



cutting through complexity

Liverpool Direct Limited

Final report

13 October 2014



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For the attention of Becky Heilard, Peter Casterton and Paul Jones

13 October 2014

Dear Sirs

Project Router

In accordance with our Framework Agreement dated 2 July 2014 (our Engagement Letter), we enclose our report on the proposed acquisition of Liverpool Direct Limited dated 10 October 2014. As stated in our Engagement Letter, you have agreed that this final written report supersedes all previous oral, draft or interim advice, reports and presentations, and that no reliance will be placed by you on any such oral, draft or interim advice, reports or presentations other than at your own risk. The scope of work set out in our Engagement Letter is attached as Appendix 1 to the report. This details the agreed scope of our enquiries, directed at those issues which you determined to be critical to your investment. You should note that our findings do not constitute recommendations to you as to whether or not you should proceed with the proposed transaction. The important notice on page 3 should be read in conjunction with this letter.

Our report is for the benefit and information of the addressees only and should not be copied, referred to or disclosed, in whole or in part, without our prior written consent, except as specifically permitted in our Engagement Letter. The scope of work for this report included as Appendix 1 has been agreed by the addressees and to the fullest extent permitted by law we will not accept responsibility or liability to any other party (including the addressees' legal and other professional advisers) in respect of our work or the report.

Yours faithfully

KPMG LLP

KPMG LLP

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Registered office: 15 Canine Square, London, E14 5SL
For all details of our professional regulation please refer to
the Regulatory Information in our website: www.kpmg.co.uk

KPMG LLP is an indirect wholly owned subsidiary of the KPMG network, a Swiss entity, and a member firm of the KPMG network, a Swiss entity, and a member firm of the KPMG network, a Swiss entity.

Our work commenced on 11 June 2014 and our fieldwork was completed on 10 October 2014. We have not undertaken to update our report for events or circumstances arising after that date. Our original work was commissioned to assess the balance sheet as at 31 March 2014. Due to the circumstances set out below, we raised a number of issues which needed to be resolved and we assisted with the resolution of these matters to support LCC in their negotiation with BT.

In preparing our report, our primary source has been Liverpool Direct Limited and BT plc internal management information and representations made to us by management of Liverpool Direct Limited and BT plc. We do not accept responsibility for such information which remains the responsibility of management. Details of our principal information sources are set out in our detailed report and we have satisfied ourselves, so far as possible, that the information presented in our report is consistent with other information which was made available to us in the course of our work in accordance with the terms of our Engagement Letter. We have not, however, sought to establish the reliability of the sources by reference to other evidence.

This engagement is not an assurance engagement conducted in accordance with any generally accepted assurance standards and consequently no assurance opinion is expressed. LDL have provided us a copy of PwC draft audited accounts for the year ended 31 March 2014.

We draw your attention to the significant limitations in the information available to us. Furthermore, the nature of our engagement changed as a result of the significant limitations. As set out in the main body of this report due to difficulties with accounting data in LDL, we assisted LCC in their commercial negotiations. BT and LCC have had to agree the respective transactions to form the accounts for the year ended 31 March 2014. We have not verified this balance sheet. We tracked the adjustments to the agreed draft balance sheet audited by PwC. We have not been able to complete our original terms of engagement as set out in this report due to the accounting issues mentioned above. As a result of the changes in nature of this assignment and as a result of the issues with information, our role on this engagement has been amended in assisting LCC in agreeing the balance sheet as at 31 March 2014.

Our report makes reference to 'KPMG Analysis'; this indicates only that we have (where specified) undertaken certain analytical activities on the underlying data to arrive at the information presented; we do not accept responsibility for the underlying data.

The analysis of 'underlying' earnings and working capital is for indicative purposes only. We have sought to illustrate the effect on EBITDA (earnings before interest, tax, depreciation and amortisation) and working capital of adjusting for those items identified in the course of our work that may be considered to be 'non-recurring' or 'exceptional' or otherwise unrepresentative of the trend in EBITDA and working capital using criteria established by the management of Liverpool City Council. However the selection and quantification of such adjustments is necessarily judgmental. Because there is no authoritative literature or common standard with respect to the calculation of 'underlying' earnings and working capital, there is no basis to state whether all appropriate and comparable adjustments have been made. In addition, while the adjustments may indeed relate to items which are 'non-recurring' or 'exceptional' or otherwise unrepresentative of the trend, it is possible that earnings and working capital for future periods may be affected by such items, which may be different from the historical items.

The prospective financial information set out within our report has been prepared by BT plc (Q1 FY15) and Liverpool Direct Limited (FY15 budget); we do not accept responsibility for such information. We must emphasise that the realisation of the prospective financial information is dependent on the continuing validity of the assumptions on which it is based. The assumptions will need to be reviewed and revised to reflect any such changes in trading patterns, cost structures or the direction of the business as they emerge. We accept no responsibility for the realisation of the prospective financial information. Actual results are likely to be different from those shown in the prospective financial information because events and circumstances frequently do not occur as expected, and the differences may be material.

LCC commissioned our engagement. The directors of BT plc or Liverpool Direct Limited have not read our report and have not confirmed the factual accuracy of this report, as they have not yet been requested to do so.

We accept no responsibility or liability for the findings or reports of legal and other professional advisers even though we have referred to their findings and/or reports in our report.



Notice: About this Report

This extract forms part of a fuller Report which has been prepared on the basis set out in commercially sensitive and confidential engagement terms agreed by KPMG LLP ("KPMG") with Liverpool City Council.

Nothing in this extract or the Report constitutes a valuation or legal advice.

We have not verified the reliability or accuracy of any information obtained in the course of our work, other than in the limited circumstances agreed with Liverpool City Council.

This extract is illustrative and not designed for use or reliance other than at own risk by anyone. The Report is for the benefit of Liverpool City Council only.

This extract has not been designed to be of benefit to anyone. In preparing the Report we have not taken into account the interests, needs or circumstances of anyone apart from Liverpool City Council, even though we may have been aware that others might read this extract from the Report or the Report itself. We have prepared the Report for the benefit of Liverpool City Council alone.

