of implementation of the Variation The Consultant shall satisfy the [Contracting Body] as to the reasonableness of the extra costs or savings resulting from a Variation under this Clause

8.3 The Consultant shall not vary the Services in any respect unless instructed in writing to do so by the [Contracting Body]

9. **Consultant's Default**

9.1 If the Consultant shall fail to complete the Services by the Completion Date or such revised date as may be agreed or granted by the [Contracting Body] then the Consultant shall pay liquidated damages to the [Contracting Body] at the rate of £[] per day from the Completion Date or such revised date as may be agreed or granted by the [Contracting Body] until the Services are completed to the satisfaction of the Supervising Officer

9.2 If within three calendar months immediately following completion of the Services the [Contracting Body] shall find and report to the Consultant any failure or defect in the Services then the Consultant will put right the same at no extra cost to the [Contracting Body]

10. **Consultant's Performance**

10.1 The Consultant must perform and comply with the standards and frequencies set out in the Contract Documents and to the entire satisfaction of the Supervising Officer

10.2 If the Consultant fails to comply with the Agreement or fails to provide the Services or any part thereof with due diligence or in proper skilful manner or

to the quality or standard set out in the Contract Documents or to the satisfaction of the Supervising Officer then the [Contracting Body] may do any one or more of the following:-

10.2.1 require by means of an oral or written instruction issued by the Supervising Officer or its nominee to the Consultant or Authorised Personnel to remedy such failure by providing again (as the case may be) without further charge to the [Contracting Body] the relevant part or part of Services to the quality and standard required by the Supervising Officer. The time within which the Consultant shall be required to remedy the failure shall be at the discretion of the Supervising Officer having regard to the urgency of the work and the prevailing circumstances which shall take account of any mitigating factors notified by the Consultant and agreed by the Supervising Officer.

10.2.2 Without determining the Agreement in whole or part deduct from any sum which would apart from this clause have been payable to the Consultant such proportion thereof as it considers fair and reasonable in respect of the breach in question having regard to the duration and seriousness of the breach and the terms of the Agreement.

10.2.3 Issue an Improvement Notice as defined in Clause 10.5 (below)

10.2.4 Without determining the Agreement in whole or in part itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Consultant or shall be recoverable from the Consultant by the [Contracting Body] as a debt.

10.2.5 Without determining the Agreement in whole determine part of the Agreement by notice in writing to the Consultant having immediate effect in respect of such part of the Services as may be specified in

such notice whereupon a corresponding reduction in the payments to the Consultant shall be made

- 10.3 The Services will be subject of programmed perception monitoring jointly and individually by both parties to confirm that standards of quality and timeliness of the Agreement are being observed
- 10.4 The Supervising Officer will agree the performance levels having considered representations by the Consultant or Authorised Personnel in respect of amongst other things errors or mitigating circumstances
- 10.5 In the event that performance falls below the required standard a written notice (the Improvement Notice) will be issued by the Supervising Officer. The Consultant shall submit to the Supervising Officer within such period as the Supervising Officer may reasonably specify proposals (the Improvement Plan) which in the Consultant's opinion will ensure that such failure does not reoccur and/or is promptly rectified. If the Supervising Officer does not consider that such proposal will remedy the failure or remedy the failure expeditiously the Consultant will be notified and in two weeks following the parties shall endeavour to agree revised proposals. Following agreement or determination of the Improvement Plan the Consultant shall diligently and promptly implement the same to restore the Services to the required standard
- 10.6 Repeat and persistent failure to provide the Services may result in the [Contracting Body] terminating the Agreement under Clause 15.3 hereof
- 10.7 Any failure to agree on the application or interpretation of this clause will be referred to the Authority's appropriate Head of Services for determination with a right of appeal to a Director of the [Contracting Body] who will both consider all relevant factors in consultation with the Consultant. The decision of the Authority's Director will be final

10.8 The rights of the [Contracting Body] under this clause are in addition and without prejudice to any other rights or remedies the [Contracting Body] may have against the Consultant

10.9 If within three calendar months immediately following completion of the Services the [Contracting Body] shall find and report to the Consultant any failure or defect in the Services then the Consultant will put right the same at no extra cost to the [Contracting Body]

