



FUNDING AGREEMENT

For Liverpool South Parkway Real Time Information

Merseytravel

(1)

and

Merseyrail Electrics 2002 Limited

(2)

CONTENTS

Clause	Heading	Page
1	INTERPRETATION	2
2	APPOINTMENT OF MERSEYRAIL	7
3	GENERAL DUTIES OF MERSEYRAIL	7
4	DEVELOPMENT OBLIGATIONS OF MERSEYRAIL AND MERSEYTRAVEL	8
5	SCOPE OF MERSEYTRAVEL'S DUTIES	8
6	FINANCE FOR SAFETY SUPERVISION	8
7	INJURY TO PERSONS AND PROPERTY	9
8	CONFIDENTIAL INFORMATION	9
9	FORCE MAJEURE	11
10	NOTICES AND NOTIFICATIONS	11
11	DEFAULT AND TERMINATION	12
12	NO PARTNERSHIP AND FURTHER ASSURANCE	13
13	ASSIGNMENT	14
14	NO REPRESENTATIONS	14
15	LIMITATION ON LIABILITY	14
16	VAT	14
17	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	15
18	GOVERNING LAW AND JURISDICTION	15

BETWEEN:

- (1) **Merseyrail Electrics 2002 Limited** (Company Number 04356933) whose registered office is at Rail House, Lord Nelson Street, Liverpool, Merseyside, L1 1JF ("Merseyrail"); and
- (2) **Merseytravel** whose office is at No.1 Mann Island, Liverpool, L3 1BP ("Merseytravel")

BACKGROUND

Merseyrail is a Train Operating Company and a Station Facility Owner (both definitions of which arise from the Railways Act 1993) and has been requested by Merseytravel to provide TOC related works for the **the replacement and upgrade of the real time information equipment at Liverpool South Parkway Station** ("the Development")

IT IS AGREED as follows:

1 INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

- (a) any party shall include its successors in title and permitted assigns;
- (b) words importing persons include firms companies and corporations and vice versa;
- (c) 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;
- (d) where any warranty is given or obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that warranty or obligation and where any warranty is given or obligation is undertaken for the benefit of two or more persons jointly those persons shall be jointly and severally entitled to that benefit;

- (e) any obligation on any party to this Agreement not to do or omit to do anything shall be deemed to include an obligation not to allow that thing to be done or omitted to be done by any person under its control;
- (f) the headings in this Agreement shall not affect the interpretation.

1.2 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

"Agreement" means this Agreement (including any schedule or annexure to it and any document in the Approved Form);

"Anticipated Development Expenditure" means the estimated £117,568.24 cost for the Development inclusive of a Merseyrail 5% management fee, contingencies and excluding VAT;

"Approval Bodies" means Network Rail and Rail Safety Standards Board Limited;

"Architect/Contract Administrator" means Paul Collins of Merseyrail or such other person as Merseyrail may from time to time appoint in accordance with this Agreement;

"Building Contract" means the building contract for the carrying out of the Building Works to be entered into by Merseyrail and the Building Contract/s under the terms of the Agreement;

"Building Contractor" means the Building Contractor/s appointed under the Building Contract to act and employed in such capacity;

"Building Works" means the installation of the works as outlined in the Background;

"Completion Date" means June 2016

"Commencement Date" means March 2016

"Confidential Information" means any information:

- (a) about the subject matter of this Agreement; or
- (b) about a party's business, statistical, financial and personnel matters; or
- (c) which a party deems confidential; or

- (d) which is disclosed to the other party in writing and clearly marked as "Confidential" or if disclosed orally, is identified as confidential at the time of disclosure, reduced to writing or any other medium within 14 days and marked as "Confidential";

"Health and Safety Policy" means the document produced by Merseyrail arising from its Safety Certificate and entitled Control of Contractors procedure (reference CSM/1.1 Issue 7 dated February 2013) as amended or replaced from time to time;

"Insolvent" Merseyrail is insolvent when it makes a composition or arrangement with its creditors, or becomes bankrupt, or, being a company:

- (a) makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 2006 or Insolvency Act 1986 as the case may be; or
- (b) has a provisional liquidator appointed; or
- (c) has a winding up order made; or
- (d) passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction); or
- (e) under the Insolvency Act 1986 has an administrator or an administrative receiver appointed