The Report is not suitable to be relied on by any party wishing to acquire rights or assert any claims against KPMG (other than Liverpool City Council) for any purpose or in any context and this extract is not suitable for anyone. Any party relying on this extract does so at its own risk. Any party other than Liverpool City Council that obtains access to the Report or a copy (under the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, through Liverpool City Council's Publication Scheme or otherwise) and chooses to rely on the Report (or any part of it) does so at its own risk. To the fullest extent permitted by law, KPMG does not assume any responsibility and will not accept any liability in respect of this extract to anyone and in respect of the Report to any party other than Liverpool City Council.

In particular, and without limiting the general statement above, since we have prepared the Report for the benefit of Liverpool City Council alone, this extract and the Report have not been prepared for the benefit of any other local authority or council, nor for any other person or organisation who might have an interest in the matters discussed in this extract or the Report, including for example those who work in any relevant sector or those who provide goods or services to those who operate in any relevant sector.

Glossary of terms

ACCL	Arena and Convention Centre Liverpool
FYXX	Financial year ended 31 March 20XX
HMRC	Her Majesty's Revenue and Customs
HR	Human resources
IT	Information technology
LCC	Liverpool City Council
LDL	Liverpool Direct Limited
LGS	Local Government Scheme
Outturn	Two months actual and one month forecast trading ending 30 June 2014
PAYE	Pay as you earn
Q1XX	The three months ending 30 June 20XX
SIA	Security Industry Association
SPA	Sale and purchase agreement
TSA	Transitional services agreement
VAT	Value added tax

Context of our involvement

1 Context and background

Liverpool City Council (LCC) have a 17 year contract for the provision of services via a Joint Venture (JV) with BT, under the title of Liverpool Direct Limited (LDL). Recently, an agreement was reached between BT and LCC to terminate the contract. As part of the reason for this piece of work was because both parties wanted to change the ownership of the organisation (LDL) – the contract between LCC and LDL continues.

Our work has focussed on the balance sheet as at 31 March 2014. This has identified a lack of consistent accounting and record keeping. We carried out an assessment and found various anomalies and discrepancies in the information presented. Furthermore, there are a range of queries from our work, queries raised by LCC and the Chief Executive of LDL which has resulted in LCC and BT resolving these issues through commercial negotiation. We subsequently advised LCC in their negotiations with BT which involved the assessment of the Balance Sheet supplied by BT. We advised LCC on their negotiations regarding the Sale and Purchase of LDL.

2 Our conclusion

We have checked through the LCC accounts tracker to confirm that all agreed adjustments between the two parties have been made in the final 31 March 2014 balance sheet. We have not had access to the books and records of LDL to confirm that these items have been reflected properly in the underlying company records. Furthermore, we have not received confirmation from BT that this final position has been formally agreed.

The majority of transactions arising in the books and records of LDL are generated by transactions with BT and LCC. Therefore BT and LCC have been able to agree between them the transactions in the year ended 31 March 2014 and agreed between them the final balance sheet at that date, based on commercial negotiations. We have agreed the balance sheet which has been submitted by BT to PwC as auditors of LDL. We recommend the following next steps:

- a Obtain from PwC the audit and sign off for the year ended 31 March 2014.
- The tax considerations of the commercial negotiations are fully considered by yourselves.
- The commercial negotiations are properly documented and legal advice obtained.

Final agreed balance sheet as at 31 March 2014

The final agreed 31 March 2014 balance sheet between LCC and BT has been restated with a net impact of a reduction in the BT Ignite Solutions creditor of £0.1 million.

The key sources of information is set out in Liverpool City Council tracker document and their supporting analysis.

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£'000	Mar-14 Previous position	Small trade debtor movements (<£50k)	Sales credit: directors pay protection	Accrued income - mayors fund	Mayor's Fund adjusted to 1.9% service	LCC profit share adjusted to 1.9% service	Historical provision for apprenticeship scheme	P&L adjustment	Total adjustment	Mar-14 Finalised	
Working capital											
Trade debtors - gross	1 9,055	26	(238)	-	-	-	-	-	(213)	8,842	
Prepayments/acrued income	2 2,400	-	-	324	-	-	-	-	324	2,724	
Prepaid expenses		-	-	-	-	-	-	-	-	887	
Trade creditors		-	-	-	-	-	-	-	-	(61)	
Accrued expenses	3 (4,563)	-	202	-	(265)	(119)	(49)	-	(232)	(4,794)	
Deferred income		-	-	-	-	-	-	-	-	(5,147)	
External VAT creditor		(4)	6	-	-	-	-	-	2	(1,703)	
Net debt											
Cash at bank		4,366	-	-	-	-	-	-	-	4,366	
Intragroup creditor (BT treasury)		-	-	-	-	-	-	-	-	-	
Intragroup creditor (Ignite)	4 (4,216)	-	-	-	-	-	-	-	-	-	
Net assets		10	21	(30)	324	(265)	(49)	119	119	(4,097)	
		10	21	(30)	324	(265)	(49)	119	119	0	10

Source: Correspondence with LCC

The following adjustments have been made to the final agreed 31 March balance sheet:

- 1a. A net £0.03 million increase in trade debtors, reflecting an increased JE debtor of £44,000 and a trade debtor credit in relation to a parking services discount (£18,000).
- 1b. A £0.2 million sales credit in relation to directors pay protection, with a corresponding £0.2 million reduction in accrued expenses.
2. A £0.3 million increase in accrued income relating to the Mayor's Fund.
- 3a. There has been a reversal of a previous adjustment to reflect the fact that the Mayor's Fund and LCC profit share accrued expenses will be taken as services rather than cash.
- 3b. A £0.05 million reduction to correct a historical provision for the apprenticeship scheme.
4. A £0.1 million reduction in the Ignite intragroup creditor, to reflect the net impact of the above items.

Headlines Balance sheet reconciliation

The March 2014 balance sheet has been restated with a net impact of a reduction in the BT Ignite Solutions creditor of £0.4 million.