11. Implementation of Proposals

If the [Contracting Body] decides to proceed with any proposals as a result of the Consultant's work under this Agreement the [Contracting Body] shall not be under any obligation whatsoever to invite the Consultant to undertake the planning or implementation of the said proposals

12. Indemnity and Insurance

12.1 The Consultant shall indemnify and keep indemnified the [Contracting Body] against injury (including death) to any persons including third parties or loss of or damage to any property data and/or information which may arise out of the act default or negligence of the Consultant in consequence of the Consultant's obligations under this Agreement and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto

12.2 Without thereby limiting its responsibilities under Sub-Clause 12.1 the Consultant shall insure with a reputable insurance company against all loss of or damage to property data and/or information and injury to persons including third parties (including death) arising out of or in consequence of its obligations under this Agreement and against all actions claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto

- 12.3 The liability of the Consultant under Sub-Clause 12.1 hereof (except in respect of injury including death to a person due to negligence for which no limit applies) shall not exceed [[£] ,000,000 ([] million pounds **OR** [] % of the Contract Price]] in respect of any event or series of connected events
- 12.4 The Consultant shall take out and maintain throughout the Contract Period and for a period of six years from the expiration of the Contract Period proper professional indemnity insurance in respect of the Consultant's business with a minimum cover of One million pounds in respect of any event or series of connected events
- 12.5 The Consultant shall prior to the Commencement Date and upon request by the [Contracting Body] provide documentary evidence of the insurance cover required under this Clause
- 12.6 If the Consultant shall at any time fail to take out or maintain the insurance cover required under Sub-Clauses 12.2 and 12.4 hereof, the [Contracting Body] may take out and maintain adequate insurance cover in the Consultant's name and the [Contracting Body] shall be entitled to deduct any costs and expenses incurred in doing so from any sums due to the Consultant under this Agreement
- 12.7 The [Contracting Body] shall not be liable to the Consultant for the death of or injury to the Consultant or its employees or loss of or damage to the Consultant's property unless due to the negligence of the [Contracting Body] to perform its obligations under this Agreement
- 12.8 The [Contracting Body] shall not be liable to the Consultant for consequential loss or damage including but not limited to loss of use profits or contracts
- 12.9 The [Contracting Body]'s liability under this Agreement shall not exceed £1,000,000 in respect of any event or series of connected events

13. **Intellectual Property Rights**

13.1 The Consultant hereby assign to the [Contracting Body] all existing and future intellectual property rights created by the Consultant in the provision of the Services to the fullest extent permitted by law Insofar as they do not vest automatically by operation of law or under this Agreement the Consultant shall hold legal title in these rights on trust for the [Contracting Body]

13.2 The Consultant shall not use any such rights referred to in Sub-Clause 13.1 hereof or will not give permission to any third party to use for any purpose other than this Agreement permits without the prior written consent of the [Contracting Body] and shall indemnify and keep the [Contracting Body] indemnified against all or any costs claims damages or expenses incurred by the [Contracting Body] or for which the [Contracting Body] may become liable with respect to any intellectual property infringement claim

13.3 The Consultant undertakes at any time either during or after the Contract Period to execute all documents, make all applications, give all assistance and do all actions and things as may in the opinion of the [Contracting Body] be necessary or desirable to vest the intellectual property rights in the name of the [Contracting Body] and to defend the [Contracting Body] against all claims that intellectual property rights infringe third party rights and otherwise to protect and maintain the intellectual property rights of the [Contracting Body]

14. **Waiver**

No delay neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement

15. **Termination**

15.1 In addition and without prejudice to Sub-Clauses 15.3 15.4 and 15.5 below the [Contracting Body] shall be entitled to terminate this Agreement upon four

weeks' notice in writing to the Consultant The [Contracting Body] shall only be liable to the Consultant for its fees up to the date of notice

15.2 The Consultant may not terminate this Agreement except in the circumstances described in Sub-Clause 15.3 below

15.3 Either party may terminate this Agreement forthwith on written notice if the other party fails to observe or perform any of the conditions on its part to be observed and performed and in the event of a failure capable of being remedied fails to remedy the breach within 14 days of receipt of notice thereof in writing The [Contracting Body] shall not be liable for any expenses incurred by the Consultant after the period of the notice has expired

