

**DATED** \_\_\_\_\_.

**RAPID TRANSIT CONSULTANCY SERVICES**

**SINGLE-PARTY FRAMEWORK AGREEMENT**

between

**Merseytravel**

and

**[Supplier]**

**AN AGREEMENT** made the

## **Parties**

- (1) **MERSEYTRAVEL** a body corporate created by statute whose office is at 1 Mann Island, Liverpool, L3 1BP (**Customer**).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**).

## **BACKGROUND**

- (A) The Supplier is in the business of providing the Available Services.
- (B) The Customer wishes to appoint the Supplier to provide some or all of the Available Services to it and its affiliates under this framework agreement (**framework agreement**).
- (C) When a Customer or any of its affiliates requests services from the Supplier, and the Supplier is able to provide such services, the relevant parties will enter into a separate call-off contract in accordance with this framework agreement.

## **Agreed terms**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this framework agreement.

#### **1.1 Definitions:**

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

**Available Services:** the services, including without limitation any Deliverables, which the Supplier is willing to provide to the Customer and the Customer Affiliates as set out in [Schedule 2](#)~~Schedule-2~~.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Call-off Contract:** an agreement for the provision of Services by the Supplier to the Customer or Customer Affiliate agreed in accordance with clause ~~22~~ (Call-off Contract process), a template of which is at ~~Schedule 1~~~~Schedule 4~~.

**Charges:** the charges set out in ~~Schedule 5~~~~Schedule 3~~.

**control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer Affiliate:** an Affiliate of the Customer.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

**Framework Agreement Commencement Date:** the date of execution of this framework agreement

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to a Call-off Contract.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this framework agreement or any Call-off Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this framework agreement and shall have effect as if set out in full in the body of this framework agreement. Any reference to this framework agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act.

- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.11 A reference to **writing** or **written** includes fax but not email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this framework agreement** or to any other agreement or document is a reference to this framework agreement or such other agreement or document, in each case as varied from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this framework agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Call-off Contract process and Charges**

- 2.1 This framework agreement governs the overall relationship of the parties in relation to the Services provided by the Supplier to the Customer and Customer Affiliates, and sets out:
  - (a) in this clause [22](#), the procedure for the Customer and Customer Affiliates to request the provision of Services from the Supplier under separate Call-off Contracts; and
  - (b) in [Schedule 1](#) ~~Schedule 1~~, the template call-off contract containing all the call-off terms, to be entered into by the Supplier and Customer or Customer Affiliate.
- 2.2 In relation to the first call-off Contract entered into under this Agreement, the Customer has, as part of the tender process, submitted a 'Brief' outlining which of

the Available Services it would like to engage the Supplier to deliver, and the Supplier has submitted a 'Proposal' in relation to those requested Services.

- 2.3 The Customer may engage the Supplier to perform the first Call-off Contract in accordance with the 'Brief' and 'Proposal' described in clause 2.2 above by completing the template call-off contract at Schedule 1 (the 'Brief' and 'Proposal' forming the 'Call-off Contract Documents') and issuing to the parties for execution.
- 2.4 In relation to subsequent Call-off Contracts, the Customer and the Customer Affiliates shall be entitled from time to time to request in writing the provision of any or all of the Available Services from the Supplier. Any such request will include a 'Brief' document which sets out the scope and nature of the particular services the Customer requires.
- 2.5 Within 10 Business Days of receipt of a written request from the Customer or any Customer Affiliate, the Supplier shall:
- (a) either notify the Customer or Customer Affiliate that it is not able to provide the requested Available Services; or
  - (b) Provide the Customer with a 'Proposal' which sets out in detail how it shall deliver the requested services. The Supplier will submit the draft proposal the Customer or the Customer Affiliate (as applicable) for its written approval. Such Proposal shall contain the Call-off Contract Price, which is to be calculated by reference to the agreed charges for the Available Services set out in [Schedule 5](#)~~Schedule 3~~.
- 2.6 The Customer shall review the Proposal, and should it decide to engage the Supplier in delivery of the Services it shall then complete the template call-off contract at Schedule 1, which shall contain the 'Brief' and 'Proposal' as 'Call-off Contract Documents', and issue for execution by the parties.
- 2.7 A Call-off Contract shall not enter into force, be legally binding or have any other effect unless:
- (a) the Call-off Contract has been signed by the authorised representatives of both parties to it; and
  - (b) as at the date the Call-off Contract is signed, this framework agreement has not been terminated.
- 2.8 Each Call-off Contract:
- (a) shall be entered into by the Customer or a Customer Affiliate and the Supplier; and
  - (b) forms a separate contract between its signatories.

2.9 The Supplier shall be permitted to increase the Charges once per annum effective from the ~~second~~<sup>third</sup> anniversary of this Agreement (the Charges shall remain fixed ~~at the~~ for the first two years of this agreement), subject to;

(a) Any such increase being no greater than whichever is the lesser of;

(i) the current Retail Price Index, and;

(ii) 5% of the current rates

and;

(b) The Supplier providing the Customer with 60 days-notice of any such increase (the increase to take effect upon expiry of the notice period)

### **3. Commencement and duration**

This framework agreement shall commence on the Framework Agreement Commencement Date and shall continue, unless terminated earlier in accordance with clause [66](#) (Termination), until the fourth anniversary of the date of this Agreement when it shall automatically terminate.

