Dated 11th February 2014

Merseyside Passenger Transport Executive

and

Halcrow Group Limited

Rolling Stock Project

Engineering Consultancy Services Agreement

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

Ref: LDS/RA/RSN8418

6.2 If either party requests a change to the scope or execution of the Services, the Consultant shall, within a reasonable time (and in any event not more than 14 working days after receipt of the Executive's request), provide a written estimate to the Executive of:

(a) the likely time required to implement the change;

(b) any necessary variations to the Consultant's charges arising from the change;

(c) the likely effect of the change on a Project Plan; and

(d) any other impact of the change on this agreement.

6.3 Unless both parties consent to a proposed change, there shall be no change to the Services, the relevant Project Plan or this agreement.

6.4 If both parties consent to a proposed change the change shall be made only after agreement of the necessary variations to the Services the relevant Project Plan and any other relevant terms of this agreement to take account of the change that has been reached and this agreement has been varied in accordance with clause 20.

6.5 If the Consultant requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Executive shall not unreasonably withhold or delay consent to it. Unless the Consultant's request was attributable to the Executive's non-compliance with the Executive's obligations, neither the Consultant's charges, the relevant Project Plan or any other terms of this agreement shall vary as a result of such change.

7. CHARGES, PAYMENT AND RATES ESCALATOR

7.1 In consideration of the provision of the Services by the Consultant, and subject to clause 7.2, the Executive shall pay the rates as set out in Schedule 2. The Executive may require the Services to be performed by the Consultant on a time basis, a fixed price basis or a combination of both. Clause 7.3 shall apply if the Consultant provides Services on a time basis and clause 7.4 shall apply if the Consultant provides Services for a fixed price. The remainder of this clause 7 shall apply in either case.

7.2 The rates set out in Schedule 2 shall be fixed for the period commencing on the Commencement Date and ending on 31st March 2018. On 1st April 2018 and on 1st April of each year thereafter during the Term the rates set out in Schedule 2 shall be revised in accordance with the percentage Retail Price Index (positive or negative) published by the Office of National Statistics (or its successor from time to time) for the previous year taken at the nearest publication date to 1st April in such year. The rates shall be revised in accordance with this clause regardless as to whether a

Project is in the process of being performed but the prevailing rates for a Project in progress shall not be so revised. The rates set out in Schedule 2 shall not be revised where the Provider is in breach of the terms of either this agreement.

7.3 Where Services are provided on a time basis:

(a) the charges payable for the Services shall be calculated in accordance with the Consultant's rates for the Consultant's Team details of which are set out in Schedule 2 or in a Project Plan (as the case may be);

(b) all charges quoted to the Executive shall be exclusive of VAT which the Consultant shall add to its invoices at the appropriate rate;

(c) the Consultant shall ensure that the members of the Consultant's Team complete time sheets recording time spent on the Services and subject to the written approval of them by the Executive's Manager the Consultant shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 7.3(d); and

(d) the Consultant shall invoice the Executive monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 7.3. Each invoice shall set out the time spent by each member of the Consultant's Team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

(e) Subject to clause 7.3(f) the Executive shall pay the Consultant the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of the Consultant's Team in connection with the Services and the cost of any materials required by the Consultant for the supply of the Services. Such expenses reasonably and properly incurred by the Consultant shall be invoiced by the Consultant at cost.

(f) The Consultant shall obtain the Executive's written approval before incurring any such expense, material or service exceeding £[redacted]

7.4 Where Services are provided for a fixed price the total price for the Services shall be the amount set out in the relevant Project Plan. The total price shall be paid to the Consultant in such manner as is set out in the relevant Project Plan. The Consultant shall invoice the Executive for the charges that are properly payable together with VAT (where appropriate).

7.5 Any fixed price contained in a Project Plan includes:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses and costs incurred by members of the Consultant's Team in connection with the Services and required by the Consultant for the supply of the Services; and

(b) VAT, which the Consultant shall add to its invoices at the appropriate rate.

7.6 The Executive shall pay each invoice which is properly due and submitted to it by the Consultant within 30 days of receipt to a bank account nominated in writing by the Consultant.

7.7 If a party fails to make any payment due to the other party under this agreement by the due date for payment then without limiting the other party's remedies the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

7.8 In relation to payments disputed in good faith interest under clause 7.7 is payable only after the dispute is resolved on sums found or agreed to be due from 7 days after the dispute is resolved until payment.