15.4 The [Contracting Body] may terminate this Agreement forthwith on written notice if the Consultant shall become insolvent or bankrupt or make an arrangement with its creditors to go into liquidation whether compulsory or voluntary (except liquidation for the purpose of reconstruction) The [Contracting Body] shall not be liable for any expenses incurred by the Consultant after receipt of the notice by the Consultant

15.5 The [Contracting Body] shall be entitled to terminate this Agreement forthwith on written notice and recover from the Consultant the amount of any loss resulting from such termination if the Consultant shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or execution of this Agreement or any other Agreement with the [Contracting Body] or the showing or forbearing to show favour or disfavour to any person in relation to this Agreement or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Consultant) or if in relation to any agreement with the [Contracting Body] the Consultant or any person employed by them or acting on its behalf shall have:

15.5.1 committed an offence under the Prevention of Corruption Acts 1889-1916 or

15.5.2 committed an offence under the Bribery Act 2010 or

15.5.3 shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972

15.6 If the [Contracting Body] terminates this Agreement under Sub-Clauses 15.3 15.4 or 15.5 hereof then the [Contracting Body] may re-let this Agreement or any part thereof under the same or such other conditions as the [Contracting Body] may think fit or may enter into a new agreement with other consultants for the provision of the Services. The Consultant shall be liable for and shall pay and make good to the [Contracting Body] and all other persons or parties legally entitled thereto all losses damages costs charges and expenses they or any of them may incur or be put to or be liable for by reasons or in consequence of such re-letting as aforesaid and shall indemnify and save harmless the [Contracting Body] and any other person or parties, as aforesaid from and against all actions suits claims and demands whatsoever by reason or on account thereof or the [Contracting Body] may deduct and retain or pay over to such other persons or parties entitled as aforesaid the amount of such losses damages costs charges or expenses out of any amounts in the hands of the [Contracting Body] due or accruing due to the Consultant but in the event of there being no sum due from the [Contracting Body] to the Consultant then such losses damages costs charges and expenses shall be recoverable by the [Contracting Body] from the Consultant as liquidated damages

15.7 Upon completion or termination of this Agreement the Consultant shall immediately deliver to the [Contracting Body] all files (including computer files) documentation correspondence specifications paper reports and any

property relating to the Services or belonging to the [Contracting Body] which may be in its possession or under its control

15.8 Termination of this Agreement shall not prejudice any rights or obligations of either party which shall have accrued or become due prior to the date of termination

15.9 Notwithstanding anything contained elsewhere in this Agreement the provisions of Clauses 6 12 13 and 15.7 shall survive the expiry or termination of this Agreement howsoever caused and shall continue for a period of 6 years thereafter in full force and effect

16. Notices

16.1 Any notice to the Consultant hereunder shall be deemed to have been given if the same has been posted to the Consultant at the Consultant's last known address or such other address as the Consultant may from time to time designate in writing for that purpose

16.2 Any notice to the [Contracting Body] hereunder shall be deemed to have been given if the same has been posted to the [Contracting Body] at PO Box 1976 Liverpool L69 3HN or such other address as the [Contracting Body] may from time to time designate for that purpose

16.3 Any notice to be given hereunder shall be sent by prepaid recorded delivery or registered post and shall be deemed to have been received by the addressee within 72 hours of posting

17. Force Majeure

17.1 Subject to Sub-Clause 17.3 hereof the Consultant shall have no liability for a consequence of any of the following events if that event and consequence was neither preventable nor foreseeable:-

17.1.1 a flood storm or other natural event or

17.1.2 any war hostilities revolution riot or civil disorder or

- 17.1.3 the introduction of or any amendment to a law or regulation or any change in its interpretation or application by any authority or
- 17.1.4 any action taken by a governmental or public authority or an agency of the European Union including any failure or delay to grant a consent exemption or clearance or
- 17.1.5 any strike lockout or other industrial action or
- 17.2 For this purpose an event or the consequence of an event was neither preventable nor foreseeable if and only if the Consultant could not have prevented it by taking steps which it could reasonably be expected to have taken and the Consultant could not as at the Commencement Date have reasonably been expected to take the risk of it into account by providing for it in this Agreement by insurance or otherwise
- 17.3 Sub-Clause 17.1 does not apply unless the Consultant
- 17.3.1 notifies the [Contracting Body] of the relevant event and consequence as soon as possible after it occurs
- 17.3.2 promptly provides the [Contracting Body] with any further information which the [Contracting Body] requests about the event (or its causes) or the consequence and
- 17.3.3 promptly takes any steps (except steps involving significant additional costs) which the [Contracting Body] reasonably requires in order to reduce the [Contracting Body]'s losses or risk of losses
- 17.4 It is for the Consultant to show that a matter is a consequence of an event covered by Sub-Clause 17.1 that the event and the consequence were neither preventable nor foreseeable and that it has satisfied the conditions set out in Sub-Clause 17.3