### **4. Limitation of liability**

4.1 The restrictions on liability in this clause [44](#) apply to every liability arising under or in connection with this framework agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

4.2 Nothing in this framework agreement shall limit or exclude the Supplier's or the Customer'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) or any other liability which cannot be limited or excluded by applicable law.

4.3 Subject to clause [4.24.2](#) (Liabilities which cannot legally be limited):

(a) neither party to this framework agreement shall have any liability to the other party for any indirect or consequential loss arising under or in connection with this framework agreement;

(b) the Supplier's total liability to the Customer arising under or in connection with this framework agreement shall be limited to £5 million in respect of each Call-off Contract awarded under this framework agreement; and

- (c) the Customer's total liability to the Supplier arising under or in connection with this framework agreement shall be limited to the aggregate total of all Charges which have been paid to the Supplier under this framework Agreement (which, for the avoidance of doubt, includes any Call-Off Contracts).

4.4 The Customer accepts no liability for the performance by any Customer Affiliate of any Call-off Contract entered into by such Customer Affiliate.

## **5. Data protection**

5.1 The Supplier and the Customer will at all times comply with the Data Protection Legislation.

5.2 The Supplier and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor.

5.3 The respective Call-off Contract shall govern any processing of personal data by the Supplier which is to be performed thereunder, including the duration of any such processing, the types of personal data as defined in the Data Protection Legislation ("Personal Data") and categories of data subject.

## **6. Termination**

6.1 Without affecting any other right or remedy available to it, either party may terminate this framework 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 framework agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this framework 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 framework 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 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- (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) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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 the other party (being a company, limited liability partnership or partnership);
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;
- (j) 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 fourteen days;
- (k) 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 [6.1\(c\)](#)~~6.1(e)~~ to clause [6.1\(j\)](#)~~6.1(j)~~ (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy;
- (n)

6.2 Without affecting any other right or remedy available to it, the Customer may terminate this framework agreement on giving not less than thirty days' written notice to the Supplier.

## 7. Survival

- 7.1 On termination (or expiry) of this framework agreement, howsoever arising, each Call-off Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Call-off Contract, unless terminated earlier in accordance with the terms of such Call-off Contract.
- 7.2 The termination of any Call-off Contract shall not affect this framework agreement. The termination of a Call-off Contract may entitle a Customer or Customer Affiliate to terminate any other Call-off Contract it has entered into where it has the right to do so under the terms of that Call-off Contract.
- 7.3 On termination of the framework agreement, the following clauses shall continue in force: clause [14](#) (Interpretation), clause [44](#) (Limitation of liability), clause [77](#) (Survival), clause [88](#) (Confidentiality), clause [1919](#) (Governing law), and clause [2020](#) (Jurisdiction)
- 7.4 Termination of this framework agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.

## 8. Confidentiality

- 8.1 Each party undertakes that it shall not at any time during this framework agreement, and for a period of five years after termination or expiry of this framework agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or supplier of the other party or any member of the group of companies to which the other party belongs, except as permitted by clause [8.28-2](#).
- 8.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this framework agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause [88](#); and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this framework agreement.

## **9. Variation**

No variation of this framework agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **10. Waiver**

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

10.2 A failure or delay by a party to exercise any right or remedy provided under this framework 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 framework agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

10.3 A party that waives a right or remedy provided under this framework agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## **11. Rights and remedies**

Except as expressly provided in this framework agreement, the rights and remedies provided under this framework agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **12. Severance**

12.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

12.2 If any provision or part-provision of this agreement is deemed deleted under clause ~~12.1~~<sup>12.4</sup> the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **13. Entire agreement**

- 13.1 This framework 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.
- 13.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this framework agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this framework agreement.

### **14. Assignment and other dealings**

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this framework agreement without the prior written consent of the other party.

### **15. No partnership or agency**

- 15.1 Nothing in this framework 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.
- 15.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **16. Third party rights**

- 16.1 This framework agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

### **17. Notices**

- 17.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by fax to its main fax number.

- 17.2 Any notice shall be deemed to have been received:
  - (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. ~~;~~ ~~[or]~~

~~(c) [if sent by [fax]] [or] [email], at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.~~

17.3 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.

17.4 A notice given under this agreement is not valid if sent by email.

**18. Counterparts**

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

18.2 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

**19. Governing law**

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

**20. Jurisdiction**

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

This Agreement (including the Schedules which form part of it) has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by \_\_\_\_\_ )  
**MERSEYTRAVEL** by the \_\_\_\_\_ )

affixing of its common seal in the )  
presence of: )

Signature .....

Name .....

Title .....

Executed as a deed by )  
[SUPPLIER NAME] )  
acting by two directors )  
or one director and its )  
company secretary: )

Signature .....

Name .....

Title .....

Signature .....

Name .....

Title .....

