

16 MARCH

2014

Merseyside Passenger Transport Executive

- and -

Kenyon Fraser Limited

**Framework Agreement
For Consultancy Services for the
Design of Travel Marketing Literature
Commencing 1 January 2014 until 31 December 2015**

Louise Outram
Secretary to the Executive
Merseyside Passenger Transport
Executive
No 1 Mann Island
Liverpool L3 1BP

Ref: LAD/CON-RSN8207-KF/SVH/JG/sl

THIS Agreement is made on

16 MARCH

2014

BETWEEN:

- (1) **MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE** whose place of business is at No 1 Mann Island, Liverpool L3 1BP ("the Executive");

AND

- (2) **KENYON FRASER LIMITED** whose registered address is at 46 Rodney Street Liverpool L1 9AA ("the Supplier")

Background

- (A) On the basis of the Supplier's application the Executive selected the Supplier to enter a framework agreement to provide the Services to the Executive on a call-off basis in respect of the Services (hereinafter defined) in accordance with this Agreement.
- (B) This Agreement sets out the award procedure for services which may be required by the Executive, the main terms and conditions for any Call-Off Contract which the Executive may conclude and the obligations of the Supplier during and after the term of this Agreement.
- (C) It is the Parties' intention that there will be no obligation for the Executive 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 Supplier to the Executive on 23 October 2013

"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

"Brief"	means the documentation supplied by the Executive to the Supplier for any Call-Off Contract that sets out the Products to be produced by the Supplier (as set out in the Specification) and the manner and timescales under which the Call-Off contract is to be performed
"Call-Off Contract"	means the legally binding agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between a the Executive and the Supplier 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 annexed hereto
"Commencement Date"	shall mean the date set out in bold type on the cover of this Agreement
"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

"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

Framework Suppliers"

means the Suppliers appointed as Framework Suppliers under this Agreement

"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 the Executive

"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, trademarks, 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 the Executive on 17 September 2013

"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 dated 6 June 2013 published in the Official Journal of the European Union
"Party"	means the Executive and/or the Supplier
"PQQ Response"	means the response submitted by the Supplier to the pre-qualification questionnaire issued by the Executive on
"Products"	means any designs materials and proposals produced by the Supplier as the result of the Executive placing a Service Order with the for Services with an Supplier
"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 the Executive
"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 of these Contract Documents as revised under Clause 12

"Services"	means the provision of the consultancy services creating the Products outlined in the Brief that accompanies any Service Order produced for a Call-Off Contract under this Agreement
"Service Order"	means the order produced by the Executive for the Products to be procured from an Supplier in the performance of the Services
"Specification"	means the documentation provided to the Supplier detailing the requirements of the Executive for the Services for any Call-Off Contract under this agreement
"Staff"	means all persons employed by the Supplier together with the Supplier's servants, suppliers and Suppliers 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 30th September 2017 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 Supplier shall comply with and shall deliver the Services to achieve the objectives of the policies of the Executive published annually and which are available on request from the Executive.
- 2.2 The Supplier has been appointed and the Executive has entered into this Agreement on the basis of the Supplier's response to the PQQ and

Invitation to Apply and, in particular, the representations made by the Supplier to the Executive in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.

- 2.3 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 the Executive and the Supplier in respect of the provision of the Services by the Supplier to the Executive.
- 4.2 The Executive (subject to the following provisions of this Clause 4 at its absolute discretion and from time to time may source Services from the Supplier during the Term.
- 4.3 The Supplier acknowledges that there is no obligation for the Executive to purchase any Services from the Supplier during the Term.
- 4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Executive in respect of the total values of the Services to be ordered by them pursuant to this Agreement and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.

5. **Supplier's Appointment**

The Executive appoints the Supplier as a potential Supplier of the Services and the Supplier shall be eligible to be considered for the provision such Services by the Executive.

6. **Exclusivity**

The Supplier acknowledges that in entering this Agreement no form of exclusivity or guarantee has been granted by the Executive for Services from the Supplier and that the Executive is at all times entitled to enter into other contracts and arrangements with other Suppliers 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 the Executive decides to source Services through this Agreement then it shall award the Services requirements following a mini-competition conducted in accordance with the requirements of this Agreement the Regulations and the Guidance.

7.2 Where the Executive requires Services under this Agreement the Executive shall:-

7.2.1 Identify the relevant Services under this Agreement.

7.2.2 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.

7.2.3 Prepare and provide the relevant Supplier with a Brief (including timescales) for the specific contract to be awarded and where relevant a Specification for any Products that may be produced.

7.2.4 Invite tenders by conducting a mini-competition for any Services requirements in accordance with the Regulations and Guidance and in particular:-

7.2.4.1 Consult in writing the Suppliers 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;

7.2.4.2 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;

- 7.2.4.3 Keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
- 7.2.5 Apply the Award Criteria to the Suppliers compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its Services requirements.
- 7.2.6 Award the Services contract by the completing of an executed Service Order whereby a Call-Off Contract shall be formed between the Supplier and the Executive for the provision of the Services referred to in that tender and such Contracts shall be evidenced;
- 7.2.7 Award the Call-Off Contract by the completing of an executed Service Order whereby a Call-Off Contract shall be formed between the successful Framework Supplier and the Contracting Body for the provision of the Works referred to in that tender and such Contracts shall be evidenced;
- 7.2.7.1 For lower value Works (those under £10,000) the signed Service Order and Brief along with the terms of the Call-Off Contract shall suffice as the contract documentation and there will be no need to have any formal executed documents.
- 7.2.7.2 For higher value Works (those in excess of £10,000) a formal legal agreement executed as a deed in the format set out in Schedule 4 to this Agreement shall be produced with the documents referred to in Clause 7.2.7.1 above incorporated therein and the successful Framework Supplier selected as a result of the mini tender process shall arrange for the legal agreement to be executed prior to commencement of the Works.
- 7.3 The Supplier agrees that a tender submitted by the Supplier 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 Executive).