18. **Dispute Resolution**

- 18.1 If any dispute arises under the Agreement then both parties shall endeavour to resolve the issue amicably However in the event of failure to do so within

a reasonable time then either party may refer the matter to mediation as a means of resolving the dispute. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the dispute under Clause 25 below.

19. **Confidential Reporting Code (Whistle-blowing)**

The [Contracting Body] is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, the [Contracting Body] expects its employees, contractors and others that it deals with who have serious concerns about any aspect of the [Contracting Body]'s work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis. [Merseytravel option - For this reason Merseytravel has a Local Confidential Reporting Code to encourage and enable employees, contractors and others working for or with Merseytravel to raise serious concerns within Merseytravel rather than overlooking a problem or "blowing the whistle" outside. Details of the code are available on the web-site (www.merseytravel.gov.uk)]

20. **Headings**

The headings in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

21. **Entire Agreement**

It is hereby agreed that the terms of this Agreement incorporating the Contract Documents represent the entire agreement between the parties and this Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

22. **Severability**

If any provision of this Agreement is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions of this Agreement.

23. **General**

- 23.1 In the event of a conflict between the various provisions of this Agreement (including any documents incorporated herein by reference) the conflict will be resolved according to the following order of priority: the clauses of this Agreement the Correspondence [the Tender] **OR** [the Proposal] [the Brief]
- 23.2 References in this Agreement to the parties shall include their respective heirs successors in title permitted assigns and personal representatives
- 23.3 In the event that either party incurs costs to which it would not otherwise be liable due to the other party's failure to comply with any law or any order regulations bye-law or EU Directive having the force of law the amount of such costs shall be reimbursed by the other party

24. **Third Party Rights**

For the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of this Agreement to be enforced by any third party but any third party right that exists or is available independently of that Act is preserved

25. **Law**

This Agreement shall be subject to and construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

[Brief]

[The Tender]

OR

[The Proposal]

The Correspondence

EXECUTED as a Deed
by **[CONTRACTING BODY]**

..... Signed

..... Name

..... Title

EXECUTED as a Deed by

..... Signed

..... Name
Director

..... Signed

..... Name
Director/Secretary

SCHEDULE 5

VARIATION PROCEDURE

1. Introduction

- 1.1 This Schedule 5 details the scope of the variations permitted and the process to be followed where Merseytravel proposes a variation to this Agreement.
- 1.2 Merseytravel may propose a variation to this Agreement under Schedule 5 only where the variation does not amount to a material change in this Agreement or the Services.

2. Procedure for proposing a Variation

- 2.1 Except where paragraph 4 applies, Merseytravel may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, Merseytravel shall serve each Services Framework Provider with written notice of the proposal to vary this Agreement ("Notice of Variation").
- 2.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each Services Framework Provider to assess the variation.
- 2.4 Upon receipt of the Notice of Variation, each Services Framework Provider has 14 days to respond in writing with any objections to the variation.
- 2.5 Where Merseytravel does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, Merseytravel may then serve each Services Framework Provider with a written agreement detailing the variation to be signed and returned by each Services Framework Provider within 28 days of receipt.
- 2.6 Upon receipt of a signed agreement from each Services Framework Provider, Merseytravel shall notify all Services Framework Providers in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that Merseytravel receives one or more written objections to a variation, Merseytravel may:-
 - 3.1.1 withdraw the proposed variation; or
 - 3.1.2 propose an amendment to the variation.

4. Variations which are not permitted

- 4.1 In addition to the provisions contained in paragraph 1.2, Merseytravel may not propose any variation which:-
 - 4.1.1 may prevent one or more of the Services Framework Providers from performing its obligations under this Agreement; or
 - 4.1.2 is in contravention of any Law.