**Schedule 1    Template Call-Off Contract**

DRAFT

**Dated**

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**Merseytravel**

**- and -**

**[XXX]**

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**Rapid Transit Consultancy Services Framework  
Call-Off Contract**

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Ref: LCS/

**AN [AGREEMENT/DEED]** made the

**BETWEEN**

- (1) **MERSEYTRAVEL** a body corporate created by statute whose office is at No.1 Mann Island, Liverpool, L3 1BP (“Customer”); and
- (2) \_\_\_\_\_  
(the “Supplier”)

each individually referred to as a “Party” and collectively the “Parties”.

**WHEREAS** The Customer and the Supplier entered into a framework agreement dated **[INSERT DATE]** (**‘Framework Agreement’**), allowing the Customer or any of its Affiliates to request services from the Supplier.

Pursuant to the Framework Agreement, the Customer requests certain services to be provided by the Supplier, and the Supplier agrees to provide such services to the Customer in accordance with this call-off contract (**‘Call-off Contract’**) and the Call-Off Contract Documents (hereinafter defined)

**IT IS HEREBY AGREED** as follows:-

1. **Definitions**

The following terms shall have the following meanings:-

**Agreement** - means this Call-off Contract including its Schedules and Annexes as varied from time to time.

**Authorised**

**Personnel** - the employees of the Supplier detailed in the Proposal attached hereto or such other employees of the

Supplier as the Supplier may from time to time nominate with the approval of the Customer.

**Call-Off Contract**

**Documents** - the “Brief” as contained in Schedule 1 to this Agreement, the “Proposal” as contained in Schedule 2 to this Agreement (excluding the Supplier’s terms and conditions (if any) which are over-ridden by this Agreement).

**Call-off Contract**

**Price** - up to a maximum of [£ ] to be accrued at the rates provided for in the Charges.

**Charges** - the rates set out in Schedule 3 of the Framework Agreement.

**Commencement**

**Date** - [XXX].

**Completion Date** - [XXX].

**Confidential**

**Information** - means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets,

intellectual property rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation.

### **Call-off Contract**

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

### **Data Protection**

**Legislation** - all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

### **Framework Agreement**

#### **Commencement**

**Date** - is as defined in the Framework Agreement.

## **Good Industry**

**Practice** - means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**Services** - The service to be provided by the Supplier under this Agreement as detailed in the Call-off Contract Documents.

**Subcontract** - means any contract between the Consultant and a third party pursuant to which the Consultant agrees to source the provision of any of the Services from that third party.

**Subcontractors** - those persons with whom the Consultant enters into a Subcontract or its or their servants or agents.

**Supervising Officer** - The [XXX] of the Customer or such other nominated representative of the Customer who has been notified by the Customer to the Supplier.

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

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

2. **Commencement and Completion**

2.1 The Supplier will commence the Services on the Commencement Date and shall use Good Industry Practice to complete all its obligations to the Customer under this Agreement by the Completion Date.

2.2 ~~Time shall be of the essence of this Agreement both as regards~~ The Commencement Date and the Completion Date ~~and as regards any dates which~~ may be substituted/ varied for them in accordance with this Agreement or by agreement in writing between the Parties.

3. **Supplier's Obligations**

3.1 **The Services**

3.1.1 The Supplier shall provide the Services in accordance with the provisions of this Agreement. The Supplier shall provide the Services in accordance with Good Industry Practice and shall devote such time attention and abilities to the Services as shall be deemed necessary by the Customer.

3.1.2 The Supplier shall keep the Supervising Officer informed of all correspondence received and sent by the Supplier during the provision of the Services as set out in the Proposal or as otherwise agreed with the Supervising Officer.

- 3.1.3 The Supplier shall provide the Services in a conscientious and timely manner and in accordance with the requirements as set out in the Proposal or as otherwise agreed with~~of~~ the Supervising Officer and shall acknowledge all instructions received from the Supervising Officer or any other officers of the Customer.
- 3.1.4 The Supplier shall make such enquiries and investigations as may be necessary in the provision of the Services and shall consult the Supervising Officer and keep him/her informed in all matters connected with the Services and produce regular reports in such manner and at such times as set out in the Proposal or as otherwise agreed with the Supervising Officer as the Supervising Officer may require.
- 3.1.5 The Supplier shall notify the Supervising Officer immediately of any circumstances relating to the Supplier and/or the Customer concerning the Services of which the Supplier is aware or anticipates which may justify the Customer taking action to protect its interests (including its reputation and/or standing).
- 3.1.6 The Supplier shall provide the Services wherever required by the Customer. The Supplier shall not in any circumstances utilise any premises or facilities of the Customer except as agreed with the Supervising Officer from time to time.

- 3.1.7 The Supplier shall use reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the Customer may require.
- 3.1.8 Unless specifically authorised to do so by the Supervising Officer in writing, the Supplier shall not have any authority to incur any expenditure in the name of or for the account of the Customer or hold itself out as having authority to bind the Customer.
- 3.1.9 If the Supplier is required to travel abroad in the provision of the Services the Supplier shall be responsible at its own cost for any necessary insurances, inoculations and immigration requirements.
- 3.1.10 The Supplier shall not in the provision of the Services in any manner endanger the safety or unlawfully interfere with the convenience of the public.