Balance sheet 31 March 2014									
£'000	Mar-14 Reported	LCC offset rec invoice	Remove pre- existing LCC offset year end accrual	Sales credit - JE impact for 2012/13 and 13/14 change control	Vodafone rebate (other receivable)	Revenue share calcs rebased from 1.9% service to 1.25% cash	P&L adjust ment	Total adjust ments	Mar-14 Restated
Working capital									
Trade debtors - gross	1	9,365	-	-	-	-	-	(310)	9,055
Prepayments/accrued income		2,400	-	-	-	-	-	-	2,400
Prepaid expenses	2	-	-	-	887	-	-	887	887
Trade creditors		(61)	-	-	-	-	-	-	(61)
Accrued expenses	3	(3,241)	(1,904)	199	-	385	-	(1,321)	(4,563)
Deferred income		(6,147)	-	-	-	-	-	-	(6,147)
External VAT creditor		(2,079)	317	-	-	-	-	369	(1,710)
Net debt				52	-	-	-	-	
Cash at bank		4,366	-	-	-	-	-	-	4,366
Intragroup creditor (BT treasury)		-	-	-	-	-	-	-	-
Intragroup creditor (Ignite)	4	(4,591)	-	-	-	-	-	-	-
Net assets		10	(1,567)	199	887	385	375	375	(4,216)
				(258)					10

Source: Correspondence with LCC

The following adjustments have been made to the 31 March balance sheet:

1. An amount of £0.3 million (gross of £0.1 million VAT) decrease in trade debtors to reflect the previously disputed job evaluation invoice (see Appendix 1).
2. An additional £0.9 million prepayment to reflect an expected Vodafone rebate as referenced in LCC's notes (see Appendix 2). This effectively reduces the impact of disputed items on the Ignite creditor. As you have already noted, the rationale for why this rebate benefits BT only, is unclear. Furthermore, there is no support for the actual value of this rebate. Through negotiations, LCC will receive approximately £0.9 million post 31 March 2014.
- 3a. The accounts previously showed an accrual of £0.2 million in relation to the LCC offset reconciliation which was disputed. The accounts now show an amount of £1.9 million relating to the LCC offset reconciliation invoice (gross of £0.3 million VAT) and the reversal of the existing LCC offset accrual of £0.2 million.
- 3b. The restated balance sheet now shows a further £0.4 million reduction to accrued expenses, which relates to the Mayor's Fund and revenue share accruals. There is no support for the rebasing of this calculation.
4. A £0.4 million reduction in the Ignite intragroup creditor, to reflect the net impact of the above items.

Note: This schedule has not been updated to reflect the final agreed position, but represents the trail that has been used as part of the commercial negotiations between LCC and BT.

The restated net debt position now reflects the adjusted 31 March 2014 balance sheet together with our previous findings on the 30 June 2014 accounts that have been communicated to you via email.

We have not undertaken work on the 31 July 2014 accounts and our work on the 30 June 2014 balance sheet is not exhaustive.

Net debt update	
£'000	
Net debt at March 2014	4,368
Cash	(2,381)
Debt	(228)
Mayor's Fund	(1,904)
LCC profit share	(800)
FY14 LCC offset reconciling item	(800)
Deferred income of LDL relating to commitments of LDL to LCC	(4,216)
Historical provision for apprenticeship scheme	(5,954)
Intercompany creditor	
Net debt at March 2014	(11,950)
June update	
BT drawings	4,216
Less:	
Repayment of intercompany creditor	2,500
Q1 management charge	3,315
Q1 costs	
Net BT drawings	(1,919)
BT charges paid twice (June 2014)	(200)
Historical amounts owed by LCC to LDL (eg JE as agreed)	400
Adjusted net debt	(7,584)

The following definition of net debt includes items that we have come across in the course of our analysis and should be used as a guide for negotiations with BT. There may be other issues (including those that were identified by the Chief Exec of LDL) that you may wish to discuss.

- 1) A £2.4 million provision held on account for LCC as a 'Mayors Fund', relating to historical billing surpluses which are yet to be offset against LCC costs;
- 2) A £0.2 million accrual relating to 'revenue share' held on account for LCC;

- 3) A £1.9 million accrual for offset invoices.
- 4) Deferred income of £0.8 million relating to commitments made by LDL to LCC.
- 5) A £0.8 million provision for historical obligations to LCC for the apprenticeship scheme, adult services training and children's services training.
- 6) Amounts owed to BT Ignite Solutions at March 2014. Net debt includes £4.2 million of intragroup creditors owed to BT and Ignite Solutions. An element of this balance may be working capital in nature relating to ongoing services provided by BT. Based on FY14 Titan costs excluding margin and overhead (£14.6 million) on 30 day credit terms the working capital element could be £1.5 million each month including VAT. LDL should consider the proposed credit terms with BT in assessing the level of working capital included in this balance.
- 7) Drawings in the period to 30 June included a cash sum of £12.0 million extracted by BT to cover the following items:
 - BTGS management charge of £2.5 million;
 - Other Titan 'third party pass through costs' of £2.8 million (leaving an outstanding balance of £0.5 million at this date);
 - Charges under the TCA of £4.6 million (to reflect the original creditor balance at 31 March 2014, before adjustments); and,
 - A BT treasury VAT settlement of £2.1 million.
- 8) A £0.2 million provision in relation to BT charges in June 2014 that are repeat charges of costs paid by LDL in 2013/14.
- 9) A £0.4 million debtor in relation to amounts owed by LCC to LDL.