COLLATERAL WARRANTY

PARTIES:

1. 'The Consultant':
of
and
2. 'The Employer': Merseytravel of No.1 Mann Island , Liverpool L3 1BP
and
3. 'The Beneficiary':
of

RECITALS:

(a) By the Contract the Employer has appointed the Consultant to act in the capacity of [] consultant in relation to the Development.

(b) The Beneficiary has an interest in the Development.

(c) The Consultant has agreed to enter into this Deed for the benefit of the Beneficiary and his successors in title and assigns.

NOW in consideration of the payment of one pound (£1.00) (receipt of which is hereby acknowledged) **THIS DEED WITNESSES** as follows:-

'PROPERTY' means the property described in Schedule 3.

1.2 In this Deed unless the context otherwise requires:

1.2.1 Clause headings are inserted for convenience only and shall not affect the construction of this Deed and all references to Clauses, Sub-clauses or Schedules are to Clauses and Sub-clauses of, and Schedules to, this Deed;

1.2.2 words denoting the singular number include the plural and vice versa;

1.2.3 references to persons include references to bodies corporate and unincorporate;

1.2.4 references to statutes or statutory instruments include references to any modification, extension or re-enactment of them from time to time.

2. Limitations on the Liability of the Consultant

2.1 The duty of the Consultant undertaken in clause 3 is to be treated as being no greater than it would have been if the Beneficiary had been a party to the Contract instead of this Deed.

2.2 The amount of the liability of the Consultant to the Beneficiary which, apart from the operation of this clause 2.2, would be incurred under this Deed is to be reduced, so far as may be appropriate and necessary, to take account of the degree of responsibility of any of the following other consultants and contractors engaged on the Development for the cause of the liability, and to reflect the position of the Consultant which would obtain if each of the said persons had entered into a deed with the Beneficiary in such terms in all material respects as apply in this Deed, and the Consultant had claimed contribution from them under the Civil Liability (Contribution) Act 1978 (as amended), and they had the resources to meet the contribution.

3. Exercise of Skill and Care

The Consultant warrants and undertakes to the Beneficiary that it has exercised and will continue to exercise all reasonable skill, care and diligence which may reasonably be expected of a professional person acting in the capacity of the Consultant in relation to the Development and within the scope of the Consultant's appointment under the provisions of the Contract.

4. Obligations Prior to Determination of the Contract

4.1 The Consultant warrants and undertakes to the Beneficiary that he will not exercise or seek to exercise any right of determination of the Contract or to discontinue the performance of any of his obligations in relation to the Development by reason of breach on the part of the Employer without giving to the Beneficiary not less than 28 days' notice of his intention to do so and specifying the grounds for the proposed termination.

4.2 Any period stipulated in the Contract for the exercise by the Consultant of a right of determination shall nevertheless be extended as may be necessary to take account of the period of notice required under Clause 4.1.

4.3 Compliance by the Consultant with the provisions of Clause 4.1 shall not be treated as a waiver of any breach on the part of the Employer giving rise to the right of determination nor otherwise prevent the Consultant from exercising his

rights after the expiration of the notice unless the right of determination shall have ceased under the provisions of Clause 5.

5. Obligations of the Consultant to the Beneficiary

5.1 The right of the Consultant to determine the Contract shall cease within the period of 28 days referred to in Clause 4.1 if the Beneficiary shall give notice to the Consultant:

5.1.1 requiring him to continue his obligations under the Contract in relation to the Development;

5.1.2 acknowledging that the Beneficiary is assuming all the obligations of the Employer under the Contract; and

5.1.3 undertaking unconditionally to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Contract;

and shall pay to the Consultant any sums which have become due and payable to him under the Contract but which were then unpaid.

5.2 Upon compliance by the Beneficiary with the requirements of Clause 5.1 the Contract shall continue in full force and effect as if the right of determination on the part of the Consultant had not arisen and in all respects as if the Contract had been made between the Consultant and the Beneficiary to the exclusion of the Employer.

5.3 Notwithstanding that as between the Employer and the Consultant the Consultant's right of determination of the Contract may not have arisen, the provisions of Clause 5.2 shall nevertheless apply if the Beneficiary gives notice to the Consultant and the Employer to that effect and the Beneficiary complies with the requirements on his part under Clause 5.1.