7.4 The Supplier agrees that the Call-Off Contracts may vary in duration and where they are of short duration payment for the Services will be made subsequent to satisfactory completion of the Services Where the Call-Off Contracts are of longer duration the payments for the Services will be made at the milestones detailed in the Service Order and within the Call-Off Terms and Conditions

7.5 Notwithstanding the fact that the Executive has followed the procedure set out above in this Clause 7 the Executive shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Agreement shall oblige any Executive to accept any tender for Services.

8. Warranties and Representations

8.1 The Supplier warrants and represents to the Executive 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 Supplier and which is either responsible directly or indirectly for the business activities of the Supplier) 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 the Executive prior to the execution of this Agreement and it will promptly advise the Executive 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 the Executive;
- 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 the Executive; 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 Supplier 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 Supplier's assets or revenue.

9. **Corrupt Gifts and Payments of Commission**

- 9.1 The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Executive or person employed by or on behalf of the Executive 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 the Executive or person employed by or on behalf of the Executive (including its award to the Supplier, 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 Supplier is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

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

9.3 If the Supplier, its Staff or any person acting on the Supplier'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 the Executive may:-

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

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

10. **Conflicts of Interest**

10.1 The Supplier shall during the Term:

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

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

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

11. **Call-off Contract Performance**

11.1 The Supplier shall perform all Call-Off Contracts entered into with the Executive 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 Supplier for Call-Off Contracts to the Executive for Services shall be the rates set out in the Schedules of Rates (and tendered in accordance with the requirements of any mini-competition held pursuant to Clause 7.

12.2 The rates set out in the Schedules of Rates shall be revised as of the anniversary of the Commencement Date of each year during the Term 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 the anniversary of the Commencement Date 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 Supplier is in breach of the terms of either this Agreement or the Call-Off Contract.

- 12.3 Should the Supplier deem it appropriate given the circumstances of a particular Call-Off Contract the Supplier shall be entitled to offer to the Executive rates for Services that are at a discount to the rates set out in the Schedule of Rates.

13. **Intentionally Not Used**

14. **Non-discrimination**

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

14.2 The Supplier shall take all reasonable steps to secure the observance of Clause 14 .1 by all servants employees or agents of the Supplier and all suppliers employed in the execution of this Agreement.

15. **Records and Access**

15.1 The Supplier shall keep and maintain until twelve (12) 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 the Executive and the amounts paid.

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

15.3 The Supplier shall afford the Executive such access to such records and accounts as may be required from time to time.

15.4 The Supplier shall provide such records and accounts (together with copies of the Supplier'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 the Executive.

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:

16.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

16.1.2 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:

16.2.1 such disclosure is a requirement of Law;

16.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

16.2.3 such information was obtained from a third party without obligation of confidentiality;

16.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

16.2.4 it is independently developed without access to the other party's Confidential Information.

16.3 The Supplier may only disclose the Executive'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 Supplier shall not and shall procure that its Staff do not use any of the Executive's Confidential Information received otherwise than for the purposes of this Agreement.

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

17. **Data Protection**

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

19. **Publicity**

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

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

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

20. **Termination**

Termination on Default

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

20.1.1 where the Supplier commits a Material Default and:-

- (a) the Supplier has not remedied the Material Default to the satisfaction of the Executive within twenty (20) Working Days or such other period as may be specified by the Executive, 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 the Executive, capable of remedy; or

20.1.2 where the Executive terminates a Call-Off Contract awarded to the Supplier under this Agreement as a consequence of default by the Supplier.

Termination on Financial Standing

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

Termination on Insolvency and Change of Control

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

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 Supplier shall notify the Executive immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Executive may terminate this Agreement by giving notice in writing to the Supplier 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 the Executive becomes aware of the Change of Control.

Termination by the Executive

20.5 The Executive 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 Supplier.

21. Suspension of Supplier's Appointment

Without prejudice to the Executive's rights to terminate this Agreement in Clause 20, if a right to terminate this Agreement arises in accordance with Clause 20 the Executive may suspend the Supplier's appointment to undertake Services for the Executive by giving notice in writing to the Supplier. If the Executive provides notice to the Supplier in accordance with this Clause 21 the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Executive 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 Supplier 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 Supplier shall return to the Executive any data and Confidential Information belonging to the Executive in the Supplier's possession power or control and any other information and all copies thereof owned by the Executive 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, 23, 24 and 34 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

23.2.3 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 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 per incident. 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 Supplier shall indemnify and keep indemnified the Executive in full from and against all claims,

proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out 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 Supplier or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This Clause shall not apply to the extent that the Supplier 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 Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier 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 Supplier 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 12 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 £1,000,000 per incident with the actual level required being detailed in the Service Order;

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 the Executive may reasonably require (and as required by law) from time to time with the actual level required being detailed in the Service Order.

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

24.4 The Supplier shall produce to the Executive, 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 Supplier fails to give effect to and maintain the insurances required by this Agreement then the Executive may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

25. **Transfer and Sub-contracting**

25.1 This Agreement is personal to the Supplier and the Supplier 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 the Executive. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Agreement.

25.2 The Executive shall be entitled to:-

25.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement; or

25.2.2 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 the Executive;

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

26. **Variations**

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

27. **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 the Executive 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 that Act. 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.

28. **Severability**

28.1 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.

28.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement the Executive and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

29. **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.

30. **Waiver**

30.1 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.

30.2 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 32.

30.3 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.

31. Entire Agreement

31.1 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.

31.2 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.

31.3 Nothing in this Clause 31 shall operate to exclude Fraud or fraudulent misrepresentation.

32. Notices

32.1 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.