Initial findings Headline	Issue	Status
<p>Outstanding issues</p> <p>A £0.8 million provision in relation to a historical obligation of LDL is yet to be reflected in the accounts at 31 March 2014.</p>	<p>Per email, the following items still remained unresolved as of 14 August 2014:</p> <ol style="list-style-type: none"> 1) BT Ignite solutions creditor of £4.6 million was previously overstated due to accounting errors (understated accrual to LCC for the year end offset reconciliation, understated provisions overstated invoicing to LCC). The BT Ignite Solutions creditor balance set out on page 3 is a balancing figure. 2) The accrual for amounts owed to LCC of £0.2 million for the year offset reconciliation is understated by £1.4 million. 3) Provisions for historical obligations to LCC for the apprenticeship scheme, adult services training and children's services training (currently nil) are understated by £0.8 million. This has now been resolved at £0.05 million and is reflected in the final balance sheet position. 4) Amounts invoiced to LCC at 31 March 2014 in respect of historical items (e.g. job evaluation) of £1.5 million are disputed and the debtor is overstated. This has now been resolved by the two parties through a £0.05 million adjustment reflected in the final balance sheet. 	<p>Resolved</p> <p>Resolved</p> <p>Resolved</p> <p>Resolved</p>
<p>Various further outstanding items raised by LDL's chief executive are also yet to be reflected in the accounts.</p>	<p>Additional issues were raised by the LDL chief executive per your email of 20 August 2014. These items are addressed below:</p> <ol style="list-style-type: none"> 1) No SIA, LMH, L&Q or Knowsley MBC provisions (total value £0.03 million). Agreed irrelevant to LDL accounts. 2) Vodafone - £0.5 million cash bonus (subsidy payment due) plus unconfirmed value for the revenue rebate have not been provided to LDL. - This is now resolved and reflected in the agreed balance sheet on page 3. 3) Cisco overcharging - Overcharge of £0.2m to be returned plus support cost overcharge. Lack of evidence, commercial decision to waive in the context of the deal. 4) David McElhinney salary - BT have not paid £0.1 million salary (April-August 14). Item resolved as BT have agreed to cover this cost moving forwards. 5) LCC believe that an intercompany recharge will be raised for (4) LDL Directors paid in OCL March 2012 which should be against LDL. Estimated at £0.05 million. Agreed as having no impact on LCC. 	<p>Resolved</p> <p>Resolved</p> <p>Resolved</p> <p>Resolved</p> <p>Resolved</p>

Headlines Updated findings (2)

Initial findings	Issue	Status
<p>Outstanding issues</p> <p>Various further outstanding items raised by LDL's chief executive are also yet to be reflected in the accounts.</p>	<p>6) 2013/2014 provisions:</p> <ul style="list-style-type: none"> ■ £2.6 million Mayoral Fund provision as at 31.03.14. This figure has been readjusted. ■ £0.4 million Profit share provision as at 31.03.14. This figure has been readjusted. ■ £0.2 million Offset reconciliation provision as at 31.03.14 understated by £1.4 million - relates to non-payment of invoice LCC X1901296490 £1.6 million (£1.9 million gross). This figure has now been adjusted to £1.9 million. ■ £0.04million third party accrual- BSF Computacenter as at 31.03.14 - This has since been paid in June 14. Confirmed has been provided for in accruals figure on balance sheet. ■ £9,000 third party accrual - PwC invoice - note in accounts- "Hscaveill e-mail 19/2/14 at 14.15". ■ £1.3 million 2013/14 ICT Investments with no provision. No further evidence to support, dealt with as part of commercial decision. ■ £0.64 million Apprenticeship under spend with no provision. Final agreed position reflected in balance sheet. ■ £0.19 million Adult Services training under spend with no provision. Final agreed position reflected in balance sheet. ■ £0.03 million Children's services training under spend with no provision. Final agreed position reflected in balance sheet. <p>7) 2013/14 LCC debtors:</p> <ul style="list-style-type: none"> ■ £15,000 Parking Services discount. ■ 2013/14 Invoice 352732 included the disputed £0.24 million against BRC24128. There was an agreement for a £15,000 discount to settle the issue. The £15,000 has not been set aside within provisions. Final agreed position reflected in balance sheet. ■ £0.35 million overstated Job Evaluation impact - (now adjusted for): <ul style="list-style-type: none"> - Invoice 352732 included a £0.77 million charge for the impact of the Job Evaluation (JE) between Oct 12-Mar 14. This has been disputed as LCC believe it has been overstated by approximately £0.35 million. No JE adjustment should be paid as LDL made a 25% GM in 2013/2014 also the staffing affordability budget is well under spent. Final agreed position reflected in balance sheet. ■ £0.19 million Director's Buyout: <ul style="list-style-type: none"> - Invoice 352753 was disputed on the grounds that it had to go via the offsets and that £0.19 million was based on 6 directors when it should have only been 5. A request has been made to BT to issue via the offsets (for 2013/2014) and withdraw the invoice. No response to date. Final agreed position reflected in balance sheet. 	<ul style="list-style-type: none"> ■ Resolved ■ Resolved ■ Resolved ■ Immaterial ■ Immaterial ■ Resolved ■ Resolved ■ Resolved ■ Resolved ■ Resolved ■ Resolved ■ Resolved

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Supporting analysis Restated balance sheet

Balance sheet				
£'000	Mar-14 Restated	Previously reported movements	Adjusted movements	Jun-14 Restated
Working capital				
Trade debtors - gross	9,054.5	(1,453.7)	-	7,600.8
Prepayments/acrued income	2,400.0	50.0	-	2,450.0
Prepaid expenses	886.8	1,851.5	(298.1)	2,442.2
Trade creditors	(61.5)	(1,948.3)	-	(2,009.8)
Accrued expenses	(4,582.7)	215.4	613.5	(3,753.8)
Deferred income	(6,147.4)	221.4	-	(5,926.0)
External VAT creditor	(1,709.7)	1,376.7	(317.4)	(650.4)
Net debt				
Cash at bank	4,366.7	(4,365.7)	-	0.0
Intragroup creditors - BT treasury	-	2,645.9	-	2,645.9
Intragroup creditors - Ignite Solutions (BT)	(4,215.9)	1,405.9	-	(2,808.9)
Net assets	10.0	(0.0)	0.0	10.0

Appendix 1

Engagement letter and scope of work

DATED 2 July 2014

LIVERPOOL CITY COUNCIL

AND

KPMG LLP

AGREEMENT

**relating to ,
the engagement of Consultants**

THIS AGREEMENT dated 2 July 2014

is made **BETWEEN:-**

- (1) **Liverpool City Council of Municipal Buildings, Dale Street, Liverpool L2 2DH ("the Council")**
- (2) **KPMG LLP of 8 Princes Parade, Liverpool, L3 1QH ("the Provider")**

WHEREAS

- (A) The Council sought proposals for the provision of financial appraisal of Regional Growth Fund and Growing Places Fund applications and the proposed acquisition of Liverpool Direct Limited by means of a public tender exercise.
- (B) The Council has, through a competitive process, selected the Provider to provide these Services and the Provider is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreed Rates"

means the rates identified and set out in annex 2 in respect of any additional costs referred to in clause 4.

"Background IPR"

means, in respect of each party, the Intellectual Property Rights owned by or otherwise in the possession of that party that are reasonably regarded as being applicable to the Project at the date of this Agreement but Background IPR

does not include either party's name or trade-marks.