5.4 The Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Employer and the Beneficiary the circumstances have occurred permitting the Beneficiary to give notice under Clause 5.3.

5.5 The Consultant acting in accordance with the provisions of this Clause 5 shall not by so doing incur any liability to the Employer.

6. Copyright and Licence to Use Documents

6.1 The Consultant grants and agrees to grant to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to use and reproduce all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD Materials and any other materials provided by the Consultant in connection with the Development (whether in existence or to be made) and all amendments and additions to them and any works, designs or inventions of the Consultant incorporated or referred to therein for all purposes relating to the Development including (without limitation) the construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, promotion and advertisement of the Development, such licence carrying the right to grant sub-licences and to be transferable without the prior consent of the Consultant.

6.2 The Consultant agrees:

- 6.2.1 on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to the material referred to in Clause 6.1 and, at the Beneficiary's expense to provide copies of it; and
- 6.2.2 at the Consultant's expense, to provide the Beneficiary with a set of all such material on Practical Completion.
- 6.3 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Contract shall be paid by the Consultant and the Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract.

7. Indemnity Insurance

- 7.1 The Consultant warrants to the Beneficiary that he has at all relevant times maintained and (so long as such insurance is available in the market) will continue to maintain for a period of 12 years after Practical Completion professional indemnity insurance with a reputable insurance company with a limit of indemnity of not less than Three million pounds (£3,000,000) in respect of each and every claim to cover any claims made under this Deed against the Consultant in relation to the Development.
- 7.2 As and when reasonably required by the Beneficiary the Consultant shall produce for inspection satisfactory documentary evidence that the insurance referred to in Clause 7.1 is being properly maintained and confirm that payment has been made in respect of the last preceding premium due under it.
- 7.3 The preceding parts of this Clause 7 do not apply at times when and to the extent that insurance cover is not available in the United Kingdom insurance market at reasonable economic rates of premiums, and the Consultant has notified the Beneficiary accordingly.

8. Deleterious Materials

- 8.1 The Consultant further warrants to the Beneficiary that none of the following materials have been specified for use, or permitted to be used, by or on behalf of the Consultant in relation to the Development or any part or parts of it:
 - 8.1.1 high alumina cement;
 - 8.1.2 woodwool slabs in permanent shuttering form;
 - 8.1.3 calcium chloride in blockwork or brickwork;
 - 8.1.4 asbestos products;
 - 8.1.5 aggregates which do not comply with BS 882 and BS 8110 (or European equivalents), and aggregates susceptible to alkali silica reaction;
 - 8.1.6 calcium silicate bricks and tiles; and
 - 8.1.7 any other materials generally known at the time of specification to be deleterious to health or safety or to the integrity of buildings;

(together referred to as 'Deleterious Materials').

9. **Post-Completion Certificates**

9.1 The Consultant undertakes immediately following completion of the Development to certify to the Beneficiary that:

9.1.1 neither he nor any other person on his behalf shall have specified for use or permitted to be used any Deleterious Materials in relation to the Development or any part or parts of it;

9.1.2 to the extent to which the design of the Development or any part or parts of it has been carried out by or on behalf of the Consultant such design complies with the requirements of the Building Act 1984, the Building Regulations 1991 and all other relevant statutory requirements, regulations and permissions and to the best of the Consultant's knowledge and belief the completed Development or such part or parts of the Development comply as have been constructed in accordance with the Consultant's design criteria comply in all respects with all such Acts and Regulations and all other relevant statutory requirements, regulations and permissions.

10. **Communications**

10.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when delivered (in the case of personal delivery or letter) or when despatched (in the case of facsimile) to the party addressed to him at the address appearing below (or at such address as the party may hereafter specify for this purpose to the other):

in the case of the Consultant
.....

in the case of the Beneficiary
.....

10.2 A written notice includes a notice by facsimile. A notice or other communication received on a non-working day or after business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.

11. **Employer**

The Employer agrees that he will not take any steps which would prevent or hinder the Beneficiary from exercising his rights under this Deed.

12. **Concurrent Liabilities**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies he may have against the Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

13. **Assignment by the Beneficiary**

The Beneficiary may, without the consent of the Consultant, assign:

- (a) the benefit of all or any of the Consultant's obligations under this Deed; and/or
- (b) any benefit arising under or out of this Deed.