7.9 Invoices covering payment in respect of materials purchased by, or services provided to, the Consultant, or for reimbursement of expenses, shall be payable by the Executive only if accompanied by relevant receipts.

7.10 The Consultant shall maintain during the term of this agreement and for a period of 12 years thereafter complete and accurate records and accounts of the operation of this agreement including the Services provided under it. The Consultant shall allow the Executive to inspect such records at all reasonable times on request. The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 7.10.

7.11 The Executive may at any time set off any liability of the Consultant to the Executive against any liability of the Executive to the Consultant whether either liability is present or future liquidated or unliquidated and whether or not either liability arises under this agreement. Any exercise by the Executive of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

8. QUALITY OF SERVICES

8.1 The Consultant warrants to the Executive that:

(a) the Consultant will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

(b) the Services will conform with all descriptions and specifications provided to the Executive by the Consultant including the relevant Project Specification and Project Plan; and

(c) the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force.

8.2 If the Consultant fails to comply with its obligations under this agreement or fails to provide the Services or any part thereof to the quality or standard set out in clause 8.1 then the Executive may do any one or more of the following:

(a) require by means of an oral or written instruction issued by the Executive to the Consultant to remedy such failure by providing again (as the case may be) without further charge to the Executive the relevant part or parts of Service to the quality and standard required. The time period within which the Consultant shall be required to remedy the failure shall be at the discretion of the Executive 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 Executive;

(b) without terminating 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 this agreement;

(c) Issue an Improvement Notice (as defined in clause 8.3 below);

(d) without terminating the agreement in whole or in part itself provide or 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;

(e) without terminating the agreement in whole determine part of the agreement by notice in writing to the Consultant having immediate effect in respect of such part of the Services as may be specified in such notice whereupon a corresponding reduction in the payments to the Consultant shall be made.

8.3 In the event that performance falls below the required quality or standard a written notice (**Improvement Notice**) will be issued by the Executive. The Consultant shall submit to the Executive within such period as the Executive may reasonably specify proposals (**Improvement Plan**) which in the Consultant's opinion will ensure that such failure does not reoccur and/or is promptly rectified If the Executive does not consider that such proposal will remedy the failure or remedy the failure promptly the Consultant will be notified and in the subsequent two weeks the Executive and the Consultant shall endeavour to agree revised proposals. Following agreement or determination of the Improvement Plan the Consultant shall diligently and promptly implement the same to restore the Services to the required standard.

8.4 The Executive's rights under this agreement are in addition to the statutory terms implied in favour of the Executive by the Supply of Goods and Services Act 1982 and any other statute.

8.5 The provisions of this clause 8 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Consultant.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Consultant assigns to the Executive, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

9.2 At its own expense, the Consultant shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement, including securing for the Executive all right title and interest in and to the Intellectual Property Rights and all other rights assigned to the Executive in accordance with clause 9.1.

9.3 The Consultant shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled.

10. LIABILITY, INDEMNITY AND INSURANCE

10.1 Nothing in this agreement shall limit or exclude the Consultant's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.2 The Consultant shall indemnify keep the Executive indemnified and hold the Executive harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Executive as a result of or in connection with:

(a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or

(b) any claim made against the Executive in respect of any liability loss damage injury cost or expense sustained by Executive's employees or agents or by any third party to the extent that such liability loss damage injury cost or expense was caused by relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this agreement by the Consultant.

10.3 Subject to clause 10.1 and clause 10.2, the Consultant's total liability to the Executive, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to £[redacted] in the aggregate.

10.4 During the term of this agreement and for a period of 12 years thereafter, the Consultant shall maintain in force, with a reputable insurance company:

(a) public liability insurance adequate to cover all risks in the performance of the Services subject to a minimum cover of £[redacted]

(b) employers' liability insurance with a minimum limit of indemnity as required by law from time to time; and

(c) for the duration of this agreement and for a period of 12 years thereafter professional indemnity insurance with a minimum limit of indemnity of £[redacted] for each individual claim subject to a higher minimum limit of indemnity as necessitated by the requirements of Network Rail with regard to a Project;

and shall, on the Executive's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premium.

10.5 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.