## 3.2 **Conflict of Interest**

- 3.2.1 The Supplier shall notify the Supervising Officer immediately on becoming aware of any possible conflict of interest which may arise between the interests of the Customer and the Supplier or any other client of the Supplier.
- 3.2.2 The Supplier shall take all reasonable action to remove or avoid the cause of any such conflict of interest to the satisfaction of the Supervising Officer.
- 3.2.3 The Supplier shall not at any time during the Contract Period or afterwards accept instructions to act against the Customer if the

Supplier is likely to use the knowledge about the Customer obtained as a result of the provision of the Services.

3.3 **Standing Orders/Financial Regulations**

The Supplier and the Authorised Personnel shall comply with the Standing Orders and Financial Regulations of the Customer. A copy of the Standing Orders and Financial Regulations of the Customer can be obtained from the Customer website.

3.4 **Attendance at Meetings**

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

3.5 **Record Keeping**

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

3.6 **Statutory and Other Regulations**

3.6.1 The Supplier shall in all matters arising in the provision of the Services conform with all Acts of Parliament and with all orders, regulations, and bye-laws that shall be applicable to the provision of the Services. The Supplier shall also observe any rules applicable to the premises of the Customer.

3.6.2 The Supplier shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the Modern Slavery Act 2015.

3.6.3 The Supplier shall comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the premises where the Services are to be provided.

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

### 3.7 **Authorised Personnel**

3.7.1 The Supplier shall provide the Authorised Personnel to provide the Services in accordance with the Call-off Contract Documents. The Supplier and the Authorised Personnel shall exercise reasonable skill care and diligence in the provision of the Services and they shall devote such of their time attention and abilities to the Services ~~as shall be deemed necessary by Customer acting reasonably.~~

3.7.2 The Customer shall be entitled to request the Supplier to withdraw any of the Authorised Personnel from providing the Services if the Supervising Officer thinks in his/her reasonable opinion that such Authorised Personnel are not exercising such reasonable skill care and diligence in the provision of the Services or are not devoting such

of their time and attention and abilities to the Services as shall be deemed necessary by the Customer.

3.7.3 The Supplier will make every reasonable effort to maintain continuity of personnel throughout the provision of the Services but in the event of a change in the Authorised Personnel the Supplier shall bear all costs related thereto. In the event of the Supplier requiring the engagement of personnel in the provision of the Services other than the Authorised Personnel then the prior written consent of the Customer is required.

3.7.4 If the Supplier requires the services of an employee of the Customer to assist in the provision of the Services then the Supplier will negotiate with the Customer for such services as are desired.

3.7.5 The Supplier shall undertake to refrain from approaching or otherwise inducing the Customer staff to leave their current employment during the Contract Period or for a period of one year thereafter.

4. **Status**

4.1 The relationship of the Supplier to the Customer will be that of independent contractor and nothing in this Agreement shall render the Supplier an employee, worker, agent or partner of the Customer and the Supplier shall not hold himself out as such.

4.2 This Agreement constitutes a contract for the provision of services and not  
a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Customer for and in respect of:

- 4.2.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services where the recovery is not prohibited by law. The Supplier shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
- 4.2.2 any liability arising from any employment related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Supplier against the CUSTOMER arising out of or connection with the provision of the Services.

5. **Sub-Contracting and Assignment**

- 5.1 The Supplier shall not assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement without the express prior written consent of the Customer.
- 5.2 The Supplier shall not sub-let the Services or any part thereof or make any sub-contract with any person or persons for the provision of any part of the Services except with the express prior written consent of the Customer.
- 5.3 Where the Customer has given prior written consent for the Supplier to enter into any sub-contract in connection with this Agreement it shall:

5.3.1 remain responsible for the performance of its obligations under this Agreement and be responsible for the acts, omissions and neglects

of its sub- contractors as if they had not sub-contracted; and

5.3.2 impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the sub-contractor complies with such terms.

6. **Confidentiality, Data Protection and Freedom of Information**

6.1 The Supplier shall keep confidential all Confidential Information of the Customer obtained under or in connection with this Agreement and shall not:

6.1.1 divulge the same to any third party without the prior written consent of the Customer; and

6.1.2 use such Confidential Information except for the purpose of performing its obligations under this Agreement.

6.2 The provisions of Clause 6.1 shall not apply to any Confidential Information which:

6.2.1 is in the public domain otherwise than by breach of this Agreement;

6.2.2 is obtained from a third party who is lawfully free to divulge the same without any obligations of confidentiality;

6.2.3 the Supplier is required to disclose by judicial, administrative, governmental or regulatory process or otherwise by applicable Law, including without limitation the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

- 6.3 The Supplier shall divulge the Confidential Information only to those employees who are directly involved in this Agreement and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.
- 6.4 The Supplier shall ensure that any sub-contractors approved under Clause 5 hereof are bound by the requirements of this Clause 6.
- 6.5 The Supplier shall not without the prior written consent of the Customer advertise or publicly announce that it is undertaking work for the Customer.

#### **Freedom of Information**

- 6.6 The Supplier acknowledges that the Customer is subject to the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 2004 and that any information provided by the Supplier to the Customer under this Agreement may need to be disclosed to third parties under the provisions of such legislation (and/or any accompanying codes of practice issued by the Information Commissioners Office). The Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure.
- 6.7 The Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure. Notwithstanding any other term of this Agreement, the Supplier consents to the publication of this Agreement in its entirety

(including variations), subject only to the redaction of information that is exempt from disclosure.