14. **Limitation Period**

The liability of the Consultant under this Deed shall cease 12 years following Practical Completion.

15. **Law and Jurisdiction**

15.1 This Deed shall be governed by, and construed in accordance with, English law.

15.2 Subject to Clause 15.3, any dispute arising out of this Deed shall be referred to arbitration in accordance with the Arbitration Act 1996 by a single Arbitrator to be agreed between the parties in dispute or, failing agreement within 14 days from the time when any party has given to another a written request to concur in the appointment of an Arbitrator, nominated at the request of any party by the President of the Chartered Institute of Arbitrators.

15.3 If the dispute to be referred to arbitration under this Deed raises issues which are substantially the same as or connected with issues raised in related disputes between any party to this Deed and any other person, and if the related dispute has already been referred for determination to an Arbitrator, the parties to this Deed agree that:

15.3.1 the dispute under this Deed shall be referred to the Arbitrator appointed to determine the related dispute, except that any party to this Deed may require the dispute under this Deed to be referred to a different Arbitrator (to be appointed under this Deed) if the party reasonably considers that the Arbitrator appointed to determine the related dispute is not appropriately qualified to determine the dispute under this Deed; and

15.3.2 the Arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure of the High Court as to joining one or more defendants or co-joining defendants or third parties was available to the parties and to him.

15.4 The parties to this Deed irrevocably agree that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Deed, and for such purpose the parties irrevocably submit to the jurisdiction of the courts of England.

DELIVERED AS A DEED on the date at the head of this document

SIGNED and delivered as a Deed
For and on behalf of the Consultant

SIGNED and delivered as a Deed
For and on behalf of the Beneficiary

..... Signed

..... Signed

..... Name
Director

..... Name
Director

..... Signed

..... Signed

..... Name

..... Name
Director/Company Secretary

SIGNED and delivered as a Deed
For and on behalf of the Employer

..... Signed

..... Name

..... Title

SCHEDULE 1

PARTICULARS OF THE CONTRACT

SCHEDULE 2

DESCRIPTION OF THE DEVELOPMENT

SCHEDULE 3

DESCRIPTION OF THE PROPERTY

SCHEDULE 7

FORM OF PARENT COMPANY GUARANTEE

PARENT COMPANY GUARANTEE

THIS DEED is made on the _____ day of _____ 201[]

PARTIES:

1 'The Guarantor': _____ whose registered office is at _____;

and

2 'The Employer' Merseytravel whose office is at No.1 Mann Island, Liverpool L3 1BP

RECITALS:

- (A) The Employer has entered/is about to enter into a Contract dated ('the Contract', which expression shall include all conditions of contract, schedule of services, schedule of rates, plans, and other documents incorporated therein) withwhose registered office is at ('the Consultant') in relation to the provision of the following Services by the Consultant as more particularly described in the Contract (hereinafter called 'the Services').
- (B) The Consultant is a wholly owned subsidiary company of the Guarantor under the Companies Act 2006 (as amended).
- (C) The Guarantor has agreed to guarantee the performance of all of the Consultant's obligations under the Contract in the manner appearing below.

OPERATIVE PROVISIONS:

NOW in consideration of the payment of one pound (£1.00) (receipt of which is hereby acknowledged by the Guarantor) **THIS DEED WITNESSES** as follows:-

1. **Guarantee**

The Guarantor HEREBY irrevocably COVENANTS AND GUARANTEES to the Employer and its successors and assigns, the full, faithful and punctual performance, observance and compliance respectively by the Consultant of each and every of the terms, provisions, conditions, obligations, undertakings and agreements on the part of the Consultant to be performed, observed or carried out by the Consultant as contained or referred to in the Contract as such Contract may, from time to time, be amended (hereinafter called "the Obligations").

2. **Performance Obligations**

If, at any time, any default is made by the Consultant in the performance of any of the Obligations, the Guarantor will well and truly perform or cause to be so performed each and every one of the Obligations and/or will pay any sum or sums that may be payable in consequence of any default made by the Consultant in the performance of any of the Obligations.

3. **Rights to Engage Another Consultant**

Without prejudice to the generality of Clause 2 above, the Employer shall have the right, at its sole option, in the event of any default by the Consultant to engage another consultant, other than the Guarantor or any nominee of the Guarantor to complete the Services under the Contract and the Guarantor undertakes to pay any additional costs (whether direct or indirect) thereby incurred by the Employer.