"Lease" means the lease of the Station made between Network Rail and Merseyrail dated 31st March 2010

"Licence for Alterations" means the consent granted under the Landlords Consent from Network Rail;

"Material Breach" means:

By Merseyrail:

- failure to proceed regularly and diligently with the performance of its obligations under this Agreement save where the Building Contract has been terminated in accordance with the Building Contract and the Merseyrail is using its reasonable endeavours to engage another Contractor;
- suspension of the Building Contract or any part thereof, otherwise than in accordance with Merseytravel's consent;

- breach of the Health and Safety Documents;
- failure to obtain any necessary consents or approvals;
- is Insolvent.

By either party:

- failure to make payment in the manner required by this Agreement;
- any repudiatory breach of this Agreement.

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587) whose registered office is at Kings Place, 90, York Way, London, N1 9AG or its successor in title;

“Plans” means the plans, drawings, specifications, bills of quantity, engineering calculations and other data relating to the Development including, as they are from time to time made, any variations, changes, alterations and additions to and revisions of the Plans;

“Practical Completion” means the practical completion of the Building Works in accordance with the Building Contract and references to the ‘date of Practical Completion’ are to the date on which the certificate of Practical Completion is issued under the Building Contract and in accordance with this Agreement and where appropriate ‘Practical Completion’ includes partial practical completion of a section or distinct part of the Building Works;

“Principal Designer” means the Principal Designer appointed in relation the Development;

“Professional Team” means the:

- (a) Principal Designer; and
- (b) Architect/Contract Administrator;

And other professional advisors whose services are from time to time appointed by Merseyrail in connection with the Development under the provisions of this Agreement.

or any one or more of them and references to a 'member of the Professional Team' shall be construed accordingly;

"Requisite Consents" has the meaning assigned to it by paragraph 5.2 of Schedule 1;

"Safety Certificate" means the document entitled Merseyrail Railway Safety Certificate dated May 2013 as revised from time to time;

"Station" means Liverpool South Parkway];

"Statutory Requirements" means:

- (a) any Act of Parliament;
- (b) any instrument, rule or order made under any Act of Parliament;
- (c) any regulation or byelaw of any local authority;
- (d) the Railway Group Standards or codes of practice;
- (e) the Equality Act 2010;
- (f) any instruction, directives or guidance issued by Her Majesty's Railways' Inspectorate (HMRI);
- (g) any relevant codes of practice or other instruction issued by Network Rail;
- (h) any relevant codes of practice or other instruction issued by the Rail Safety Standards Board Limited (RSSB);

"Third Party Agreements" means the following third party agreements entered into between Merseytravel and Network Rail:

- (a) a basic asset protection agreement;
- (b) an asset protection agreement;
- (c) an asset purchase agreement;

any other third party agreement or arrangement entered into Merseytravel from time to time in relation to or which affects the Building Works.

"Variation" means a change to the Plans or ther Development under paragraph 4 of Schedule 1;

"VATA" means Value Added Tax Act 1994 and all other statutes, statutory instruments, regulations and notices containing provisions relating to Value Added Tax;

"VAT" means value added tax imposed levied or charged under VATA in the United Kingdom (where applicable) and any value added, turnover, sales, purchase or similar tax of any other jurisdiction and references to VAT shall be construed accordingly;

"Working Day" means a day (other than a Saturday or a Sunday) on which clearing banks are open for business in the city of London (other than solely for trading or settlement in euro).

- 1.3 If any provision of this Agreement is or becomes void illegal or unenforceable that provision shall be severed from the remainder of this Agreement which shall remain valid and enforceable.

2 APPOINTMENT OF MERSEYRAIL

- 2.1 Merseyrail agrees to procure the Development by the Completion Date in accordance with this Agreement.
- 2.2 Merseyrail agrees to be treated as the sole and only Client in relations to the Works for the purposes of the Construction (Design and Management) Regulations 2015 (as amended) and agrees to undertake all duties and responsibilities entailed therein.