32.2 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), by facsimile transmission 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 32.3. 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 facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

32.3 For the purposes of Clause 32.2 the address of each Party shall be:

32.3.1 For the Executive:-

Address:

Merseytravel, No 1 Mann Island, The Strand, PO Box 1976
Liverpool

For the attention of: The Secretary to the Executive

Fax:

Email:

32.3.2 For the Supplier:-

Address: 46 Rodney Street Liverpool L1 9AA

For the attention of:

Fax: N/A

Email:

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

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

33. Dispute Resolution

33.1 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 32 above.

33.2 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.

34. **Law and Jurisdiction**

The Executive and the Supplier 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 the)
EXECUTIVE)

Signed LOUISE OUTRAM

Name LOUISE OUTRAM

Position Secretary to the Executive

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

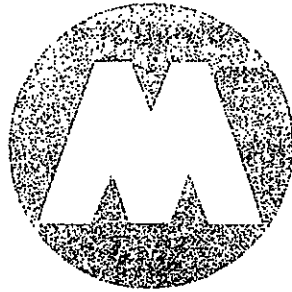
Signed

Name
(Director)

Signed

Name
(Director/Company Secretary)

Application for Inclusion onto
the Framework and the
submitted Schedule of Rates



Merseytravel

Price Submission

Provision of Travel Marketing Services - Multi Party Framework

In addition to the overarching costs to illustrate how budget will be allocated for tasks 1 & 2, we ask agencies to present their hourly and day rates for each of the following in the separate price evaluation section of the tender response.

➤ Hourly / Day rates for the following:

Service Position	Day Rate	Hourly
<ul style="list-style-type: none"> • Creative Director • Digital Director • Acc. Director • Acc. Manager • Acc. Exec • Media Planner • Media Manager • Media Exec • Web Designer • Web Developer • Copy Writer • Art Worker 	<ul style="list-style-type: none"> • • • • • • • • • • • • 	<ul style="list-style-type: none"> • • • • • • • • • • • •
<ul style="list-style-type: none"> • Others – As appropriate 	Engagement – covered by Acc. Managers and Execs at rates above. Sessional staff / day	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Files, transfers and transmission, asset, conversion of formats – category for small ad hoc requests? 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • Delivery / distribution options where appropriate. 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •

SCHEDULE 1

THE SERVICES

The Services shall include the Following:-



Merseytravel

Specification

Provision of Travel Marketing Services - Multi Party Framework

1.1 **Overview of Requirement**

This purpose of this contract is to provide Merseytravel with the appropriate creative resources to support the Customer & Business Development Service (CBD) in the development of a varied range of strategic marketing and information outputs.

These services are integral to delivery of our corporate priorities, enabling provision of core travel information, promotional initiatives and strategic marketing. In achieving this, the resource will be required to provide innovative and dynamic marketing solutions that will help retention of existing customers and increase the take up of Merseytravel's products and services among new target audiences.

1.2 **Scope**

The Executive wishes to appoint 3 agencies to a multi-party framework agreement and the selection process will be conducted to reflect these arrangements.

BRIEF

The Customer & Business Development Service – Delivering Transport Information, Publicity & Marketing

The Customer & Business Development Service (CBD) is responsible for overseeing all marketing activity for Merseytravel which includes the promotion of multimodal travel ticket products, supported bus networks and behaviour change initiatives to increase the use of sustainable travel modes. The service also provides a client services for Merseytravel, providing professional marketing support for the internal departments.

At a strategic level, the CBD is critical in supporting delivery of 3 strategic themes of the Corporate Plan – Partnerships and Innovation, Customer Focus and Integrated Transport. In contributing to these priorities, the service's core focus of delivery is as follows:-

Transport Information

Transport information materials are a key tool for retaining existing audiences and supporting tactical communications initiatives. At present the service provides timetable information for the bus and rail network, is responsible maintaining the accuracy of travel information following network changes and ensures information on local transport services is available across the network and at key transport interchange points. The service is also responsible for online travel information including the provision of travel alerts information for planned and unplanned changes across the network.

Merseytravel is currently reviewing the way it provides and communicates travel information in order to improve satisfaction levels among existing customers and to increase the number of people using the public transport network. Through a new information strategy, investment will be focussed on improving the design and accessibility of printed literature including upgrades to the presentation and legibility of printed timetable and route map information.

Concurrent with this, investments will also be made in technology to provide travel information across a range of digital formats including the development of Merseytravel's journey planning apps, website based journey planning and real time information (RTI).

Strategic Marketing

The marketing function of CBD provides a strategic support service to inform corporate business planning processes, product development and ensures strategies are in place for the effective communication of all Merseytravel's products and services. CBD is also responsible for the management and development of Merseytravel's digital estate (including web and marketing CRM assets), revenue generation and product marketing of those services operated directly by Merseytravel (Mersey Tunnels, Mersey Ferries, multi modal ticketing products etc.).

In providing a client service function, CBD provides specialist marketing guidance across the organisation including the development of social marketing/behavioural change initiatives, brand development and the promotion of specialist transport initiatives and infrastructure. Through initiatives such as the Quality Bus Partnership initiative, the service is also responsible for developing marketing plans and partnerships with some of the major bus operators and delivering campaign activity on their behalf.

Through effective creative delivery, Agencies will be a key partner in supporting how the marketing function informs Merseytravel's corporate approach to market development, performance analysis, digital channel development, data capture and market research.

Behaviour Change

Encouraging alternative and sustainable ways to travel is a core priority in implementing the third Local Transport Plan to 2024. The campaigns, initiatives and interventions are provided under the brand 'TravelWise Merseyside' and delivered in conjunction with Knowsley, Liverpool, Sefton, St Helens and Wirral councils, together with partners collectively making up the Merseyside Transport Partnership.

Working closely with our Smarter Choices Team, common aims and objectives include challenging entrenched attitudes and behaviours, encouraging people to walk, cycle, car share, use bus and train and use cars wisely – in a socially, financially and healthily beneficial sense.