**Data Protection**

6.8 The Supplier and the Customer will at all times comply with the Data Protection Legislation.

6.9 The Supplier and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor.

6.10 The Call-off Contract Documents and the below table sets out the scope, nature and purpose of the processing by the Supplier, the duration of the processing and the types of personal data as defined in the Data Protection Legislation (“Personal Data”) and categories of data subject.

Controller	Customer
Processor	Supplier
Purpose of processing	
Duration of Processing	
Nature of Processing	
Subject Matter of Processing	
Description of Personal Data	

6.11 The Supplier shall, in relation to any Personal Data processed in connection with this Agreement:

6.11.1 process that Personal Data only on written instructions of the Customer;

6.11.2 keep the Personal Data confidential;

- 6.11.3 comply with the Customer's data protection policy and data retention guidelines;
- 6.11.4 comply with the Customer reasonable instructions with respect to processing Personal Data;
- 6.11.5 not transfer any Personal Data outside of the European Economic Area without the Customer's prior written consent;
- 6.11.6 assist the Customer in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;
- 6.11.7 notify the Customer without undue delay on becoming aware of a Personal Data breach or communication which relates to the Customer's or Supplier's compliance with the Data Protection Legislation;
- 6.11.8 at the written request of the Customer, delete or return Personal Data and any copies thereof to the Customer on termination of this Agreement unless required by the Data Protection Legislation to store the Personal Data;
- 6.11.9 Maintain complete and accurate records and information to demonstrate compliance with this Clause 6.
- 6.12 The Supplier shall ensure that he has in place appropriate technical or organisational measures to protect against unauthorised or unlawful

processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.

6.13 The Customer does not agree to the Supplier appointing any third party processor of Personal Data under this Agreement.

## 7. **Payment**

7.1 The Customer shall pay the Supplier the Call-off Contract Price for the provision of the Services on the terms set out in this Clause 7.

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

7.3 The invoices shall be accompanied by details of the time spent by the Supplier in the provision of the Services and the date of performance together with details of the tasks undertaken during that period and their applicable rates in accordance with those contained within the Charges.

7.4 The Customer shall pay to the Supplier the amount stated in such invoice within 30 days of receipt thereof subject to the accuracy of the account and to the satisfactory performance of the Services in the reasonable opinion of the Supervising Officer.

7.5 ~~The fee to be paid in respect of any additional work required under Clause 11 hereof which is not part of the Services shall be subject to the prior approval of the Supervising Officer.~~ Not used.

7.6 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes. Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

7.7 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Supplier the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement ~~or any other agreement with the Customer.~~

7.8 Exercise by the Customer of its rights under Sub-Clause 7.7 hereof shall be without prejudice to any other rights or remedies available to the Customer under this Agreement.

7.9 The Customer shall adhere to the requirements in relation to prompt payment in accordance with Section 68 of the Procurement Act 2023 (where this shall apply to this Agreement) provided always that the Supplier has met its requirements under Sub-Sections 8-9 of Section 68 of the Procurement Act 2023.

7.10 Interest for any late payment shall accrue at the interest rate of four percent (4%) above the Bank of England base rate, calculated daily from the date payment was due until it is made.

7.11 In the event that payment is not made in accordance with this Clause 7, the Supplier may provide the Customer with 14-day day written notice to

suspend any part of the Services pending payment of the outstanding payment.

8. **Variations**

8.1 In the event that the Customer shall require any reasonable alteration or addition to or omission from the Services or any part thereof (hereinafter referred to as a "Variation") the Supplier shall state in writing the effect such a Variation will have on the Services and what adjustment if any will be required to the Call-off Contract Price. The Supplier shall furnish such details within 14 days of receipt of the Customer's written request or such other period as may be agreed.

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

8.3 The Supplier shall not vary the Services in any respect unless instructed in writing to do so by the Customer.

9. **NOT USED**

10. **Supplier's Performance**

10.1 The Supplier must perform and comply with the standards and frequencies set out in the Call-off Contract Documents and to the entire satisfaction of the Supervising Officer (acting reasonably).

10.2 If the Supplier fails to comply with the Agreement or fails to provide the Services or any part thereof with due diligence or in a proper and skilful manner or to the quality or standard set out in the Call-off Contract Documents or to the satisfaction of the Supervising Officer then the Customer may do any one or more of the following:-

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

10.2.2 ~~without determining the Agreement in whole or part deduct from any sum which would apart from this clause have been payable to the Supplier such proportion thereof as it considers fair and reasonable in respect of the breach in question having regard to the duration and seriousness of the breach and the terms of the Agreement~~not used;

10.2.3 issue an Improvement Notice as defined in Clause 10.5 of this Agreement (below);

10.2.4 subject to following the process set out in Clause 10.5 and without determining the Agreement in whole or in part itself provide or employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Supplier or shall be recoverable from the Supplier by the Customer as a debt;

10.2.5 subject to following the process set out in Clause 10.5 and without determining the Agreement in whole determine part of the Agreement by notice in writing to the Supplier 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 Supplier shall be made.

10.3 The Services will be subject of programmed perception monitoring jointly and individually by both Parties to confirm that standards of quality and timeliness of the Agreement are being observed.