3 GENERAL DUTIES OF MERSEYRAIL

- 3.1 Merseyrail agrees to procure the Development by the Completion Date in Accordance with this Agreement and ensure compliance with the Statutory Requirements.
- 3.2 In carrying out its specific duties Merseyrail shall:
- (a) keep Merseytravel informed of the progress of the Development; and
 - (b) consult with Merseytravel as frequently as may be necessary to achieve these objectives.
- 3.3 Without prejudice to clause 3.2, in the event that Merseyrail becomes aware that the Development expenditure will or is likely to exceed the Anticipated Development Expenditure then Merseyrail shall advise Merseytravel as soon as is practicable.
- 3.4 Merseyrail shall perform its obligations under this Agreement and shall procure that the Building Contractor carries out and completes the Building Works in each case in

conformity with Merseytravel's obligations under the Third Party Agreements as if they were expressly referred to in this Agreement as obligations of Merseyrail and to the extent that Merseyrail causes or contributes to any breach by Merseytravel of any of its obligations under the Third Party Agreements Merseyrail indemnifies Merseytravel against any liability, claims, damages reasonable costs and losses that Merseytravel may incur as a result of or arising out of a breach by Merseyrail of its obligations under this clause.

3.5 Merseyrail shall, at the request of Merseytravel, upon the appointment of each member of the Professional Team, make all reasonable efforts to procure that the Professional Team enters into a collateral warranty in favour of Merseytravel in such form as is reasonably required by Merseytravel.

3.6 Merseyrail shall, at the request of Merseytravel, upon the appointment of the Building Contractor and each sub-contractor, procure that it enters into a collateral warranty in favour of Merseytravel in such form as is reasonably required by Merseytravel.

4 DEVELOPMENT OBLIGATIONS OF MERSEYRAIL AND MERSEYTRAVEL

4.1 Merseyrail and Merseytravel shall observe and perform their respective obligations and conditions and in compliance with the Statutory Requirements.

5 SCOPE OF MERSEYTRAVEL'S DUTIES

5.1 Merseytravel shall fund the carrying out of the TOC associated works for the Development in accordance with the terms of this Agreement.

6 FINANCE FOR SAFETY SUPERVISION

6.1 Subject to clause 6.3, Merseytravel shall pay Merseyrail the Development Expenditure on or before the thirtieth day after the date of a VAT invoice from Merseyrail for the relevant amount calculated in accordance with this Agreement provided that the Anticipated Development Expenditure has not be exceeded.

6.2 Merseyrail shall carry out an assessment from time to time of the cumulative;

(a) Amounts paid by Merseyrail or to be paid by Merseytravel as Development Expenditure; and

(b) Other amounts paid or to be paid by Merseytravel to Merseyrail pursuant to this Agreement; less

- (c) Any amounts which have previously been paid by Merseytravel to Merseyrail pursuant to this clause 6.1

6.3 The assessment carried out pursuant to clause 6.2 shall be submitted to Merseytravel together with the supporting calculation and documentation (including copies of all relevant invoices and certificates).

7 INJURY TO PERSONS AND PROPERTY

Insurance

7.1 Merseyrail shall:

- (a) maintain in full force and effect at its own cost insurance which complies with the Employers' Liability (Compulsory Insurance) Act 1969; and

- (i) procure that the Building Contractor maintains in full force and effect:

- (A) a policy of insurance for all risks insurance for the full reinstatement value of the Building Works together with design works and services and shall maintain such policy up to and including the earlier of the date of termination of this Agreement and the date of Practical Completion;

- (B) professional indemnity insurance of not less than [REDACTED] to cover any one claim for any negligent act, error or omission in the carrying out of the Building Works (including in respect of the negligent acts, errors or omissions of the Building Contractor or consultant of any tier and having a design responsibility) for a period of 12 years from Practical Completion provided that such insurance continues to be generally available in the insurance market on commercially reasonable terms;and

- (C) public liability insurance) of not less than [REDACTED] million to cover any loss, cost, expense, liability, action, demand, claim or proceeding whatsoever arising under any statute or at common law in respect of personal injury or damage to any property and shall maintain such policy up to and including the earlier of the date of termination of this Agreement and the date on which

the whole of the Building Works are taken into use by Network Rail.

- 7.2 Merseyrail shall from time to time on request by Merseytravel provide to Merseytravel:
- (a) evidence satisfactory to Merseytravel that any premiums and renewals which have become payable in respect of the insurance has been paid in accordance with the terms of the relevant policy; and
 - (b) copies of current policies or certificates of brokers or other evidence which shows to the reasonable satisfaction of Merseytravel that the requirements of this clause 7 are being complied with.