In strategic marketing and promotions, encouraging wider behavioural change to maintain and increase patronage of public transport services, is informed by segmentation and customer insight, an intrinsic element of project scoping, campaign planning and development. Agencies will be involved in a co-creative environment to ensure concepts and messages are authentic, resonant and validated in line with this insight, creating levers for change that will be both measurable and sustainable.

The Local Transport plan and Active Travel Strategy are available to view at www.transportmerseyside.org

www.LetsTravelWise.org is the Merseyside Transport Partnership's customer facing sustainable transport website and includes downloads of all paper resources, the travel widget that can sit on external websites and other journey planning tools

Our Markets, Clients & Customers

A constituent element of our campaign planning and delivery has involved identifying the key social, environmental, and economic factors that can be leveraged for influencing customer choice into adopting and maintaining sustainable transport patronage. To do this, we have developed considerable understanding of public behaviour, perceptions and misconceptions regarding Merseytravel products and services through qualitative and quantitative research and audience segmentation.

Key information and profiles of our core markets can be found within the Corporate Marketing Strategy located within the corporate documents section of our website at: <http://www.merseytravel.gov.uk/about-us/corporate-information/Pages/Corporate-Documents.aspx>

Marketing & Information Outputs & Channels of Delivery

The CBD Service and client service areas including the Smarter Choice Programme require suppliers to be able to provide creative solutions in a broad range of formats, layouts and styles, governed by adherence to Merseytravel's brand guidelines. Market insight, testing and feedback enable us to determine the best ways in which we provide information and interventions – recognising that accessibility, clarity, consistency and ease of reference are core components of the materials we produce in print or digital formats. We also incorporate corporate KPIs and metrics within each campaign plan to gauge effectiveness of messages and materials developed. For further detail, our Annual Campaign Evaluation Report 2012-13 has been appended to this ITT.

SCOPE

Below is a list of typical outputs against each of the main areas requiring external support. Please note this list provides indicative requirements and the scope of work over the contract period will not be restricted to the design and production of these core outputs alone.

Graphic Design for Print and Digital Assets

Merseytravel retains limited in house design capability. Within the CBD service, a restricted number of users have access to a range of DTP software products, including Quark Xpress and Adobe Illustrator and Photoshop, used largely for the present production of travel information such as timetables and interchange posters.

The core requirement is to support Merseytravel in the design, layout and production to a print ready standard of items for press adverts, leaflets, direct mail, e-communications, web pages and banners, social media pages, corporate and commercial documentation/packs, ad hoc promotional items and merchandise, clothing POS and exhibition materials.

Concept Generation

Merseytravel will work closely and collaboratively with our suppliers in the development of new creative concepts, typically for new programmes, corporate initiatives and travel products/services.

It is expected that concepts will be developed that are consistent with overarching brand guidelines, and validated through interpretation of available insight into the target audiences, their attitudes, motivations, and levers for behaviour change - producing innovative and impactful creative and resonant and persuasive copy.

Concepts for large scale or on-going campaigns for example, will require a full development rationale, and where possible proposed creative routes will be tested and to further qualify the strategic approach.

Conversely, it is anticipated that certain conceptual requirements, such as those for small scale or ad hoc corporate projects will require a direct, on brand approach be taken, working to existing layouts, formats and conventions. The extent of potential development will be agreed between suppliers and the CBD service and made explicit within Merseytravel briefings and any planning or scoping meetings.

Copywriting for Web and Print

Using the right tone of voice is critical in positively positioning Merseytravel with customers - providing a voice reflecting our brand values, traits and personality. The way we communicate in copy on and offline will reflect the way we want to be seen and convey the advantages, benefits and value of our core services.

- Copy will be consistent with brand guidelines and our key brand attributes

- As a primary element to engage stakeholders, customers and the general public, the tone of voice must be clear, concise and consistent.
- Our tone of voice must be engaging –attraction and retention of interest is vital.
- Copy must be accessible and avoid use of unnecessary acronyms, jargon or terminology that may be difficult for customers to understand.

Underpinning this rationale is the principal that Merseytravel is a customer focused organisation, placing high value in the quality of experience within every aspect of Merseytravel's customer facing operations. Effective, accessible copy writing represents a key element for enhancing these relationships and embodying the Merseytravel brand in the public domain.

When considering the types of copy the website requires, from general and introductory to explanatory and directive, we must ensure tonal consistency that considers:

Our Voice

Our brand personality is innovative, dedicated and welcoming, with 'dedicated' and 'welcoming' being particularly relevant to our tone of voice. We want our customers to feel like we are there to help them go to where they are going, rather than a faceless institution.

Our Speaking Style

- The language we use should reflect the way people speak to one another in everyday conversation. It should be relaxed, polite and friendly, not stuffy or full of jargon. Our language should show that we are thinking of them, rather than trying to sound self-important.
- These principles will be deployed across projects requiring introductory, explanatory, signposting or promotional text such as campaign messaging, advertising, digital promotions, information and publicity materials, events or corporate documentation.

For further detail, review the Merseytravel Brand Guidelines as per the details provided below.

Art Working and Formatting to Print Ready Standard

This Framework does not require suppliers to provide print services to Merseytravel, however it is expected that all creative solutions will be designed and art worked to a print ready standard.

As an indication, the following categories describe our typical printing requirements:

- Short to Medium run litho 1-4 colours up to sheet size B2
- Long run litho, 1-4 colours up to sheet size B1

- Outdoor, display & large format graphics – Digital/screen Short run digital/quick response
- Speciality (Braille, large print etc.) merchandise, carrier bags, direct mail, and individual/one off projects.
- Website banners are produced to 961x340px, commonly supplied as .png or jpeg files.

Merseytravel is also developing new and innovative ways of providing travel information through Real Time Information (RTI) systems such as bus stop screens and mobile applications. As part of this Framework, suppliers may also be called upon to provide a range of digital graphics and materials to be deployed across this estate.