10.6 The provisions of this clause 10 shall survive termination of this agreement however arising.

11. COLLATERAL WARRANTY AND PARENT COMPANY GUARANTEE

11.1 The Consultant may be required and shall at the request of the Executive enter into a collateral warranty in favour of Network Rail substantially in the form set out in

Schedule 3 as agreed between Network Rail and the Consultant according to the requirements of a Project.

11.2 The obligations of the Consultant to effect and maintain insurance under clause 5 of the Network Rail collateral warranty set out in Schedule 3 are indicative and the insurance cover required will be agreed between Network Rail and the Consultant according to the requirements of a Project.

11.3 The Consultant may be required to procure and shall at the request of the Executive procure from the Consultant's immediate parent company the execution of a parent company guarantee in favour of the Executive in a form to be agreed.

11.4 During the term of this agreement or any parent company guarantee the Consultant shall notify the Executive in writing as soon as practicably possible:

(a) if there is any adverse change to the financial condition of the immediate parent company of the Consultant that is likely to affect the ability of such parent company to comply with its obligations under the parent company guarantee; or

(b) if the immediate parent company of the Consultant from time to time ceases to be such;

at which time, if so requested by the Executive, the Consultant shall procure a replacement parent company guarantee as agreed with the Executive.

12. CONFIDENTIALITY AND THE EXECUTIVE'S PROPERTY

12.1 The Consultant undertakes that it shall not at any time disclose to any person any Input Material, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Consultant by the Executive, its employees, agents, consultants or subcontractors, or any other confidential information concerning the Executive's business or its products which the Consultant may obtain, except as permitted by clause 12.2.

12.2 The Consultant may disclose the Executive's confidential information:

(a) to the Consultant's Team and to such of its other employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Consultant's obligations to the Executive. The Consultant shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Executive's confidential information comply with this clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 The Consultant shall not use the Executive's confidential information for any purpose other than to perform its obligations under this agreement.

12.4 All In-put Materials and all other materials, equipment and drawings, specifications and data supplied by the Executive to the Consultant shall, at all times, be and remain the exclusive property of the Executive, but shall be held by the Consultant in safe custody at its own risk and maintained and kept in good condition by the Consultant until returned to the Executive. They shall not be disposed of or used other than in accordance with the Executive's written instructions or authorisation.

13. ANTI-BRIBERY

13.1 The Consultant shall:

(a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010; and

(b) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010 to ensure compliance and will enforce them where appropriate.

13.2 The Consultant shall ensure that any person associated with the Consultant who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause 13. The Consultant shall be responsible for the observance and performance by such persons of such terms and shall be directly liable to the Executive for any breach by such persons of any those terms.

14. TERMINATION

14.1 The Executive shall be entitled to terminate this agreement or to terminate the provision of any part of this agreement:

(a) at any time by giving 3 months' written notice to the Consultant; or

(b) by serving notice on the Consultant 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 Consultant which adversely impacts on the Consultant's ability to perform the Services.

14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply];

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(i) (inclusive);

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(l) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010);

(m) 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:

(i) committed an offence under the Prevention of Corruption Acts 1889-1916;

(ii) committed an offence under the Bribery Act 2010; or

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

(n) any warranty given by the other party in clause 8 of this agreement is found to be untrue or misleading.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of this agreement by the Executive under clause 13.2:

(a) 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 Services;

(b) the Executive shall continue to have the benefit of its rights under clause 9 and to copy and exploit all Intellectual Property Rights and to copy and use all Deliverables drawings specifications and other documents made by or on behalf of the Consultant; and

(c) the Consultant shall if so instructed by the Executive in writing assign to the Executive the benefit of any agreement which the Consultant may have entered into for the supply of any of the Services.

15.2 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 re-letting the agreement under clause 15.1 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.

15.3 On termination of this agreement for any reason the Consultant shall immediately deliver to the Executive:

(a) all In-put Material and all copies of information and data provided by the Executive to the Consultant for the purposes of this agreement. The Consultant shall certify to the Executive that it has not retained any copies of In-put Material or other information or data, except for one copy which the Consultant may use for audit purposes only and subject to the confidentiality obligations in clause 11; and

(b) all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Executive (to the extent that they have not already done so by virtue of clause 9.1), who shall be entitled to enter the premises of the Consultant to take possession of them.

15.4 If the Consultant fails to fulfil its obligations under clause 15.1 then the Executive may enter the Consultant's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed the Consultant shall be solely responsible for their safe keeping.