8 CONFIDENTIAL INFORMATION

- 8.1 No party shall disclose Confidential Information to any third party and shall only release Confidential Information to those of its employees as have a need to know. Each receiving party shall treat the Confidential Information with the same degree of care and apply no lesser security measures than it affords to its own confidential information, which the receiving party warrants as providing adequate protection against unauthorised disclosure, copying or use.
- 8.2 The receiving party shall make no commercial use of the disclosing party's Confidential Information.
- 8.3 Confidential Information may be disclosed if and to the extent:
- (a) it is required by law or any securities exchange or regulatory or governmental body to which the receiving party is subject wherever situated; or
 - (b) the receiving party considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on terms protecting the information; or
 - (c) the information has come into the public domain through no fault of the receiving party; or
 - (d) the disclosing party has given its consent in writing.

Provided that in any of the circumstances specified in sub-clauses (a) and (d) the receiving party shall give the disclosing party, if possible, not less than 10 Working Days' notice of such disclosure.

8.4 Without prejudice to clause 8.1, copies or reproductions of Confidential Information shall not be made except to the extent reasonably necessary and all copies made shall be the property of the disclosing party. All Confidential Information and copies shall be returned to the disclosing party within 30 days of receipt of a request from the disclosing party.

9 FORCE MAJEURE

9.1 If either party can provide evidence to the reasonable satisfaction of the other that its performance of any of its obligations under this Agreement is prevented by reason of any event or combination of events beyond its reasonable control, it shall be entitled to relief from performing each such obligations under this Agreement for such period as the event or combination of events continues to prevent performance ("Force Majeure").

9.2 Neither party shall be entitled to claim relief in respect of any period during which it could have complied with any obligation (or any part thereof) by using its reasonable endeavours to avoid, overcome or minimise wholly or partly the effects of the said event or combination of events.

9.3 The party prevented from performing any obligation under this Agreement in the circumstances contemplated by clause 9.1 shall notify the other as soon as it becomes aware of the event. Each of the parties shall use its reasonable endeavours to avoid, overcome or minimise wholly or partly the effect of any event referred to in clause 9.1 upon the performance of its obligations under this Agreement.

10 NOTICES AND NOTIFICATIONS

10.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to have been properly served on the relevant party if served on any one of the officers or the Directors or on the Secretary or other named representative of the party or sent by first class mail or air mail, or by fax (confirmed by first class mail), to the relevant party set out at the head of this Agreement, or to the relevant fax number set out below, or such other address or fax number as that party may from time to time notify to the other party in accordance with this clause 10. The fax numbers of the parties are as follows:

Merseyrail – 0151 [REDACTED] (for the attention of the Managing Director)

Merseytravel – 0151 [REDACTED] (for the attention of Secretary to the Executive)

- 10.2 Notices sent as above shall be deemed to have been received at 10am one Working Day after the day of posting (in the case of inland first class mail) or on the next Working Day after transmission (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine, confirming the fax was sent to the number indicated above and confirming that all pages were successfully transmitted).
- 10.3 For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by electronic mail.

11 DEFAULT AND TERMINATION

- 11.1 The provisions of this clause 11 are without prejudice to any other rights or remedies that the parties may possess.

Termination by Merseytravel

- 11.2 If Merseyrail commits a Material Breach of this Agreement Merseytravel may give Merseyrail a notice identifying the Material Breach and stating that it may terminate this Agreement if it fails to remedy the Material Breach as soon as reasonably practicable and in any event not later than within 21 days from receipt by Merseyrail of the notice.
- 11.3 If the Material Breach has not been remedied within 21 days of Merseytravel's notice under clause 11.2 Merseytravel may by a further notice issued at any time within the subsequent 14 days terminate this Agreement.
- 11.4 If this Agreement is terminated under clause 11.3 Merseytravel shall not be obliged to make any further payment to Merseyrail other than there shall be an assessment carried out of the Development Expenditure shall be paid pursuant to and in accordance with clause 6.

Termination by Merseyrail

- 11.5 If Merseytravel commits a Material Breach of this Agreement Merseyrail may give a notice to Merseytravel identifying the Material Breach and stating that Merseyrail may terminate this Agreement if Merseytravel fails to remedy the Material Breach as soon as reasonably practicable and in any event within 21 days from the receipt by Merseytravel of the notice.