Media Production & Selective Media Buying (on and offline)

Agencies will be expected to provide a cost effective media buying service that maximises budgets and client value. Agencies should be able to react quickly to short term opportunities and be flexible in their approach to media planning and buying.

Brand Enhancement

Merseytravel's brand guidelines provide a clear stylistic framework for the development of customer facing materials. As new products, services and channels of delivery are developed the guidelines will be expanded and amended accordingly. Agencies will be expected to contribute directly to this process through demonstrable understanding of the Merseytravel brand and any development of sub branding, through clear creative rationales and recognition of the equity and trust in the Merseytravel and any affiliate brands.

Ad-hoc Experiential Marketing

The Smarter Choices undertakes considerable engagement work both with communities and businesses to advocate uptake of sustainable transport options as a core strand of delivery of the Local Transport Plan. Direct engagement work can vary from on-street promotions within target areas and social spaces, to working directly within businesses and schools to build awareness and encourage positive behavioural change. A range of materials are produced to support these initiatives, including promotional flyers, t shirts and giveaways such as branded pedometers and cycle locks, to education packs and presentations for schools. It will be expected that Agencies will be called upon to provide design and production of these materials as appropriate, and to bespoke specifications agreed with Merseytravel, but also have available resource (or with approved sub-contractors) to assist in the delivery of events by providing experienced individuals or teams working to robust briefing and reporting mechanisms.

Supplier Briefing & Tasks

The following two scenarios are for Agencies to demonstrate their suitability for this contract. In responses to these tasks, Merseytravel is seeking evidence of an insight led interpretation in the development of resonant concepts and messages. The accompanying creative rationales and written proposals, should include the approach to effective job management, co-creative thinking, innovative delivery choices and suggestions for on-going maintenance, sustainability and evaluation of campaigns.

Merseytravel's brand guidelines can be obtained upon request by contacting Paul Chedotal on 0151 330 1054 email [@merseytravel.gov.uk](mailto:Paul.Chedotal@merseytravel.gov.uk) Paul will provide you with a link and password to access. Please note that these guidelines are essential to completing your submission.

Scenario 1: Increasing Bus Patronage Campaign Aims & Objectives

Merseytravel is seeking to develop an overarching campaign across Merseyside to increase patronage on bus services, raise awareness of the tangible benefits of bus travel to local audiences, and change preconceived attitudes that are a barrier to uptake.

Consequently, the campaign will encourage fewer car journeys and more trips by bus and coach, contributing to Merseytravel's LTP and corporate objectives, increasing the value of bus and coach travel in stimulating economic growth, reducing congestion and CO₂ emissions and enabling access to jobs, retail, leisure and vital services.

Key Messages

The campaign will promote many aspects of bus travel - convenience, quality, frequency, value for money and environmental benefits with a range of proposed activities and delivery channels including ticket offers, direct mail, dedicated web pages, outdoor (network) advertising, radio, and on street promotions together with digital campaigns and social media.

A call to action/incentive is to try travel to discover the benefit and value as a customer and that this choice is socially responsible, financially preferable, convenient, frequent and safe alternative to driving, (avoiding congestion, pollution, charges for parking etc.). This proposition will resonate directly with our convertible audience segments (see audience profiles within Corporate Marketing Strategy) and reinforce benefits to existing customers.

Task

Agencies are asked to design an umbrella campaign identity, and indicative supporting materials (print and digital) that can be deployed across a number of

promotional channels. An indicative budget of £18,000 has been allocated to this project, with a campaign duration of 12 months.

Agencies will consider audience insight, relevant media channels, branding and corporate guidelines to develop the campaign proposition, calls to action, copy and incentives and how each approach is validated and monitored.

Each element/phase of development and delivery will be costed; indicating how the overall budget will be allocated (including media). Submissions will also include a full creative rationale and delivery schedule. You should include the job role/specialism of each member of the team and the number of hours allocated. **Please do not provide hourly or day rates within this part of the submission.**

Scenario 2: Car Share Campaign

Targeting businesses within Merseyside, the campaign will aim to promote car share to reduce single car occupancy journeys to work. Previous activity and campaigns in this area have highlighted that some Car Share goes on at a fairly informal level with no actual promotion. This has been evidenced through the evaluation of a previous Merseyside wide scheme undertaken by TravelWise where uptake was low.

It is thought that this number was low because it was perceived that people would be getting lifts with strangers from outside their sphere of colleagues (potentially those from other organisations and workplaces round and about) and this was a deciding factor for people not to take part. Through this campaign we will be hoping to highlight car share as a sustainable option within individual workplaces.

Objectives

- to raise awareness and bring about positive change;
- to increase no. of people who try car sharing;
- to bring about a positive shift in mode share; and
- to reduce cost of travel to and from work.

Key Messages

Car share can reduce your car parking problems lack of space, potentially create savings on cost of travel, cost of maintenance of vehicle and management and maintenance of car park – issues faced by car users and companies across the board. It is noted that every company is different and has access to different facilities. Those within the city will have limited access to spaces and those spaces they have will be at a premium. Outside the city companies may have access to more space but they will have the cost of maintaining/operating that space. Other organisations within the network are having the space available to them and the numbers of staff able access it, constrained through restrictions imposed by the council (shop Direct Liverpool) and are looking for and championing innovative ways of reducing pressures and working within constraints.

It may be a way of companies offering employees other ways to save especially in the current climate where by they may not be able to offer pay increases etc. We can show that companies are experiencing difficulties through the work we are currently undertaking with them. They have pressures from too little space, planning requirements, etc. We also have companies where they want to increase their carbon savings but have more parking spaces than employees and want more informal schemes that will encourage their staff to want to share for the cost saving, more social aspect. Savings on a daily 30 mile round trip shared with one other person could be as much as £900 with the savings increasing the more people you share with.