15.5 On termination or expiry of this agreement clauses 9, 10, 11, 13 and 29 shall continue in force.

15.6 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

16. REMEDIES

If any Services are not supplied in accordance with, or the Consultant fails to comply with, any terms of this agreement, the Executive shall be entitled if such failure to supply or failure to comply is remediable and the Consultant fails to remedy that breach within a period of 30 days after being notified in writing to do so (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

(a) to terminate this agreement; or

(b) to refuse to accept the provision of any further Services by the Consultant; or

(c) to require the Consultant, without charge to the Executive, to carry out such additional work as is necessary to correct the Consultant's failure; and

(d) in any case, to claim such damages as it may have sustained in connection with the Consultant's breach (or breaches) of this agreement not otherwise covered by the provisions of this clause 16.

17. **INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies that the Executive may have the Consultant acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Consultant. Accordingly the Executive shall be entitled to the remedies of injunction specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

18. **FORCE MAJEURE**

The Executive reserves the right to defer the date for performance of or payment for the Services or to terminate this agreement if it is prevented from or delayed in carrying on its business by acts events omissions or accidents beyond its reasonable control including strikes lockouts or other industrial disputes (whether involving the workforce of the Executive or any other party) failure of a utility service or transport network act of God war riot civil commotion malicious damage compliance with any law or governmental order rule regulation or direction accident breakdown of plant or machinery fire flood storm or default of suppliers or subcontractors.

19. **ASSIGNMENT AND OTHER DEALINGS**

19.1 The Consultant shall not, without the prior written consent of the Executive assign transfer mortgage charge subcontract declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

19.2 The Executive may at any time assign transfer mortgage charge or deal in any other manner with any or all of its rights and obligations under this agreement.

20. **VARIATION**

Subject to clause 3 and clause 6 no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. **WAIVER**

21.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

21.2 A failure or delay by a party to exercise any right or remedy under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

23.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. ENTIRE AGREEMENT

24.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25. NO PARTNERSHIP OR AGENCY

25.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

26. THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

27. NOTICES

27.1 A notice given to a party under or in connection with this agreement:

(a) shall be in writing and sent to the party for the attention of the contact and at the address listed in clause 27.2;

(b) shall be sent by a method listed in clause 27.3; and

(c) is deemed received as set out in clause 27.3 if prepared and sent in accordance with this clause.

27.2 The parties' addresses and contacts are as set out in this table or as otherwise notified in writing to the other party:

Party	Contact	Address
The Executive	Rolling Stock Project Director	Merseytravel, No.1 Mann Island, Liverpool L3 1BP
The Consultant	[redacted] Project Manager	[redacted]

27.3 This table sets out:

(a) delivery methods for sending a notice to a party under this agreement; and

(b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 27.4:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	9.00 am on the second business day after posting or at the time recorded by the delivery service.

27.4 For the purpose of clause 27.3 and calculating deemed receipt if deemed receipt would occur on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

27.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27.6 A notice given under or in connection with this agreement is not valid if sent by e-mail.

28. COUNTERPARTS

28.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

29. DISPUTE RESOLUTION

29.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Rolling Stock Project Director of the Executive and the Project Director of the Consultant shall attempt in good faith to resolve the Dispute;

(b) if the Rolling Stock Project Director of the Executive and the Project Director of the Consultant are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Director of Integrated Transport of the Executive and the Operations Director of the Consultant who shall attempt in good faith to resolve it; and

(c) if the Director of Integrated Transport of the Executive and the Operations Director of the Executive are for any reason unable to resolve the Dispute within 30 days of it being referred to them the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 21 days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 30 which clause shall apply at all times.

29.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days or the mediation terminates before the expiration of the said period of 30 days the Dispute shall be finally resolved by the courts of England in accordance with clause 30 in this agreement.

30. **GOVERNING LAW**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

31. **JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the parties hereto have executed this agreement as a deed on the date stated at the beginning of it.

Schedule 1 Services

The scope of the services to be performed by the Consultant may include, but is not limited to, the following activities during the development, bidding, construction, delivery and approvals phases of the Rolling Stock Project:

- Provision of specialist technical support, as required, to programme elements: rolling stock, depot, infrastructure, maintenance and concession development (operational), during scope definition, development, design, implementation and commissioning phases;

- Review current status and assist in further development of the programme's technical specifications;

- Assist, as required, in the preparation of pre-qualification questionnaire and invitation to negotiate documentation for procurement of the Rolling Stock Project;

- For the invitation to negotiate, undertake review of suitability of timetable, network description documents, Train Technical Specification, Design Guide, Train Infrastructure Interface Specification, maintenance specification for rolling stock, depot specification, etc.