11.6 If the Material Breach has not been remedied within 14 days of Merseyrail's notice under clause 11.5 Merseyrail may by a further notice issued at any time within the subsequent 14 days terminate this Agreement.

11.7 In the event that this Agreement is terminated under clause 11.6 Merseyrail shall issue an advice:

- (a) setting out its valuation of its entitlements under this Agreement at the date of termination (including any entitlements in respect of Variations and other amounts for which Merseytravel is liable) and any loss and/or damage suffered by Merseyrail, whether arising as a consequence of the termination or otherwise.

11.8 Any amount identified by the advice issued under clause 11.7 as properly payable shall become due to payment upon the receipt of a VAT invoice. The final date for payment shall be on or before the thirtieth day after the date of the relevant VAT invoice.

12 NO PARTNERSHIP AND FURTHER ASSURANCE

12.1 This Agreement does not constitute a partnership or a joint venture between the parties.

12.2 At its own expense each party 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 reasonably be required for the purpose of giving full effect to this Agreement.

13 ASSIGNMENT

13.1 Neither Merseyrail nor Merseytravel may assign transfer, charge or hold on trust all or any rights under or arising out of this Agreement without the written consent of the other party, such consent not to be unreasonably withheld or delayed.

14 NO REPRESENTATIONS

14.1 This Agreement incorporates the entire contract between the parties and the parties acknowledge that they have not entered into this Agreement in reliance on any advertisement or other matter issued by the other party or anyone acting as the their agent or in reliance on any statements or representations made to the party.

15. LIMITATION ON LIABILITY

15.1 Save as otherwise provided in this Agreement, the liabilities of Merseytravel and Merseyrail to each other under or in connection with this Agreement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed ~~£~~million ~~£~~million pounds) for each and every claim.

16. VAT

16.1 Where one party ("the supplier") makes or is deemed to make a supply to another party ("the recipient") for the purposes of VAT, whether the supply is for a monetary consideration or otherwise, the recipient shall pay to the supplier an amount equal to VAT in addition to the consideration provided in this Agreement. The recipient shall account to the supplier for any amount so payable on the date referred to under clause 16.3 upon presentation of a valid VAT invoice from the supplier.

16.2 If any amount paid by the recipient to the supplier in respect of VAT is subsequently found to have been overpaid, the supplier shall repay such amount to the recipient to the extent that the recipient has not recovered such amount from HM Customs & Excise and the supplier shall at the same time (or at the time the payment would have been due under clause 16.3, if the recipient had not fully recovered that amount from HM Customs & Excise) present to the recipient a valid VAT credit note where by law it is required so to do.

16.3 The supplier shall be entitled to demand any amount payable under clause 16.1 at any time on or after the time of the supply and the recipient shall be entitled to demand any amount repayable under clause 16.2 at any time after the overpayment is discovered and any such amounts shall be paid or repaid within 5 Working Days following the date of the demand, but such amounts shall not be payable or repayable unless and to the extent that the supplier has issued to the recipient an invoice pursuant to clause 16.1, or the overpayment referred to in clause 16.2 is discovered, within the period of three years referred to in section 77(1)(a), VATA (Assessments: time limits).

17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

17.1 For the purpose 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 parties but any third party right which exists or is available independently of that Act is preserved.

18. GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Courts.
- 18.2 In the event of any dispute arising out of or in connection with this Agreement, the parties shall in good faith refer that dispute to the decision of the Managing Director of Merseyrail and the Director General of Merseytravel (or other such persons of equivalent status as the parties may respectively have designated for the purpose by notice to the other).
- 18.3 If within 60 days after any referral shall have been made pursuant to clause 18.2 above the parties remain in disagreement, the parties may, in good faith, seek to resolve that dispute through a mediation. The mediator and the procedure to be followed in the mediation shall be agreed between the parties within 15 days of one party requesting mediation, failing which the mediator shall be appointed by the Centre for Dispute Resolution and the procedure established by the mediator.
- 18.4 The costs and fees associated with the mediation shall be borne equally by the parties.
- 18.5 In the event that the dispute has not been resolved to the satisfaction of both parties within 30 days after the appointment of the Mediator, or either party fails or refuses to agree to mediation, then the dispute shall be referred to litigation and the parties shall be free to pursue their remedies without further reference to this clause.