Key messages for development include:

- For individuals: Get a lift/Give a lift and save money this new year.
- Encouraging workplaces to order resource packs.
- Employees – reduced cost of travel (taking into account price of fuel, tunnel, wear and tear of vehicle, insurance). It's more social and more relaxing
- Uptake of specialist advice on car park management techniques provided by the Smarter Choices Team.

Task

Agencies are asked to design an umbrella campaign identity, and associated supporting incentive materials (print and digital) that will help companies sell the idea and incentivise staff to take part.

This includes an indicative range of promotional material concepts that can be used in the workplace, across print and digital platforms, and requires further development of the key call to actions advocating the potential benefits available.

The campaign will be promoted through existing contacts within the employer's network and with new contacts wanting to join the network. It will be sent out to an existing database, through e newsletters and mail shots (where appropriate). It will be promoted by Smarter Choices Officers making contact with and visiting businesses and agencies are asked to provide indicative details for ad hoc engagement team support.

Each element/phase of development and delivery will be costed; indicating how the overall budget will be allocated (including media). Submissions will also include a full creative rationale and delivery schedule.

You should include the job role/specialism of each member of the team and the number of hours allocated. **Please do not provide hourly or day rates within this part of the submission.**

For further information about the role of Smarter Choices please visit www.letstravelwise.org

Merseytravel operates a robust job management and briefing system, and we recommend that the written task responses use the template below to describe the

main development processes and delivery mechanisms being proposed (under each heading). This document is commonly completed in conjunction with (and reference) the campaign plans or briefings issued by Merseytravel.

Supporting documents should be appended to this, and referenced accordingly. Submissions can be presented in sizes no larger than A3.

Part 1: Campaign Themes - The overarching proposition linked to product features and benefits, including substantiation to enhance product credibility.
Part 2: Message Development - Based on the appropriate audience groups (see segmentation analysis) and rationale provided in the task/brief. This must specify appropriately tailored messaging to raise awareness of the product and stimulate action in identified audiences.
Part 3: Concept Development: Providing initial creative concepts based upon the rationale identified in earlier stages, including concepts in chosen/or identified routes/channels to market and adhering to brand/product guidance.
Part 4: Delivery: Providing <u>a fully costed</u> and evidence based media laydown, providing contingency options, again based on audience insights and identified media preferences. (For the purposes of this tender, please provide headline costs for budget allocation in this section – detailed costings will be provided separately in the price submission section).
Part 5: Implementation & Evaluation: Providing a full timeline for campaign activity, (gant chart) also identifying allocated management resources. This needs to be approved by Merseytravel, given the development of in house capacity to deliver elements including web, e-shots and social media etc) This should also factor proposed measurement, monitoring and evaluation methods.

NB. Merseytravel will not expect costs to be incurred for the development of initial proposals within the duration of this framework.

1.3 Contract Award Criteria

The Executive will award the Contract to the Contractors whose offers are the most economically advantageous to the Executive based upon the following criteria:

Price 35%

Quality 65%

The quality criteria are split into two elements as show below.

A quality threshold will be applied after the written submission of 75%, and a minimum of 5 and a maximum of 8 agencies will go forward to the presentation/interview stage.

(a) Written submission 45%

- (i) Understanding and interpretation of the briefs 20%.
- (ii) Creativity of the campaigns in respect of the appeal to the target market 20%.
- (iii) Impact and practicality of campaign 20%.
- (iv) Rationale for media selection and use of budget 20%.
- (v) Knowledge of market and how this impacts the campaign 20%.

(b) Presentation of the Quality Submission & Interview 20%.

All completed submissions should be returned by 12 noon 21 October 2013 to the following address, please mark clearly with the following information.

Provision of Travel Marketing Services Tender

For the Attention of

Procurement Officer

**Merseytravel
No' 1 Mann Island
Liverpool
L3 1BP**

Please ensure that there are no external markings on the packaging to identify your company.

SCHEDULE 2

CALLOFF CONTRACT AWARD CRITERIA

Criterion Number	Criterion	Percentage Weightings (or rank order of importance where applicable)
1	Price Submission	35%
2	Quality Submission (The Written submission 65%) Understanding and interpretation of the briefs 20% Creativity of the campaigns in respect of the appeal to the target market 20% Impact and practicality of campaign 20% Rationale for media selection and use of budget 20% Knowledge of market and how this impacts the campaign 20% Presentation of the Quality Submission & Interview 20% (dates to be confirmed)	65%

- (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. The Award Criteria will include evaluation of Key Performance Indicators under this Agreement.
- (b) The Award Criteria listed above will be subject to a price/quality ratio to be set by the Executive and the percentage weightings or rank order of importance (where applicable) will be set at the time of a mini-competition and will change depending on the type and level of Services to be undertaken.
- (c) The Executive will award its Service requirements to the Framework Supplier with the most economically advantageous tender according to the Award Criteria.

SCHEDULE 3

SCHEDULES OF RATES

These are set out in another part of the Tender Documentation.

SCHEDULE 4

CALL-OFF TERMS AND CONDITIONS

The Call-Off Terms and Conditions comprise the:

- (a) The Executive's Consultancy Services Agreement
- (b) Service Order for any Call-Off under Clause 7.2.7
- (c) The Specification and Brief
- (d) The Supplier's tender submission or its proposals to complete the Services
- (e) Where the Works are being let under Clause 7.2.7.1 (a lower value Call-Off) no formal documentation shall be produced other than the Service Order which shall fully detail the Services and have reference to the relevant Call Off terms.