- Development of a future-proofing strategy for the project;

- Participation, as members of team, in rolling stock technical bid evaluation and, potentially, within negotiations with bidders;

- Provision of specialist support, as required, during rolling stock development, design, manufacture, testing, delivery and commissioning phases;

- Lead the development of the project's approvals strategy, reflecting the desire to be able to introduce metro-style rolling stock;

- Evaluation of engineering/design review process including keeping of detailed record of review;

- Undertake visits to successful bidder's manufacturing facility and facilities of manufacturer's subsidiaries, agents or suppliers as required to effectively monitor their activities including the ability to provide resident engineer with appropriate technical and linguistic capabilities;

- Undertake visits to reference projects and any ancillary programme related locations;

- Witness testing of new rolling stock including sign off of test strategy;

- Support the rolling stock acceptance process, including acceptance testing, and advise, as required, on interoperability related matters;

- Provide logistical expertise to facilitate the safe, expeditious and cost effective delivery of the new rolling stock;

- Provide support to enable achievement of successful commissioning of new rolling stock;

- Assist in the development of strategy for the phased introduction of the new rolling stock;

- Provision of support to programme stakeholders as and when requested and instructed/approved by Project Director or Project Management;

- Work with Train Operating Company (Merseyrail Electrics) as required, including in relation to safety case and operational procedures;

- Leadership of systems engineering, including instigation and implementation of systems engineering management plan and delivery of integrated approach to the Programme's numerous disciplines;

- Undertake programme related interdisciplinary checks;

- Undertake HAZOPs or similar to ensure that full consideration has been given to the safety aspects of the project and suitable risk mitigation plans have been developed and implemented;

- Provide quality management services;

- Assist in informing, and potentially management of, risk register including engagement in and possibly facilitation of risk management workshops;

- Ensure all programme elements' compliance with all regulatory requirements, rail industry standards and Codes of Practice;

- As required, act as NoBo, DeBo and AsBo for the Programme;

- Review produced studies and associated interpretative reports in relation to infrastructure requirements. Support design development and implementation of infrastructure interventions, providing specialist support in required areas, eg traction power, gauging;

- Liaise with various disciplines within Network Rail including engagement with their approvals processes as required to deliver services to the programme's various elements;

- Aide in the development of solutions in response to the RAIB Report recommendations following the fatality at James Street station in October 2011;

- Advise and assist in relation to DDA and equality matters pertinent to the programme and its' associated disciplines;

- Provide sustainability related services, including the development and implementation of environmental/sustainability strategy and the undertaking of sustainability impact assessments;

- Assist in the achievement of regulatory approvals in relation to rolling stock;

- Assist in the achievement of regulatory approvals in relation to changes within the status and physical nature of depots, infrastructure and stations (eg depot change, station change);

- Aid in the development of maintenance specification;

- Assist, as required, in outworking of depot strategy, including (but not limited to) implementation of depot refurbishment/construction works;

- Attendance at, and input, into programme related meetings as and when required including instigation of meetings integral to achieving programme delivery (as agreed with appropriate project manager);

- Assist in investigation of feasibility and impacts of option routes beyond the current Merseyrail Electric network boundary;

- Provide support in relation to timetabling, including the ability to undertake any modelling required;

- Undertaking activities in relation to Health and Safety, including production of relevant system, documentation, reports, etc. and the facilitation of hazard related workshops;

- Utilisation of appropriate project management tools to inform and aide the effective delivery of the Programme and facilitation of appropriate meetings/workshops/training sessions;

- Production of progress reports related to areas of support engaged within. Based on an awareness of the overall programme provide information leading to identification of rolling programme of activities, production of 4 weekly review and 6 month look ahead;

- Undertake the provision of the necessary documentation and certification to enable the programme's milestone payments to be made;

- Assist in/advise on the development of sign-off hierarchy;

- Provision of any other areas of support as the programme develops.