10.4 The Supervising Officer will agree the performance levels having considered representations by the Supplier or Authorised Personnel in respect of amongst other things errors or mitigating circumstances.

10.5 In the event that performance falls below the required standard a written notice (the "Improvement Notice") will be issued by the Supervising Officer. The Supplier shall submit to the Supervising Officer within such period as the Supervising Officer may reasonably specify proposals (the "Improvement Plan") which in the Supplier's opinion will ensure that such

failure does not reoccur and/or is promptly rectified. If the Supervising Officer does not consider that such proposal will remedy the failure or remedy the failure expeditiously the Supplier will be notified and in the two weeks following the Parties shall endeavour to agree revised proposals. Following agreement or determination of the Improvement Plan the Supplier shall diligently and promptly implement the same to restore the Services to the required standard.

- 10.6 Repeat and persistent failure to provide the Services in accordance with the terms of this Agreement may result in the Customer terminating the Agreement under Clause 15.3 hereof.
- 10.7 Any failure to agree on the application or interpretation of this clause will be referred to the Customer's appropriate Head of Services for determination with a right of appeal to a Director of the Customer who will both consider all relevant factors in consultation with the Supplier. The decision of the Customer's Director will be final.
- 10.8 The rights of the Customer under this clause are in addition and without prejudice to any other rights or remedies the Customer may have against the Supplier.
- 10.9 If within 3 (three) calendar months immediately following completion of the Services the Customer shall find and report to the Supplier any failure or defect in the Services then the Supplier will put right the same to the reasonable satisfaction of the Supervising Officer at no extra cost to the Customer.

11. **Implementation of Proposals**

If the Customer decides to proceed with any proposals as a result of the Supplier’s work under this Agreement the Customer shall not be under any obligation whatsoever to invite the Supplier to undertake the planning or implementation of the said proposals.

12. **Indemnity, Limitation of Liability, and Insurance**

Indemnity

12.1 The Supplier shall indemnify and keep indemnified the Customer against any legally enforceable and reasonably foreseeable costs, expenses, fines and losses whatsoever incurred by the Customer (subject to the Customer taking reasonable steps to mitigate the same, where possible) arising out of or in connection with:

- (a) any claim made against the Customer arising out of or in connection with the provision of the Services; and
- (b) any failure or delay in the performance of this Agreement by the Supplier;
- and
- (c) the enforcement of this Agreement.

**Limitation of Liability**

12.2 This Clause 12 sets out the entire financial liability of the Parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

12.2.1 any breach of this Agreement; and

12.2.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.3 The Supplier's total liability under this Agreement shall not exceed £5,000,000 (five million) pounds in the aggregate.

12.4 The Customer's total liability under this Agreement shall not exceed the Call-off Contract Price.

12.5 ~~The Customer~~Neither Party shall ~~not~~ be liable to the ~~Supplier~~other Party for:

12.5.1 loss of profits;

12.5.2 loss of anticipated profits;

12.5.3 loss of revenue;

12.5.4 loss of goodwill;

12.5.5 business interruption;

12.5.6 economic loss;

12.5.7 indirect losses;

12.5.8 consequential losses.

12.6 Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:

12.6.1 fraud or fraudulent misrepresentation;

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

12.6.3 any other liability for which may not be limited under any applicable law.

## **Insurance**

12.7 Without thereby limiting its responsibilities under this Clause 12 the Supplier shall insure with a reputable insurance company against all loss of or damage to property data and/or information and injury to persons including third parties (including death) arising out of or in consequence of its obligations under this Agreement and against all actions claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto.

12.8 The Supplier shall take out and maintain throughout the Contract Period and for a period of six years from the expiration of the Contract Period ~~proper~~ professional indemnity insurance in respect of the Supplier's business with a minimum cover of £5,000,000 (five million pounds) in ~~the aggregate~~ respect of any one claim.

12.9 The Supplier shall prior to the Commencement Date and upon request by the Customer provide documentary evidence of the insurance cover required under this Clause.

12.10 If the Supplier shall at any time fail to take out or maintain the insurance cover required under Sub-Clauses 12.8 and 12.9 hereof the Customer may take out and maintain adequate insurance cover in the Supplier's name and the Customer shall be entitled to deduct any reasonable costs and expenses incurred in doing so from any sums due to the Supplier under this Agreement.

### 13. Intellectual Property Rights

13.1 All intellectual property rights which vest in the Customer in materials furnished or made available to the Supplier by or on behalf of the Customer in relation to the Services (“Customer IPR”) shall remain the property of the Customer. All existing intellectual property rights of the Supplier (“Supplier IPR”), as well as such intellectual property prepared by the Supplier specifically for or in connection to the provision of the Services (“Service Specific IPR”) shall remain the property of the Supplier, subject to the licence provided for by Clause 13.2. below.

13.2 The Supplier grants to the Customer an irrevocable royalty free non-exclusive licence to use the Supplier IPR and the Service Specific IPR for purposes in relation to or connected to the Services, with the right to sublicense to any third-party contractor assisting the Customer in relation to services that are similar to the Services, provided always that the Customer shall not use or disclose the Supplier IPR without the Supplier’s prior written approval (not to be unreasonably withheld or delayed).