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

SCHEDULE 1
Development Obligations

1 INTERPRETATION

- 1.1 In this Schedule the capitalised words shall have the same meaning as defined in the Agreement.
- 1.2 Unless the context otherwise requires, references to a paragraph are to a paragraph of this Schedule, and reference to a clause are to a clause of this Agreement.
- 1.3 Words importing the singular meaning where the context so allows include the plural meaning and vice versa.
- 1.4 Words of one gender include both other genders and words denoting natural persons include corporations and firms, and all such words are to construed interchangeable in that manner.
- 1.5 The paragraph headings in this Schedule are for convenience only and do not affect its interpretation.
- 1.6 References to a statutes or a provision of a statute include any statute or provision of a statute amending consolidating or replacing it for the time being in force.
- 1.7 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done, and words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction.
- 1.8 Any consent of approval of Merseytravel required under this Schedule is required to be obtained before the act or event to which it applies is carried out or done and is effective only if the consent or approval is given in writing.

2 THE PROFESSIONAL TEAM

- 2.1 Merseyrail is responsible for the appointment, and shall engage the services, of the Professional Team and other specialist advisers in connection with the Development Building Works.
- 2.2 The appointment and engagement of the services of a member of the Professional Team may be made only after due enquiry as to his repute, competence, experience and suitability with respect to the Development and Building Works.

2.3 Merseyrail may not appoint and engage the services of a member of the Professional Team without the approval of Merseytravel of the selection of their appointment. Such approval shall not be unreasonably withheld or delayed providing each member of the Professional Team:

- (a) can show relevant experience and has carried out work within the railway environment;
- (b) provides draft health and safety documents and risk assessments which are acceptable to the Principal Designer.

3 THE PLANS

3.1 The Plans have been approved by Merseytravel.

3.2 Merseyrail shall in consultation with the Approval Bodies and Merseytravel continue to develop the Plans for the design and carrying out of the Development.

3.3 Insofar as such rights have vested to Merseyrail, Merseyrail hereby grants to Merseytravel a perpetual royalty-free licence to use and reproduce all or any of the Plans and any intellectual property (including design rights, registered designs, patents, copyright and copyright licences) generated by or on behalf of Merseyrail pursuant to this Agreement for all purposes connected with Development. Merseyrail shall not be responsible for use of the Plans for any purpose other than that for which the same was prepared or provided by or on behalf of Merseyrail.

4 CHANGES AND VARIATIONS

4.1 Merseyrail shall not make any changes (that is to say, any alteration or addition to or omission of anything from the Plans nor the use of any materials in substitution for those specified in the Plans) without the consent of Merseytravel (such consent not to be unreasonably withheld or delayed pursuant to paragraph 4.2).

4.2 Consent shall not be unreasonably withheld if:

- (a) Merseyrail notifies Merseytravel in writing of the changes within a reasonable time before the change is required; and
- (b) the change does not involve Merseytravel in any expenditure in carrying out the change; and
- (c) the change has been approved by the Approval Bodies; and

- (d) the change does not materially change the scope or nature of the Development as described in the Plans; and
 - (e) in the case of a change involving the substitution of the materials, the materials substituted are of equivalent or superior standard.
- 4.3 Merseytravel may issue an instruction requiring a Variation by giving Merseyrail a preliminary notice of Variation and paragraphs 4.4 to 4.10 inclusive shall apply.
- 4.4 Merseyrail may give Merseytravel written notice that it is unable to carry out the proposed Variation if it:
 - (a) materially changes the scope or nature of the Development as described in the Plans; or
 - (b) is unlikely that the Variation will be approved by the Approval Bodies.
- 4.5 Upon receipt of the notice pursuant to paragraph 4.4 both Merseytravel and Merseyrail shall co-operate and seek to amend the preliminary notice of Variation in order that Merseyrail accepts the preliminary notice of Variation.
- 4.6 Within such reasonable period as Merseytravel may specify (being not less than seven days after the receipt by Merseyrail of an acceptable preliminary notice of Variation as referred to in paragraph 4.3) Merseyrail shall provide Merseytravel with an estimate of the valuation of the proposed Variation in the form of a quotation or quotations from its contractors including any loss and/or expense arising from the proposed Variation.
- 4.7 Following receipt by Merseytravel of the estimates referred to in paragraph 4.6 Merseyrail shall for a period of seven days, or such longer period as Merseytravel may specify, conduct negotiations with Merseytravel with a view to agreeing the said estimates ("Valuation Costs"). If such negotiations are successfully concluded Merseytravel shall issue an instruction to Merseyrail confirming the Variation (hereinafter in paragraph 4.7 called a "Confirmation Instruction"), and such Confirmation Instruction is deemed to be authorised by both Merseytravel and Merseyrail.
- 4.8 The Valuation Cost shall be paid by Merseytravel to Merseyrail and shall become due when:
 - (a) the Variation has been carried out; and