Deliverables:

The deliverables under the Services may include, but are not limited to, the following in support of the delivery of the Rolling Stock Project:

- Fulfilment of programme objectives;
- Successful delivery of integrated solution to deliverables of core elements - rolling stock, depot, infrastructure, maintenance and concession development (operational) - of the programme;
- Introduction and management of systems engineering management plan and associated sub-plans;
- Sign off of technical specifications within the invitation to negotiate documentation;
- Confirmation, in relation to invitation to negotiate, of suitability of timetable, network description documents, Train Technical Specification, Design Guide, Train Infrastructure Interface Specification, maintenance specification for TARA, depot specification, etc.;
- Confirmation that the invitation to negotiate is formed of a suite of documentation that works together;
- Bid evaluation (technical), as part of team;
- Provision of technical support to bidder negotiations;
- Agreed approvals strategy;
- Weekly design/production monitoring and reports;
- Detailed record of engineering/design review;
- Design sign off;
- Inspection reports related to production/delivery of key programme components;
- Production of progress reports including identification of rolling programme of activities, production of 4 weekly review and 6 monthly look-ahead.
- Sign off of testing following review and sign off of acceptance test strategy/procedures and witnessing of testing;
- Achievement of vehicle acceptance;
- Expeditious, safe delivery of new rolling stock;

- Successfully commissioned and introduction of new rolling stock;

- Provision of NeBo, DeBo and AsBo services;
-
- Introduction of new rolling stock to timetable that maximizes the benefits of increased performance characteristics;

- Report recommendations for infrastructure requirements based on review of produced studies, associated interpretative reports and development documentation;

- Production of study reports and interpretative reports of works undertaken by third parties and Programme delivery members;

- Infrastructure interventions correctly specified and delivered in timely and cost effective manner to enable introduction of new rolling stock at its' optimum performance;
-
- Maintenance regime introduced (including the undertaking of any related infrastructure interventions) and associated depot provision created ensuring ability to continually deliver rolling stock in line with TARA and cursor requirements;
-
- Depot provision amendment and upgrade correctly specified and delivered in timely and cost effective manner;
-
- All relevant regulatory approvals achieved;
-
- Introduction of innovations to 'step change' improvements and benefits to integrated system in addition to whole life cycle opportunity maximization;

- Proof of recognition of RAIB James Street report recommendations, record of implementation, mitigation or derogation;
-
- Provision of DDA compliant rolling stock and passenger infrastructure

- Produce draft template plans, eg Quality Plan; Health and Safety Plan;

- Environmental/Sustainability Strategy;

- Environmental/Sustainability Impact Assessments;
-
- Future proofing strategy;

- Meeting administration including production of minutes and notes of meetings;

- Effectively managed risk including Programme long up to date and live quantified Risk Register;

- Regulatory approval for rolling stock and any associated changes to depots, infrastructures and stations;

- Achievement of programme's milestone payments;
-
- Defined sign-off hierarchy;

- Reports, as requested, reflecting the work undertaken in delivering the programme and associated work streams.

Programme related meetings currently in existence include:

- Project Advisory Group (monthly);
- Project Development Group (2 weekly);
- Rolling Stock Group (as required);
- Vehicle Acceptance Group (as required);
- Infrastructure Working Group (4 weekly);
- Infrastructure sub-groups, eg Power, Gauging (as required);
- Train Technical Specification Working Group (as required);
- Train Infrastructure Interface Specification Working Group (as required);
- Network Rail Deliverables Progress Meeting (4 weekly);
- Business Case, Commercial & Financial (as required);
- Stakeholder & Communications Group (2 weekly);
- Procurement and Contracts Group (2 weekly);
- Depot Working Group (4 weekly);
- Maintenance Working Group (4 weekly);
- Operational Working Group (4 weekly)

Frequency of meetings is subject to change in line with the changing demands of the Programme. Existence of meetings listed, amendment to function and addition of other meetings subject to continual review of relevance.

Schedule 2 Schedule of Rates

Staff Role	Team Member	Proposed Role	Rate (£) (Per Hour)
Director/Partner	[redacted]	Project Director Risk Manager	[redacted]
Associate	[redacted]	Infrastructure (track) Commercial/Operations Support Depot Construction Project Engineer – Rolling Stock Rolling Stock Support Approvals Manager	[redacted]
Principal Engineer	[redacted]	Infrastructure (power) Infrastructure (signalling) Project Engineer – Depots & Infrastructure Rolling Stock & Approvals Support Infrastructure (telecoms)	[redacted]
Senior Engineer	[redacted]	Project Engineer – Maintenance Depot Support Rail Operational Support Maintenance Support	[redacted]
Resident Engineer	TBA		Subject to location
Engineer	TBA		[redacted]