13.3 The Supplier shall not disclose Customer IPR without the Customer’s prior written approval save to the extent necessary (as determined by the Supervising Officer) for the performance of the Services under this Agreement.

~~The Supplier hereby assigns to the Customer all existing and future intellectual property rights created by the Supplier in the provision of the Services to the fullest extent permitted by law. Insofar as they do not vest automatically by~~

~~operation of law or under this Agreement the Supplier shall hold legal title in these rights on trust for the Customer.~~

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

~~13.43 The Supplier undertakes at any time either during or after the Contract Period to execute all documents, make all applications, give all assistance and do all actions and things as may in the opinion of the Customer be necessary or desirable to vest the intellectual property rights in the name of the Customer and to~~ Each Party shall cooperate and undertake to defend the ~~Customer~~ other Party against all claims that intellectual property rights infringe third party rights and otherwise to protect and maintain the intellectual property rights of the ~~Parties~~ Customer.

14. **Waiver**

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

15. **Termination**

15.1 In addition and without prejudice to Sub-Clauses 15.3, 15.4 and 15.5 below the Customer shall be entitled to terminate this Agreement upon 4 (four) weeks' notice in writing to the Supplier. The Customer shall only be liable to the Supplier for its fees up to the date of termination of this Agreement.

15.2 NOT USED

15.3 Customer may terminate this Agreement forthwith on written notice if the Supplier fails to observe or perform any of the conditions on its part to be observed and performed and in the event of a failure capable of being remedied fails to remedy the breach within 14 days of receipt of notice thereof in writing. The Customer shall not be liable for any expenses incurred by the Supplier subsequent to the termination of this Agreement.

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

15.5 The Customer shall be entitled to terminate this Agreement forthwith on written notice and recover from the Supplier the amount of any loss resulting from such termination if the Supplier 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 Customer 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 Supplier) or if in relation to any agreement with the Customer the Supplier or any person employed by them or acting on its behalf shall have:

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

15.5.2 committed an offence under the Bribery Act 2010; or

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

15.6 If the Customer terminates this Agreement under Sub-Clauses 15.3 15.4 or 15.5 hereof then Customer or any part thereof under the same or such other terms of this Agreement nothing shall restrict or otherwise prohibit the Customer from entering into a new agreement with other Suppliers for the provision of the Services. The Supplier shall be liable for and shall pay and make good to Customer and all other persons or parties legally entitled thereto all losses damages costs charges and expenses whatsoever they or any of them may incur or be put to or be liable for by reasons or in consequence of entering such agreement.

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

property relating to the Services or belonging to the Customer which may be in its possession or under its control. The Customer acknowledges that the Supplier may retain one copy of any such documentation for legal compliance and audit purposes.

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

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

16. **Notices**

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

16.2 Any notice to the Customer hereunder shall be deemed to have been given if the same has been posted to the Customer at 1Mann Island, Liverpool, L3 1BP or such other address as the Customer may from time to time designate for that purpose.

16.3 Any notice to be given hereunder shall be sent by prepaid recorded delivery or registered post and shall be deemed to have been received by the addressee on the second Working Day after posting. A working day means

any day Monday to Friday excluding any public holidays in England (“Working Day”).

17. **Force Majeure**

17.1 Subject to Sub-Clause 17.3 hereof neither Party shall have any liability under this Agreement if it is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by an event not within their reasonable control provided that such an event was neither preventable nor foreseeable including, without limitation:-

17.1.1 acts of God, flood, drought, earthquake or other natural disaster; or

17.1.2 epidemic or pandemic; or

17.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; or

17.1.4 the introduction of or any amendment to a law or regulation or any change in its interpretation or application by any authority; or

17.1.5 any action taken by a governmental or public authority or an agency of the European Union including any failure or delay to grant a consent exemption or clearance; or

17.1.6 any strike lockout or other industrial action.

17.2 For the purpose of this Clause 17 an event or the consequence of an event was neither preventable nor foreseeable if and only if the Party subject to such event (“Affected Party”) could not have prevented it by taking steps which it could reasonably be expected to have taken and the Affected Party

could not as at the Commencement Date have reasonably been expected to take the risk of it into account by providing for it in this Agreement by insurance or otherwise.

17.3 Sub-Clause 17.1 does not apply unless the Affected Party:

17.3.1 notifies the other Party of the relevant event and consequence as soon as possible after it occurs; and

17.3.2 promptly provides the other Party with any further information which the other Party requests about the event (or its causes) or the consequence; and

17.3.3 promptly takes any steps (except steps involving significant additional costs) which the other Party reasonably requires in order to reduce the other Party's losses or risk of losses.

17.4 It is for the Affected Party to show that a matter is a consequence of an event covered by Sub-Clause 17.1 that the event and the consequence were neither preventable nor foreseeable and that it has satisfied the conditions set out in Sub-Clause 17.3.

18. **Dispute Resolution**

If any dispute arises under the Agreement then both Parties shall endeavour to resolve the issue amicably. However in the event of failure to do so within a reasonable time then either Party may refer the matter to mediation as a means of resolving the dispute. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the dispute under Clause 25 below.