"Commencement Date"

means 11 March 2014.

"Council's Representative"

means Becky Hellard, Liverpool City Council Finance Team or such other officer appointed by the Council from time to time.

"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 be expected from a skilled experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

"Fee"

means the Provider's fixed fee for the performance of the Services as set out in paragraph 1 of annex 2.

"Foreground IPR"

means all Intellectual Property Rights resulting from, related to or created in the course of the provision of the Services.

"Intellectual Property Rights"

means all patents, copyrights, database rights, trade marks, service marks, inventions, domain names, database rights, utility models and design rights (whether registered or not and all applications for any of the foregoing)

and all rights of confidence in the Know-How whenever and howsoever arising for the full term thereof and all renewals and extensions thereof.

"Know-How"

means information, data, know-how or experience whether patentable or not including but not limited to all design or manufacturing techniques, operating instructions, machinery designs, raw material or products specifications, drawings, blue prints, and any other technical and commercial information relating to research, design, development, manufacture, assembly, use or sale.

"Project"

means one of the ten financial appraisals of Regional Growth Fund and Growing Places Fund applications or the proposed acquisition of Liverpool Direct Limited in relation to which the Services are to be provided by the Provider to the Council in accordance with this Agreement.

"Provider Persons"

means the Provider, each and all of its partners/members, employees and agents, as the case may be, together with any other body or entity controlled by the Provider or owned by the Provider or associated with the Provider through membership of the international network of professional services firms to which the Provider belongs and each

and all of its partners, members, directors, employees and agents and "Provider Person" shall mean any one of them.

"Services"

means the services to be provided by the Provider in respect of the Project as described in Schedule 1 annexed.

- 1.2 References to annexes and schedules are references to annexes and schedules to this Agreement. The provisions of the annexes and schedules are incorporated in this Agreement.
- 1.3 References to "parties" in this Agreement are to the Provider and the Council and "party" shall be construed accordingly.
- 1.4 Where the Provider comprises more than one person, references to "Provider" shall include all persons comprising the Provider and all obligations on the part of the Provider under this Agreement shall be deemed to be made and undertaken by such persons jointly and severally.
- 1.5 Reference to the singular includes the plural and vice versa and references to any gender includes both genders.
- 1.6 References to a person include any individual, firm, unincorporated association or body corporate.
- 1.7 The headings in this Agreement inserted for convenience only and shall not affect the interpretation of this Agreement.
- 1.8 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

2 Provider's Obligations

- 2.1 In consideration of payment of the Fee the Provider shall provide the Services to the Council as from the Commencement Date.

2.2 The Provider shall exercise all reasonable skill, care and diligence in the performance of the Services in accordance with Good Industry Practice.

2.3 The Provider shall comply with the responsibilities set out in annex 1 and the accounting and information provisions of annex 2.

2.4 The Provider shall comply with all statutory provisions relevant to the provision of the Services.

3 The Council's Obligations

3.1 The Council will comply with the payment provisions of annex 2 provided that the Council has received full and accurate information and documentation from the Provider in accordance with the requirement of annex 2.

3.2 The Council shall provide the Provider with all reasonable information, documents and other data as may reasonably be required by the Provider where such information, documents or data are in the possession of the Council and are necessary to enable the Provider to provide the Services and shall use reasonable endeavours to procure reasonable information, documents and other data when not in possession of the Council.

3.3 The Provider shall be entitled to place reasonable reliance on the information, documents or data provided in accordance with Clause 3.2 to the extent that such information, documents or data are not subsequently amended by the Council.

4 Changes to the Council's Requirements

4.1 The Council shall notify the Provider of any material change to the Council's requirement under this Agreement to be documented and agreed between the parties in writing.

4.2 The Provider shall use its reasonable endeavours to accommodate any changes to the needs and requirements of the Council provided that it shall be entitled to payment for any additional costs it incurs as a result of any such changes. The amount of such additional costs is to be agreed between the Council and the Provider in writing in accordance with the Agreed Rates set out in annex 2.

6 Management

- 5.1** The Provider shall comply with any reasonable instructions issued by the Council from time to time in respect of the Services.
- 5.2** The Provider shall address any enquiries about procedural or contractual matters in writing to the Council's Representative.
- 5.3** The Council reserves the right to call performance monitoring and/or the Council care meetings. These shall be attended by the Provider (at no cost to the Council), and any other person the Council wishes to attend.

6 Provider's Employees and Sub-Contractors

- 6.1** The Provider shall include in its contracts with suppliers or sub-contractors engaged for the purposes of the Services a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or sub-contractor's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).
- 6.2** The Provider shall take all reasonable steps to satisfy itself that its employees or sub-contractors (or their employees) are suitable in all respects to perform the Services.
- 6.3** The Provider shall immediately notify the Council if they have any concerns regarding the propriety of any of its sub-contractors in respect of work/services rendered in connection with this Agreement.

7 Intellectual Property Rights

- 7.1** The Background IPR shall remain the absolute property of the owner of such rights at the date of this Agreement. No party will make any representation or do any act which may be taken to indicate that it has any right title or interest in or to the ownership or use of any of the Background IPR of the other party except under the terms of this Agreement, and each party acknowledges that nothing contained in this Agreement shall give it any right, title or interest in or to the Background IPR of the other party save as granted hereby.

- 7.2** To the extent that any product of the Services includes the Provider's Background IPR that is necessary for the Council to make use of the Foreground IPR that may be assigned under clause 7.4, the Provider hereby grants to the Council an Irrevocable, non exclusive, royalty free licence to use such Background IPR with a right to grant sub-licences to such third parties as the Council reasonably requires ('the Transferees') for the purposes of the Project. The Provider shall not be liable for any use by the Council or the Transferees of any of the Background Intellectual Property for any purpose other than that for which the same were provided by or on behalf of the Provider. No right is granted for the Council to use the Provider's name or trade-marks in any form or medium without the Provider's prior written consent.
- 7.3** The Council hereby grants to the Provider a non exclusive, royalty free licence to use the Council's Background IPR with a right to sub-licence to such third party sub-contractors as are approved by the Council solely for the purposes of the Project and for the duration of the Services.
- 7.4** In consideration of the Fee payable by the Council to the Provider, all Foreground IPR shall remain the sole, exclusive property of the Council and the Provider acknowledges that nothing contained in this Agreement shall give it any right, title or interest in or to the Foreground IPR save as granted hereby.
- 7.5** The Council hereby grants to the Provider a royalty free, non exclusive licence to use the Council's Foreground IPR with a right to sub-licence to such third party sub-contractors as are approved by the Council solely for the purposes of the Project and for the duration of this Agreement.
- 7.6** The parties shall when appropriate execute a formal licence or licences for the purpose of registering the licences granted pursuant to Clauses 7.2, 7.3 and 7.5 in such form as may be necessary to give effect to this Agreement (including these terms). Such licence or licences shall be subject to all the terms and conditions of this Agreement.
- 7.7** The parties shall provide all reasonable assistance to each other when reasonably requested to do so by the other for the purposes of ensuring that each party receives the full benefit of the licences of Intellectual Property Rights granted hereunder.
- 7.8** Both parties warrant to the other that:

7

7.8.1 It is the exclusive legal and beneficial owner of all right, title and interest in its Background IPR and that there are no liens, encumbrances options or other charges over any of them;

7.8.2 to the best of its knowledge, information and belief the use of its Background IPR by the other party pursuant to this Agreement will not infringe Intellectual Property Rights of any third party.

7.9 Each party shall inform the other of any infringement of any Intellectual Property Rights as soon as reasonably practicable upon such infringement coming to its notice. The party that is the owner of such Intellectual Property Rights shall have the sole conduct of any proceedings in relation to them.

7.10 Each party (the "Indemnifying Party") will indemnify and hold harmless the other party against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by such other party in respect of any claim or action that the use of the Indemnifying Party's Background IPR infringes the Intellectual Property Rights of any third party (an "Intellectual Property Infringement") provided that such other party:

7.10.1 gives notice to the Indemnifying Party of any Intellectual Property Infringement (or potential claim of such Infringement) forthwith upon becoming aware of the same;

7.10.2 gives the Indemnifying Party the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Indemnifying Party; and

7.10.3 acts in accordance with the reasonable instructions of the Indemnifying Party and gives the Indemnifying Party such assistance as it shall reasonably require in respect of the conduct of the said defence.

7.11 The Provider shall ensure that any copyright materials produced by or on behalf of the Council in connection with the provision of the Services for Council are vested in the Council.

8 Warranty, Indemnity and Insurance

8.1 The Provider warrants to the Council:

8.1.1 that the obligations of the Provider under this Agreement will be performed by appropriately qualified and trained personnel with reasonable skill, care and diligence;

8.1.2 and (subject to clause 8.11) the accuracy of all representations or statements made and the advice given by the Provider in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Provider as part of this Agreement.

8.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Agreement then the Council shall be entitled, where appropriate and acting reasonably, to:

8.2.1 require the Provider promptly to re-perform or replace the relevant part of the Services without additional charge to the Council; or

8.2.2 assess the cost of remedying the failure ("the Assessed Cost") and to deduct from any sums due to the Provider the Assessed Cost for the period that such failure continues.

8.3 The Provider shall be liable for and shall (subject to clause 8.10) indemnify the Council in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property real or personal including (but not limited to) any infringement of third party patents, copyrights and registered designs whether belonging to the Council or otherwise arising out of the provision of the Services insofar as such damage or injury shall be due to any act or omission of the Provider its employees, agents, officers, or sub-contractors.

8.4 The Provider shall be liable for and shall (subject to clause 8.10) indemnify the Council against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms of the this Agreement or otherwise through the default of the Provider.

8.5 All property of the Provider whilst on the Council's premises shall be there at the risk of the Provider and the Council shall accept no liability for any loss or damage howsoever occurring to it.

8.6 Except in the case of death or personal injury caused by one party's negligence or in other circumstances where liability may not be limited under applicable law, neither party shall be liable to the other for any loss of income or any type of special indirect or consequential loss.

8.7 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover and as a minimum the following levels of cover:

8.7.1 public liability insurance with a limit of indemnity of not less than £10,000,000.00 in relation to any one claim or series of claims

8.7.2 employer's liability insurance with a limit of indemnity in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

8.7.3 professional indemnity insurance with a limit of indemnity of not less than £5,000,000.00 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

8.8 The Provider shall give the Council, on request, a broker's verification of insurance to demonstrate that the Required Insurances are in place and as evidence of payment of the latest premiums due under those policies.

8.9 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Agreement.

The Provider (if an individual) represents that he is regarded by both the Inland Revenue and the Department for Work and Pensions as self-employed and accordingly shall indemnify the Council against any tax, national insurance

contributions or similar impost for which the Council may be liable in respect of the Provider by reason of this Agreement.

- 8.10 All other terms of this Agreement shall be subject to this clause. The liability of all Provider Persons to the Council, in contract or tort or under statute or otherwise, for any loss or damage (including but not limited to any liability under any indemnity provision in the Agreement) suffered by the Council arising from or in connection with any services provided under the Agreement, shall be subject to i) agreement between the parties in final settlement; or ii) a court of competent and final jurisdiction holding that the Provider had breached its duties to the Council and that the breach has caused such loss or damage in such amount as is assessed by the court applying principles of recoverability (or otherwise) of damages under the laws of England & Wales after taking into account the responsibilities (if any) of others and subject always to the maximum aggregate amount specified in the next sentence. The aggregate liability of the Provider for all such loss or damage however the loss or damage is caused, including if caused by the Provider's negligence but not if caused by the Provider's fraud or other deliberate breach of duty, shall be limited to a maximum of £1.5 million per Individual Project within a maximum aggregate of £5 million for the Services. Nothing in this paragraph shall operate to exclude or limit any liability which cannot lawfully be excluded or limited.
- 8.11 The Provider may receive information from the Client or from other sources in the course of delivering the Services. To the fullest extent permitted by law, the Provider shall not be liable to the Council for any loss or damage suffered by the Council arising from fraud, misrepresentation, withholding of information material to the Services or other default relating to such material information, whether on the Council's part or that of the other information sources, unless such fraud, misrepresentation, withholding or such other default is evident to the Provider without further enquiry. This provision shall not apply to the extent that the agreed scope of the Services states that the Provider is to verify information.
- 8.12 The Council shall not bring any claim against any Provider Person other than the Provider in respect of loss or damage suffered by the Council arising out of or in connection with the Services. This restriction shall not operate to limit or exclude the liability of the Provider for the acts or omissions of any other Provider Person.