(b) when Merseytravel has received a valid VAT invoice for the Valuation Cost.

4.9 The final date of payment of a Valuation Cost shall be 30 days after the amount became due.

4.10 Whenever Merseytravel issues a preliminary notice of Variation pursuant to paragraph 4.3, no work pursuant to the proposed Variation to which the preliminary notice relates shall be commenced until such time as Merseytravel so instructs.

5 REQUISITE CONSENTS

5.1 Merseyrail shall apply for and use all reasonable endeavours to obtain all Requisite Consents from time to time as may be appropriate before and throughout the course of the Development:

5.2 The Requisite Consents are those permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out, maintain and complete the Development, and for Merseyrail to use and enjoy the Development as intended by the parties including (but without limitation):

- (a) planning permission and approval of reserved matters;
- (b) building regulations, consents and by-law approvals;
- (c) the requirements of all competent authorities regulating the Development and/or the use of the Property;
- (d) the consents of all parties having interests or rights in or over the Property who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out or progress of the Development or its use and enjoyment;
- (e) the 'consents' as defined in paragraph 4 of the Licence for Alterations.

5.3 Merseyrail shall promptly notify Merseytravel of the grant of a Requisite Consent and deliver a copy to Merseytravel.

5.4 Merseyrail shall apply for and use all reasonable endeavours to obtain the approval of Network Rail and the Users (as defined in the National Station Access Conditions) to Part B and Part C of the National Station Access Conditions if required.

6 THE BUILDING CONTRACTOR

- 6.1 Merseyrail is responsible for the selection and appointment of the Building Contractor. The Building Contractor should be able to show relevant experience and has carried out work within the railway environment and should be able to show that it is able to comply with the Health and Safety Documents and is approved by Network Rail and can provide draft health and safety documents and risk assessments which are acceptable to the Principal Designer
- 6.2 The appointment of the Building Contractor may be made only after due enquiry by Merseyrail as to its repute, competence and suitability with respect to the Development.
- 6.3 Merseyrail may progress the appointment of the proposed Building Contractor without the further approval of Merseytravel but Merseytravel may withdraw its approval if the Building Contractor is unable to fulfil the requirements stated in paragraph 6.1. and paragraph 6.2.
- 6.4 This paragraph 6 also applies to the appointment of a building contractor by way of replacement of the Building Contractor.

7 THE BUILDING WORKS

- 7.1 Merseyrail shall procure that the Building Works are procured in accordance with Merseyrail procurement rules and are commenced on the Commencement Date and the Certificate of Practical Completion shall be issued in accordance with this Agreement on or before the Completion Date.
- 7.2 The Completion Date shall be extended by:
- (a) the aggregate of the periods of extension commensurate with those properly allowed to the Building Contractor by the Architect/the Contract Administrator under the terms of the Building Contract except to the extent that delay is attributable to the fault of Merseyrail; and
 - (b) such periods entitling Merseyrail to have the Completion Date extended in accordance with this Agreement; and
 - (c) Force Majeure

and such extensions shall run consecutively or concurrently as may be fair and reasonable in the circumstances and shall be reviewed and adjusted on a fair and reasonable basis from time to time.

7.3 Merseyrail shall keep Merseytravel informed of:

- (a) materials measures taken and stages reached by Merseyrail in performing its obligations;
- (b) the progress of the Building Works;
- (c) material problems or delays affecting the Building Works; and
- (d) changes to the Anticipated Development Expenditure.