Graduate Engineer	TBA		[redacted]
Senior Technician	TBA		[redacted]
Technician	TBA		[redacted]
Systems Manager	[redacted]	Engineering Manager	[redacted]
Systems Engineer	[redacted]	Systems Support Systems Engineer	[redacted]
HSE Manager	[redacted]	HSQE Manager	[redacted]
Sustainability Manager	[redacted]	Environmental Manager	[redacted]
Inspector	TBA		Subject to location
Clerical Assistant	TBA		[redacted]

The above rates are based on the Consultant's Team performing the Services at the offices of the Executive or at the respective base offices of the relevant Consultant Team member. No expenses (as set out in clause 7.3(e)) will be paid for working at these locations.

Staff roles and titles are not definitive or comprehensive. Full title and associated hourly rate of the full range of additional personnel required to undertake the provision of the full range of services required by the Rolling Stock Project will be subject to agreement at Project Plan stage (or such other time as agreed) supplemented and amended in agreement with the Rolling Stock Project Director as the programme requirements dictate.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Schedule 3 Collateral Warranty

Form of Collateral Warranty (Consultant/Sub-consultant to Network Rail)

DATED 2014

[CONSULTANT][SUB-CONSULTANT] (1)

and

NETWORK RAIL INFRASTRUCTURE LIMITED (2)

DEED OF WARRANTY

IN CONNECTION WITH
CONSULTANT SERVICES TO UNDERTAKE:
'ENGINEERING SUPPORT FOR NEW ROLLING STOCK PROGRAMME INCLUDING ASSOCIATED INFRASTRUCTURE IMPROVEMENTS AND DEPOT UPGRADES'

THIS DEED is made the day of 2014

BETWEEN:

(1) **[CONSULTANT]** whose registered office is at [ ], (the **"Consultant"**) and

(2) **NETWORK RAIL INFRASTRUCTURE LIMITED** registered in England and Wales under company number 2904587 and having its registered office at Kings Place, 90 York Way, London N1 9AG (the **"Beneficiary"**).

WHEREAS

(A) The Beneficiary has entered into an agreement dated [ ] with Merseyside Passenger Transport Executive (the **"Employer"**) in connection with the Works.

(B) The Consultant has entered into the Contract with the Employer to carry out the Works.

(C) The Consultant has agreed to enter into this Deed for the benefit of the Beneficiary.

NOW IT IS AGREED AS FOLLOWS:

1. Definitions and interpretation

1.1. In this Deed (including the recitals), except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Contract" means the agreement dated [ ] between (1) the Employer and (2) the Consultant;

"Intellectual Property" means all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, inventions, technical information, know-how or other intellectual property rights of any nature created by the Consultant in connection with the Works;

"Network" means the railway network of which Network Rail Infrastructure Limited is the facility owner (as defined in section 17(6) of the Railways Act 1993);

"Network Licence" means the licence relating to the Network granted to Network Rail pursuant to section 8 of the Railways Act 1993 (as amended); and

"Works" means [*insert description of relevant Works*].

1.2. In this Deed unless the context otherwise requires:-

(a) words importing any gender include every gender;

(b) words importing the singular number only include the plural number and vice versa;

(c) words importing persons include firms, companies and corporations and vice versa;

(d) any reference to any statute (whether or not specifically named) shall include any statutory modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission and direction made or issued under it or under any statute replaced by it or deriving validity from it;

(e) references to Clauses are references to the relevant clause in this Deed;

(f) the words "include" and "including" are to be construed without limitation;

(g) where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation; and

(h) the headings to the Clauses are for convenience only and shall not affect the interpretation of this Deed.

2. Consultant's obligations

2.1. The Consultant represents, warrants and undertakes to the Beneficiary:

(a) that in performing the Works it has exercised and will continue to exercise all the skill, care and diligence to be reasonably expected of an appropriately qualified and competent Consultant which is experienced in carrying out projects of a similar, scope, nature, complexity and size to the Works;

(b) that it has complied with and will comply with each and all of the obligations, duties and undertakings of the Consultant under and pursuant to the Contract;

(c) that on completion the Works will satisfy all performance specifications and requirements contained or referred to in the Contract; and

(d) that the Beneficiary shall be deemed to have relied upon the Consultant's skill and judgment in respect of those matters relating to the Works as lie within the scope of the Contract and that the Consultant owes a duty of care in respect thereof to the Beneficiary (but not more onerous than that owed to the Employer under the Contract).