Dated

17th February

2013/4

Merseyside Passenger Transport Executive

- and -

[Consultant]



**Consultancy Services Agreement
For the Provision of
Design Services for Travel Marketing Literature
October 2013 to September 2017**

Mrs Louise Outram
Secretary to the Executive
Merseyside Passenger Transport Executive
No.1 Mann Island
Liverpool L3 1BP

Ref: LAD/CON-RSN8207-ITT/SVH/JG

AN AGREEMENT made the 17th day of February 2014
BETWEEN

(1) **MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE** (operating as Merseytravel) of No.1 Mann Island, Liverpool L3 1BP ("the Executive") of the one part **AND**

(2) Kenyon Fraser
("the Consultant") of the other part

WHEREAS the Executive has requested the Consultant to perform the Service and the Consultant has agreed to perform the Service (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 personnel detailed in the Tender attached hereto or such other persons as the Executive may in consultation with the Consultant designate for that purpose

Commencement Date -

Completion Date -

Contract Documents - The Invitation to Tender the Tender (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** - Any reasonable travel accommodation or subsistence expenses properly and necessarily incurred by the Consultant in the provision of the Service subject to production of receipts or other appropriate evidence of payment and payable in accordance with the principles of the Executive'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 Executive 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]
- Service** - The service to be provided by the Consultant under this Agreement as detailed in the Contract Documents
- Supervising Officer** - The of the Executive or such other nominated representative of the Executive who has been notified by the Executive to the Consultant

Reference to any employees of the Consultant shall be deemed to include the Consultant's agents and sub-Suppliers 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 Service on the Commencement Date and shall complete all its obligations to the Executive 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 Service

3.1.1 The Consultant shall provide the Service in accordance with the provisions of this Agreement The Consultant shall exercise reasonable skill care and diligence in the provision of the Service and shall devote such time attention and abilities to the Service as shall be deemed necessary by the Executive

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 Service

3.1.3 The Consultant shall provide the Service 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 Executive

3.1.4 The Consultant shall make such enquiries and investigations as may be necessary in the provision of the Service and shall consult the Supervising Officer and keep him/her informed in all matter connected with the Service 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 Executive concerning the Service of which the Consultant is aware or anticipates which may justify the Executive taking action to protect its interests (including its reputation and/or standing)

3.1.6 The Consultant shall provide the Service wherever required by the Executive The Consultant shall not in any circumstances utilise any premises or facilities of the Executive 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 Executive 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

Executive or hold itself out as having authority to bind the Executive

3.1.9 If the Consultant is required to travel abroad in the provision of the Service 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 Service 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 Executive and the Consultant or any other client of the Consultant

3.2.2 The Consultant will make every reasonable effort to maintain continuity of personnel throughout the provision of the Service but in the event of a change in the Authorised Personnel the Consultant shall bear all costs related thereto and shall also notify the Executive of any changes in key personnel and will keep the Executive informed of any interim arrangements and any new personnel in order to ensure full continuity and consistency in the provision of services.

3.2.3 In the event of the Consultant requiring the engagement of personnel in the provision of the Service other than the

Authorised Personnel then the prior written consent of the Executive is required.

3.2.4 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

3.2.5 The Consultant shall not at any time during the Contract Period or afterwards accept instructions to act against the Executive if the Consultant is likely to use the knowledge about the Executive obtained as a result of the provision of the Service

3.3 Standing Orders/Financial Regulations

The Consultant and the Authorised Personnel shall comply with the Standing Orders and Financial Regulations of the Executive. A copy of the Standing Orders and Financial Regulations of the Executive can be obtained from the Executive website – www.merseytravel.gov.uk

3.4 Attendance at Meetings

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

3.5 Record Keeping

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

3.6 Consultation

The Consultant and the Authorised Personnel shall make such investigations and enquiries as may be necessary to provide the Service and shall consult the Supervising Officer and keep him/her informed in all matters connected with the Service and produce regular reports in such manner and at such times as the Supervising Officer may require

3.8 Statutory and Other Regulations

- 3.7.1 The Consultant shall in all matters arising in the provision of the Service 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 Service The Consultant shall also observe any rules applicable to the premises of the Executive
- 3.7.2 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
- 3.7.3 The Consultant shall comply with all reasonable standards of safety and comply with the Executive's health and safety procedures from time to time in force at the premises where the Service is to be provided
- 3.7.4 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

3.8 Authorised Personnel

3.8.1 The Consultant shall provide the Authorised Personnel to provide the Service in accordance with the Contract Documents

The Consultant and the Authorised Personnel shall exercise reasonable skill care and diligence in the provision of the Service and they shall devote such of their time attention and abilities to the Service as shall be deemed necessary by Executive

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

3.8.3 The Consultant will make every reasonable effort to maintain continuity of personnel throughout the provision of the Service 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 Service other than the Authorised Personnel then the prior written consent of the Executive is required

3.8.4 If the Consultant requires the services of an employee of the Executive to assist in the provision of the Service then the

Consultant will negotiate with the Executive for such services as are desired

3.8.5 The Consultant shall undertake to refrain from approaching or otherwise inducing the Executive 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 Executive will be that of independent Supplier and nothing in this Agreement shall render the Consultant an employee, worker, agent or partner of the Executive 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 Executive 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 Service where the recovery is not prohibited by law The Consultant shall further indemnify the Executive against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Executive 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 Executive arising out of or connection with the provision of the Service

5. **Assignment**

5.1 The Consultant shall not assign any of its obligations under this Agreement without the prior written consent of the Executive

5.2 The Consultant shall not without the prior written consent of the Executive sub-let the Service or any part thereof or make any sub-contract with any person or persons for the provision of any part of the Service 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 Executive is subject to the provisions of the Freedom of Information Act 2000 and that any information provided by the Consultant to the Executive 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 Executive 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 Executive

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-Suppliers approved under sub-clause 5.2 hereof are bound by the requirements of this Clause

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

7. Payment

7.1 The Executive shall pay the Contract Price to the Consultant [*in the following manner for contracts of short duration*]

within 30 days following the completion of the Service to the satisfaction of the Supervising Officer