9 Termination

9.1 Termination by the Council

The Council may terminate this Agreement by written notice with Immediate effect following any breach of its terms by the Provider (other than a breach capable of remedy which is notified to, and remedied by, the Provider within **15 Working Days** of the notice) or in the event of the Provider ceasing to carry on its business, becoming insolvent, or having a liquidator, trustee in bankruptcy, receiver, manager or administrative receiver appointed in respect of the Provider's assets or (where the Provider is a partnership) those of any partner of the firm or where the Provider commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Council into disrepute or is materially adverse to the interests of the Council or commits a breach of clause 23.

9.2 Termination by the Provider

The Provider may terminate this Agreement by written notice with Immediate effect following any breach of its terms by the Council (other than a breach capable of remedy which is notified to, and remedied by, the Council within **15 Working Days** of the notice), or in the event of the Council ceasing to carry on its business, becoming insolvent or having a liquidator, receiver, manager or administrative receiver appointed.

The Provider may terminate the Agreement by giving notice in writing with immediate effect if there has been a change of law, rule, regulation or professional standard or a change in circumstance that would cause the continued provision of Services under the Agreement by the Provider to i) violate such law, rule, regulation or professional standard (including but not limited to standards requiring auditor independence, ethical behaviour, objectivity, impartiality, strict rules of confidentiality and 'know your customer' checks); or ii) give rise to a conflict of interest that cannot be managed; or iii) would otherwise, in the reasonable opinion of the Provider, prejudice the ability of any Provider Person to comply with any applicable auditor independence requirement. This clause shall not apply to changes or circumstances the Provider should reasonably have anticipated at the time it entered into the Agreement. If the Provider is reasonably able to give a longer notice period the Provider shall do so. The Provider shall, to the extent reasonably possible and at no cost to the Council, co-operate with the Council to mitigate any adverse effects of termination under this clause, including providing documentation and assistance to the Council and any successor to the Provider.

10 Status of Provider

- 10.1** In carrying out its obligations under this Agreement the Provider agrees that it will be acting as principal and not as the agent of the Council.
- 10.2** The Provider shall not say or do anything that may lead any other person to believe that the Provider is acting as the agent of the Council.
- 10.3** Nothing in this Agreement shall have the effect of making the Provider the servant of the Council.

11 Confidentiality

- 11.1** The parties shall keep secret and not disclose and shall procure that their employees and use reasonable endeavours to procure that any subcontractors keep secret and do not disclose any information of a confidential nature obtained by them by reason of this Agreement. This obligation shall not apply to information:
- 11.1.1** which is in the public domain or is trivial or cannot reasonably be considered to be confidential; or
- 11.1.2** which the Council is required to disclose as a matter of law or in discharge of its obligations of public accountability and freedom of information.
- 11.2** The Provider undertakes to make no reference in any advertising or other promotional material to this Agreement without the prior written consent of the Council.
- 11.3** The Council reserves the right to disclose and make public any Fee payable under this Agreement.
- 11.4** Any written advice or final written report released to the Council in any form or medium shall be supplied by the Provider on the basis that it is for the Council's benefit and information only. Any product of the services will be prepared on the basis that it is not intended to be copied, referred to or disclosed, in whole (save for the Council's own internal purposes) or in part. The Provider hereby consents to the Council copying and distributing (entirely at the Council's discretion and risk) any product of the Services but not the Provider's name or the Provider's trade-marks. The Council shall not quote the Provider's name or reproduce the Provider's trade-marks in any form or medium without the Provider's prior written consent. The Council may disclose in whole any product of the Services to the

Council's legal and other professional advisers for the purposes of the Council seeking advice in relation to the Services, provided that when doing so the Council informs them that a) disclosure by them (save for their own internal purposes or as required by law or regulation) is not permitted without the Provider's prior written consent, and b) to the fullest extent permitted by law the Provider accepts no responsibility or liability to them in connection with the Services. This condition shall not prevent the Council making any disclosure that may be required by law, or by a competent regulatory authority, although the Council shall use all reasonable endeavours to inform the Provider in advance of such disclosure. The Provider confirms that neither disclosure under the Freedom of Information Act 2000 ("the Act") nor confirmation/ denial given to comply with section 1(1)(a) of the Act shall be precluded through exemption under section 41 of the Act solely as a consequence of this condition.

12 Access and Information

The Provider shall provide access at all reasonable times to the Council's internal auditors or other duly authorised staff or agents to inspect and take copies of such documents as the Council considers necessary in connection with this Agreement and where appropriate speak to the Provider's employees.

13 Transfer of Responsibility on Expiry or Termination

13.1 The Provider shall, at no cost to the Council unless fees are agreed between the Parties (the absence of fees being a limit on the assistance that might reasonably be provided), promptly provide such assistance and comply with such timetable as the Council may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Agreement. The Council shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Agreement.

13.2 Such assistance may include (without limitation) the delivery of documents and data in the possession or control of the Provider which relate to this Agreement.

13.3 The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Council to ensure an orderly transfer of responsibility.

14 Amendment and variation

No amendment or variation to this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties. The Provider shall comply with any formal procedures for amending or varying contracts which the Council may have in place from time to time.

15 Assignment and Subcontracting by the Provider

The Provider shall not assign, or charge any right or obligation under this Agreement to any other person or subcontract (other than to another Provider Person) the whole of the Services. The Provider shall not subcontract any part or parts of the Services (other than to another Provider Person) without the prior written consent of the Council. Where such consent is given, this may be subject to conditions at the Council's discretion. Any consent to subcontract any part or parts of the Services shall not affect or reduce the scope of the Provider's obligations under this Agreement and the Provider shall, at all times, remain responsible for the proper performance of the Services and for all acts or omissions of any subcontractors.

16 Assignment by the Council

The Council may assign any of its rights and obligations under this Agreement to any successor of its functions provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter. The Council shall not otherwise assign this Agreement without the prior consent of the Provider, such consent not to be unreasonably withheld.

17 Rights of Third Parties

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the parties do not intend any third party to have a right in respect of this Agreement by virtue of that Act.