3. Liability

3.1. No approvals, comments, instructions, consents, attendance at meetings relating to the Works or advices from the Beneficiary shall in any way relieve the Consultant from its obligations under this Deed.

3.2. Notwithstanding anything that may be contained elsewhere in this Deed, the Consultant shall have no greater liability (whether in quantum or in scope) to the Beneficiary than it would have had if the Beneficiary had been named as joint employer under the Contract.

3.3. No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Works.

4. Intellectual Property

4.1. The Consultant as beneficial owner irrevocably grants to the Beneficiary with effect from the date of this Deed (and notwithstanding that the Contract may be completed or terminated) a royalty-free, non-exclusive licence to use all rights, titles and interest in the Intellectual Property for any purpose:

(a) in connection with the maintenance, repair, reinstatement, renewal or extension of the Works; or

(b) in order for the Beneficiary to comply with the obligations on its part under the Network Licence or to comply with any standard or requirement affecting the Beneficiary.

4.2. Insofar as the beneficial ownership of any Intellectual Property provided by the Consultant in connection with the Works is vested in a person other than the Consultant, the Consultant shall use all reasonable endeavours to procure that the beneficial owner grants to the Beneficiary a licence in such material or similar terms and for such purposes as are referred to in Clause 4.1.

4.3. The licence referred to in Clauses 4.1 and 4.2 shall carry the right to grant sub-licences in the same terms and shall be transferable to third parties.

4.4. All royalties or other sums payable in respect of the supply and use of any Intellectual Property required in connection with the Contract shall be paid by the Consultant and the

Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract or the licence granted in Clause 4.1 or 4.2 above.

5. Insurance

5.1. The Consultant has effected and will maintain professional indemnity insurance/public liability insurance in an amount of £[redacted] respectively for each and every claim or series of claims arising out of the same event or circumstances in any one period of insurance (which period shall not be more than one year) for a period of 12 years from the date of the issue of the certificate of practical completion of the Works. As and when reasonably requested to do so by the Beneficiary, the Consultant shall produce for inspection documentary evidence that such insurance is being maintained and that payment has been made in respect of all premiums due under it.

6. Notices

6.1. Any notices to be given under this Deed shall be either delivered personally or sent by first class recorded delivery post. The address for service of the Beneficiary and of the Consultant shall be as stated in this Deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

(a) if personally delivered, at the time of delivery; or

(b) if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities.

In proving such service, it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a pre-paid first class recorded delivery letter.

7. General

7.1. The Consultant shall have no claim whatsoever against the Beneficiary in respect of any damage, loss or expense howsoever arising out of or in connection with the Contract or any amounts due to the Consultant thereunder.

7.2. The Beneficiary may assign the benefit of this Deed on a maximum of four occasions without the consent of the Consultant. The benefit of this Deed may also be assigned by way of security or charged without the consent of the Consultant to any mortgagee of the Beneficiary or its assignees on any number of occasions.

7.3. The parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.

7.4. If for any reason any Clause in this Deed shall be found to be ineffective inoperable or unenforceable, it shall be severed and deemed to be deleted from this Deed and in such event the remaining provisions of this Deed shall continue to have full force and effect.

7.5. This Deed shall be governed by and construed in accordance with the law of England and any dispute or difference concerned with its terms shall be referred to the non-exclusive jurisdiction of the Courts of England.

IN WITNESS whereof the parties have caused this agreement to be executed (as a Deed in the case of the Consultant) on the date first before written.

EXECUTED AS A DEED by)
[CONSULTANT])
acting by)

Director

Director/Secretary

Part 1. SIGN)
Part 2. duly authorised on behalf of)
Part 3. NETWORK RAIL INFRASTRUCTURE LIMITED)
Schedule 3

EXECUTED and delivered as a deed
for and on behalf of
MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE

..... Signed

LOUISE OUTRAM Name

AUTHORISED SIGNATORY Title

EXECUTED and delivered as a deed
for and on behalf of
HALCROW GROUP LIMITED

[redacted] Signed

[redacted] Name
Director

[redacted] Signed

[redacted] Name
~~Director~~/Company Secretary*

*Delete as appropriate