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

The Customer is committed to the highest possible standards of openness, probity and accountability. In line with that commitment the Customer expects its employees, and contractors who have serious concerns about any aspect of the Customer's work to come forward and voice those concerns. It is recognised that most cases will have to proceed on a confidential basis. For this reason the Customer has a Confidential Reporting ("Whistleblowing") Protocol (available upon request) to encourage and enable employees, and contractors working for or with Customer to raise serious concerns within Customer rather than overlooking a problem or raising these externally.

20. **Headings**

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

21. **Entire Agreement**

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

22. **Severability**

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

22.2 If any provision or part-provision of this Agreement is deemed illegal, void or invalid under Clause 22.1 the Parties shall negotiate in good faith to agree a replacement provision that to the greatest extent possible achieves the intended commercial result of the original provision.

23. **General**

23.1 If there is any conflict or inconsistency between the provisions in the main body of this Agreement and the schedules, such conflict or inconsistency shall be interpreted, and the conflict shall be resolved, according to the following order of priority:

23.1.1 the clauses of this Agreement

23.1.2 the clauses of the Framework Agreement

23.1.3 the Brief

23.1.4 the Proposal

23.2 References in this Agreement to the Parties shall include their respective heirs, successors in title, permitted assigns, and personal representatives.

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

24. **Public Procurement**

- 24.1 The Customer may give the Supplier written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:
- 24.1.1 set out which termination ground the Customer considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Customer's reasons for deciding to terminate on this basis; and
  - 24.1.2 invite the Supplier to make representations to the Customer about the existence of the termination ground and the Customer's decision to terminate, within timescales determined at the discretion of the Customer.
- 24.2 Insofar as it states the Customer intention to terminate by reference to the status of a Subcontractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Supplier may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.
- 24.3 On expiry of the time for the Supplier to make representations under Clause 24.1 if, after considering any representations, the Customer is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Supplier.
- 24.4 If the Customer terminates under the provisions of Clause 24.1, the procedures and amounts due on termination are the same as if the Supplier has substantially failed to comply with his obligations.

#### Subcontracts

- 24.5 The Supplier does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under regulation 57 of the Public Contracts Regulations 2015.

- 24.6 The Supplier warrants it has disclosed to the Customer during the call-off process of its intention(s) to use any sub-contractors to meet the whole or any part of the Services and the identity of any sub-contractors.
- 24.7 The Supplier includes in any subcontract awarded by him provisions requiring that:
- 24.7.1 payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless this contract requires the Supplier to make earlier payment to the Subcontractor or supplier;
  - 24.7.2 invoices for payment submitted by the Subcontractor or supplier are considered and verified by the Supplier in a timely fashion;
  - 24.7.3 undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and;
  - 24.7.4 any contract awarded by the Subcontractor or supplier for work included in this contract includes provisions to the same effect as these provisions

#### Publication of this Agreement

- 24.8 The Supplier acknowledges and hereby agrees that the Customer shall be entitled to publish this Agreement in full in accordance with Section 53 of the Procurement Act 2023 and any modifications to the Agreement in accordance with Section 74, 75 and 77 of the Procurement Act 2023
- 24.9 The Customer shall, prior to publication of the Agreement, consult with the Supplier on the manner and format of publication and to inform the Supplier of its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion as to the extent of the content disclosed. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish this Agreement in accordance with section 53 of the Procurement Act 2023.

#### Debarment Lists

24.10 The Supplier warrants that neither it, nor any Sub-Contractors have been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts under Section 62 of the Procurement Act 2023 (“Debarment List”).

24.11 The Supplier shall promptly notify the Customer in writing if, during the Call-off Contract Period:

24.11.1 the Supplier, or any Subcontractor is placed on the Debarment List;

24.11.2 a mandatory exclusion ground or discretionary exclusion ground applies to the Supplier, or any Subcontractor.

25. **Third Party Rights**

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

26. **Law**

26.1 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.

26.2 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 the day and year first before written] [This Agreement (including the Schedules which form part of it) has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it]

[

**EXECUTED** by \_\_\_\_\_ **EXECUTED** by \_\_\_\_\_

**MERSEYTRAVEL** \_\_\_\_\_ **[INSERT SUPPLIER NAME]**

\_\_\_\_\_

..... Signed ..... Signed

..... Name ..... Name

Director

..... Title ..... Signed

..... Name

**1/1**  
Executed as a deed by )  
**MERSEYTRAVEL** by the )  
affixing of its common seal in the )  
presence of: )

Signature .....

Name .....

Title .....

Executed as a deed by )  
**[SUPPLIER NAME]** )  
acting by two directors )  
or one director and its )  
company secretary: )

Signature .....

Name .....

Title .....

Signature .....

Name .....

**Call-off Contract Schedule 1 - Brief**

DRAFT

**Call-off Contract Schedule 2 - Proposal**

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## **Schedule 2 Available Services**

- 1. Options Assessment Development Services**
- 2. Business Case Development Services**
- 3. Transport Modelling Services**
- 4. Engineering Design Work**
- 5. Stakeholder Engagement Services**
- 6. Data Collection/Analysis Services**
- 7. Implementation Strategy Support Services**

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## Schedule 3 Charges

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## Schedule 4

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## Schedule 5 Charges

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