7.4 Merseyrail shall provide to Merseytravel a programme of the Development showing the sequence and timing of the Development together with details of any key dates. Merseyrail shall provide Merseytravel a revised programme as and when any of the information on the programme is superseded.

8 INSPECTION OF THE BUILDING WORKS BY MERSEYTRAVEL

8.1 Merseytravel and its advisers may at all reasonable times and upon reasonable notice during the Development Period by arrangement with the Building Contractor enter the Development Area in order to inspect and view the state and progress of the Building Works and the materials used.

8.2 Merseytravel and its advisers in doing so may not impede or obstruct the progress of the Building Works nor issue any instructions to the Building Contractor any workmen employed on the site or the Professional Team, but will address any requirement comment or complaint only to Merseyrail.

9 PRACTICAL COMPLETION

9.1 Merseyrail shall give notice (and use his reasonable endeavours to give at least 7 days' notice) to Merseytravel of the pending issue of the certificate of Practical Completion in order to allow Merseytravel and its professional advisers the opportunity to inspect the Building Works and consider whether the Building Works have been completed in accordance with the Building Contract and this Agreement.

9.2 The Architect/Contract Administrator shall not be fettered from issuing the certificate of Practical Completion at such time as in his opinion he thinks fit.

9.3 Merseytravel may make representations to the Architect/Contract Administrator as to whether the certificate of Practical Completion should be issued at a particular time or what qualifications should be made to the certificate of Practical Completion upon its issue.

9.4 If Merseytravel is of the opinion that the certificate of Practical Completion should not be issued or should not have been issued or that the certificate as issued has not been properly qualified then Merseytravel may notify Merseyrail within a reasonable time giving details of Merseytravel's objections and Merseyrail and Merseytravel shall endeavour to resolve what if any action should be taken but if they cannot then the provision clause 17 shall apply.

10 DEFECTS LIABILITY

10.1 Merseyrail shall enforce the defects liability provisions in the Building Contract.

10.2 Merseyrail shall inspect the Development and prepare a schedule of defects itemising defects, shrinkages and other faults due to materials or workmanship not in accordance with the Building Contract or to frost occurring before Practical Completion; and shall:

(a) deliver a copy to Merseytravel in time for Merseytravel to consider it and notify additions to Merseyrail; and

(b) then deliver the schedule (with any additions notified to Merseyrail by Merseytravel) to the Building Contractor within the appropriate time limits for doing so under the Building Contract.

10.3 Merseytravel is not obliged to prepare any such schedule of defects, but Merseyrail shall include in its schedule any defects notified to it by Merseytravel within the appropriate time limits, and Merseyrail shall allow Merseytravel the facilities necessary to enable the schedule of defects to be prepared.

10.4 No action may be brought against Merseyrail in respect of breach of any obligation under this Schedule or the Agreement after the expiry of 6 years from the date of Practical Completion.

11 NOTICES AND NOTIFICATION

11.1 Any notice or notification or other communication in respect of the Development under the provisions of this Schedule shall be in accordance with clause 10. Notifications or other communications to Merseyrail shall be for the attention of the **Managing**

Director at Merseyrail, Rail House, Lord Nelson Street, L1 1JF and notifications or other communications to Merseytravel shall be for the attention of Louise Outram, Secretary to Merseytravel, PO Box 1976, Liverpool L69 3HN.

SCHEDULE 2

Development Expenditure

The Development Expenditure means the aggregate of the following expenditure incurred by Merseyrail in respect of or arising from the Development:




- (a) the costs of the Building Contractor pursuant to the Building Contract;
- (a) the fees of the Professional Team;
- (b) costs incurred from Network Rail;
- (c) all other amounts of expenditure in relation to the [REDACTED] specifically mentioned above but are agreed by Merseytravel and Merseyrail as Development Expenditure.
- (d) items stated in the Agreement as amounts which are Development Expenditure;




2015/16 - £30,000

2016/17 - £87,568.24

Overall Cost Estimate £117,568.24

Executed and delivered as a deed)
For and on behalf of)
Merseyrail Electrics 2002)
Limited acting by:)

.....Signed
Director .....Print name
.....Occupation

.....Signed
Director/Company Secretary .....Print name
.....Occupation

Merseytravel)
)

.....Authorised Signatory