[OR for contracts of longer duration]

such payments shall be made in accordance with the Milestones detailed in Schedule 1 attached hereto and will only be made after the completion of the particular Milestone to the satisfaction of the Supervising Officer

- 7.2 The fee to be paid in respect of any additional work required under Clause 11 hereof which is not part of the Service shall be subject to the prior approval of the Supervising Officer
- 7.3 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 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 Executive
- 7.5 Exercise by the Executive of its rights under Sub-Clause 7.4 hereof shall be without prejudice to any other rights or remedies available to the Executive under this Agreement

8. Variations

- 8.1 In the event that the Executive shall require any reasonable alteration or addition to or omission from the Service or any part thereof (hereinafter referred to as "a Variation") the Consultant shall state in writing the effect such Variation will have on the Service 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 Executive'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 Service an adjustment to the Contract Price shall be made with effect from the date of implementation of the Variation. The Consultant shall satisfy the Executive 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 Service in any respect unless instructed in writing to do so by the Executive.

9. **Consultant's Default**

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

9.2 If within three calendar months immediately following completion of the Service the Executive shall find and report to the Consultant any failure or defect in the Service then the Consultant will put right the same at no extra cost to the Executive.

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 Service 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 Executive 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 Executive the relevant part or part of Service 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 Service 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 Executive 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 Service as may be specified in such notice whereupon a corresponding reduction in the payments to the Consultant shall be made

10.3 The Service 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 Service to the required standard

10.6 Repeat and persistent failure to provide the Service may result in the Executive 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 Service for determination with a right of appeal to a Director of the Executive 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 Executive under this clause are in addition and without prejudice to any other rights or remedies the Executive may have against the Consultant

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

11. **Implementation of Proposals**

If the Executive decides to proceed with any proposals as a result of the Consultant's work under this Agreement the Executive 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 Executive 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 One million pounds 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 Executive 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

Executive may take out and maintain adequate insurance cover in the Consultant's name and the Executive 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 Executive 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 Executive to perform its obligations under this Agreement

12.8 The Executive 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 Executive's liability under this Agreement shall not exceed One million pounds in respect of any event or series of connected events

13. **Intellectual Property Rights**

13.1 The Consultant hereby assign to the Executive all existing and future intellectual property rights created by the Consultant in the provision of the Service 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 Executive

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 Executive and shall indemnify and keep the Executive indemnified against all or any costs claims damages or expenses

incurred by the Executive or for which the Executive 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 Executive be necessary or desirable to vest the intellectual property rights in the name of the Executive and to defend the Executive against all claims that intellectual property rights infringe third party rights and otherwise to protect and maintain the intellectual property rights of the Executive

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 Executive shall be entitled to terminate this Agreement upon four weeks' notice in writing to the Consultant The Executive 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 Executive shall not be liable for any expenses incurred by the Consultant after the period of the notice has expired

15.4 The Executive 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 Executive shall not be liable for any expenses incurred by the Consultant after receipt of the notice by the Consultant

15.5 The Executive 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 Executive 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 Executive 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 Executive terminates this Agreement under Sub-Clauses 15.3 15.4 or 15.5 hereof then the Executive may re-let this Agreement or any part thereof under the same or such other conditions as the Executive may think fit or may enter into a new agreement with other consultants for the provision of the Service. The Consultant shall be liable for and shall pay and make good to the Executive 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 Executive 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 Executive 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 Executive due or accruing due to the Consultant but in the event of there being no sum due from the Executive to the Consultant then such losses damages costs charges and expenses shall be recoverable by the Executive from the Consultant as liquidated damages

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

property relating to the Service or belonging to the Executive 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 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 Executive hereunder shall be deemed to have been given if the same has been posted to the Executive at PO Box 1976 Liverpool L69 3HN or such other address as the Executive 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 Executive of the relevant event and consequence as soon as possible after it occurs

17.3.2 promptly provides the Executive with any further information which the Executive 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 Executive reasonably requires in order to reduce the Executive'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

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 Executive is committed to the highest possible standards of openness, probity and accountability. In line with that commitment the Executive expects its employees, Suppliers and others that it deal with who have serious concerns about any aspect of the Executive's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis. For this reason the Executive has a Local Confidential Reporting Code to encourage and enable employees, Suppliers and others working for or with the Executive to raise serious concerns within the Executive rather than overlooking a problem or "blowing the whistle" outside

Details of the code are available on the Executive's 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 become 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 and the Invitation to Tender

23.2 References in this Agreement to the parties shall include their respective heir's 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

EXECUTED as a Deed
by **MERSEYSIDE PASSENGER**
TRANSPORT EXECUTIVE

..... Signed

..... Name

..... Title

EXECUTED as a Deed by

..... Signed

ben O'brien..... Name
Director

..... Signed

ROGER KENTON..... Name
Director/Secretary

Invitation to Tender

The Tender

The Correspondence

SCHEDULE 5

Variation Procedure

1. Introduction

- 1.1 Schedule 5 details the scope of the variations permitted and the process to be followed where the Executive proposes a variation to this Agreement.
- 1.2 The Executive 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 5 applies, the Executive may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, the Executive shall serve each Framework Supplier 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 Framework Supplier to assess the variation.
- 2.4 Upon receipt of the Notice of Variation, each Framework Supplier has 14 days to respond in writing with any objections to the variation.
- 2.5 Where the Executive does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Executive may then serve each Framework Supplier with a written agreement detailing the variation to be signed and returned by each Framework Supplier within 28 days of receipt.
- 2.6 Upon receipt of a signed agreement from each Framework Supplier, the Executive shall notify all Framework Suppliers in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that the Executive receives one or more written objections to a variation, the Executive 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, the Executive may not propose any variation which:-

4.1.1 may prevent one or more of the Framework Suppliers from performing its obligations under this Agreement; or

4.1.2 is in contravention of any Law.