4. **Liability as if Sole Principal Obligor**

- 4.1 As between the Guarantor and the Employer (but without affecting the Obligations), the Guarantor shall remain liable under this Deed as if it were the sole principal obligor and not merely a guarantor.
- 4.2 The Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including, but not limited to:-
- 4.2.1 any amendment, modification, waiver, consent or variation, express or implied, to the scope of the Services or to the Contract or any related documentation;
 - 4.2.2 the granting of any extensions of time or forbearance, forgiveness or indulgences in relation to time to the Consultant;
 - 4.2.3 the enforcement, absence of enforcement or release of the Contract or of any security, right of action or other guarantee or indemnity;
 - 4.2.4 the dissolution, amalgamation, reconstruction, re-organisation of the Consultant or any other person; or
 - 4.2.5 the illegality, invalidity or unenforceability of or any defect in any provision of the Contract or any of the Obligations;
 - 4.2.6 any indulgence or additional or advanced payment, forbearance, payment or concession to the consultant;
 - 4.2.7 any compromise of any dispute with the Consultant;
 - 4.2.8 any failure of supervision to detect or prevent any fault of the Consultant;
 - 4.2.9 any assignment of the benefit of the Contract.

5. **Assignment**

- 5.1 This Deed and the benefit conferred by it may be assigned by the Employer to any party to whom it assigns its interest under the Contract at any time and references to the Employer shall include its assigns.
- 5.2 Save for the provision of Clause 5.1 above, this Deed and the benefit conferred by it may not be assigned by either party.

6. **Limit of Liability**

The Guarantor's total liability in terms of this Guarantee shall be no greater than the Consultant's total liability under the terms of the Contract.

7. **Governing Law**

The construction, validity and performance of the Guarantee is subject to English law and the English courts shall have jurisdiction over any dispute or difference arising out of or in connection herewith.

DELIVERED AS A DEED on the date at the head of this document

SIGNED and delivered as a Deed
For and on behalf of the Guarantor

..... Signed

..... Name
Director

..... Signed

..... Name
Director/Company Secretary

SIGNED and delivered as a Deed
For and on behalf of the Employer

..... Signed

..... Name
Director

..... Signed

..... Name
Director/Company Secretary

SCHEDULE 8

FORM OF PERFORMANCE BOND

THIS GUARANTEE BOND is made as a deed **BETWEEN** the following parties whose names and addresses are set out in the Schedule to this Bond (the "Schedule"):-

- (1) The "Contractor" as principal
- (2) The "Guarantor" as guarantor, and
- (3) The "Employer"

WHEREAS

- (1) By a contract (the "Contract") entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the "Works") upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in Clause 2.

NOW THIS DEED WITNESSES as follows:

1. The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor or if the Contractor shall become insolvent or bankrupt or have a receiving order or administration order made against it or compound with its creditors or being a corporation commence to be wound up not being a members voluntary winding up for the purpose of reconstruction or amalgamation or carry on its business under an administrator or administrative receiver for the benefit of its creditors or any of them the Guarantor shall subject to the provision of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provision of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.
2. The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the "Bond Amount") but subject to such limitation and to Clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.
3. The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provision of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
4. Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any claims which have been made by the Employer upon the Guarantor before Expiry.
5. The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

6. This Guarantee Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.
7. This Guarantee Bond shall be governed by and construed in accordance with the laws of England and Wales and only the Courts of England and Wales shall have jurisdiction hereunder.

THE SCHEDULE

The Contractor: _____ whose address / registered office is
at _____

The Guarantor: _____ whose registered office is at _____

The Employer: Merseytravel whose address is at No.1 Mann Island Liverpool L3 1BP

The Contract: A contract dated the _____ day of _____ to be entered into
between the Employer and the Contractor for [_____]
for the original contract sum _____ of
pounds sterling (£ _____)

The Bond Amount: The sum of _____ pounds sterling (£
_____)

Expiry: _____ which shall be
conclusive for the purposes of this Guarantee Bond

IN WITNESS whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a deed on the date at the head of this document

EXECUTED AND DELIVERED as a deed by
CONTRACTOR

EXECUTED AND DELIVERED as a deed by
GUARANTOR