18 Problem Solving and Dispute Avoidance or Resolution

18.1 Notification

As soon as either party is aware of any difference or dispute with the other arising out of, or in connection with, this Agreement, they shall give notice to the other party.

18.2 Negotiation

The parties will endeavour to resolve any difference or dispute by direct negotiation in good faith between senior executives and each party will give serious consideration to a request by the other to refer a difference or dispute to mediation.

18.3 Mediation

Any disputes arising under or in connection with this Agreement which cannot be resolved in accordance with clause 18.2 shall be settled as far as possible by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

19 Data Protection

19.1 The Provider shall comply with the requirements of the Data Protection Act 1998 together with all relevant subordinate legislation and any other data protection legislation for the time being in force and shall not disclose or allow access to any personal data provided by the Council or acquired by the Provider during the term of this Agreement other than to a person employed or engaged by the Provider.

19.2 The Provider agrees to have in effect and maintain appropriate technical and organisational security measures to prevent unauthorised or unlawful processing of personal data and accidental loss or destruction of, or damage to, personal data.

19.3 The Provider agrees that the Council may process any personal and sensitive data concerning the Provider provided such processing is lawful and reasonable.

19.4 Any use, disclosure of or access to personal data allowed under clause 19.1 above shall be made in confidence and shall extend only so far as that which is specifically necessary in connection with this Agreement.

19.5 The Provider shall store or process such personal data only in accordance with the Council's instructions and (if requested by the Council) at sites specifically agreed in writing in advance with the Council.

19.6 For the purpose of this clause 19, "process" or "processing" has the same meaning as that in the Data Protection Act 1998.

20 **Waiver**

No delay by or omission by either party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

21 **Notices**

21.1 **Notices in writing**

All notices must be in writing.

21.2 **Forms of service**

Any notice may be served by leaving it with, or sending it by pre-paid first class post or by email provided that the emails are confirmed within 24 hours by first-class mailed confirmation of a copy to, the parties at their addresses set out at the start of this Agreement (or to such addresses as shall have been duly notified in accordance with this clause) or to the following email address:-

The Council	<i>paul.dw.jones@liverpool.gov.uk</i>
The Provider	<i>ogcfm@kpmg.co.uk</i>

21.3 **Times of service**

Notices delivered by hand shall be deemed to have been delivered when handed over. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered

72 hours after posting and correctly directed emails shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

22 Law and Jurisdiction

This Agreement shall in all respects be governed by and interpreted in accordance with English Law and the parties submit all disputes (whether contractual or non-contractual) to the exclusive jurisdiction of the English courts.

23 Corrupt Gifts and Bribery Act

23.1 The Provider shall not and shall ensure that any sub-contractors shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Council nor favour any employee, officer or agent of the Council with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Council other than as a representative of the Council, without the Council's written approval.

23.2 The Provider shall not commit any offence:

- (a) under the Bribery Act 2010;
- (b) under legislation creating offences concerning fraudulent acts;
- (c) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Council.

23.3 The Council, if it has reasonable grounds to suspect breach of this clause and identifies transactions for which records exist relating to that breach, shall have the right to audit any and all such records (subject to the Provider maintaining the confidentiality of information relating to its other clients) necessary to confirm compliance with this clause at any time during performance of the Services under this Agreement and during the three year period following completion of performance. Breach of this clause shall entitle the Council to terminate this Agreement and any other contracts between the Provider and the Council with immediate effect.

24 Survival of Certain Clauses

24.1 The provisions of clauses 7.2, 7.6, 7.9, 7.10, 7.11, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.10, 8.11, 8.12, 11, 12, 13, 19, 20, 22, 24, 25 and paragraphs 12 to 16 of annex 2 shall survive the expiry or termination of this Agreement.

24.2 The provisions of clauses 23 and 24 shall survive the expiry or termination of this Agreement for the period specified in the relevant clause.

25 Severance

25.1 Any clause or provision of this Agreement which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of this Agreement.

25.2 In the event that a clause or provision (or part of a clause or part of a provision) is excluded under clause 25.1 above the validity and enforceability of the remainder of this Agreement shall not be affected.

26 Professional advice

26.1 Where the Services (or part of the Services) amount to "regulated activities" under the Financial Services and Markets Act 2000, the Provider shall inform the Council and set out the implications in the Statement of Work or elsewhere in writing and additional terms including provisions referable to "regulated activities" shall apply. Certain other services of the Provider (for example Tax Services and Accounting or Regulatory Advisory Services) may also require additional terms and conditions to be incorporated in the Agreement.

26.2 Notwithstanding the Provider's duties and responsibilities in relation to the Services, the Council shall retain responsibility and accountability for managing its affairs, deciding on what to do after receiving any product of the Services, implementing any advice or recommendations provided by the Provider, and realising any benefits requiring activity by the Council.

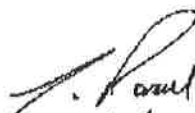
26.3 To enable the Provider to perform the Services, the Council shall supply promptly all information and assistance and all access to documentation in its possession, custody or under its control and to personnel under its control where required by the Provider (and shall use reasonable endeavours to procure these supplies where not in the Council's possession or custody or control). The Council shall inform the Provider of any information

or developments which may come to the Council's notice and which might have a bearing on the Services. The Council shall supply information in response to the Provider's enquiries (if any) to enable the Provider to comply with its statutory responsibilities to make disclosures to relevant authorities in respect of money laundering and any other criminal activity that the Provider may encounter during performance of the Services and any such disclosures may include Confidential Information.

- 26.4** The Provider may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom the Provider knows to be or reasonably believes to be authorised by the Council to communicate with the Provider for such purposes. The Provider may communicate with the Council by electronic mail where any such person wishes the Provider to do so, on the basis that in consenting to this method of communication the Council accepts the inherent risks (including the security risks of interception of or unauthorised access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices), that to the extent permitted by law the Provider may intercept such communications in order to monitor them for internal compliance or other statutory purposes, and that the Council shall perform virus checks. The Provider may at the Council's request send documents to an electronic storage facility hosted or controlled by the Council or at the Council's direction, in which event the Council shall be responsible for security and confidentiality at such facility.
- 26.5** The Provider may supply written advice or confirm oral advice in writing or deliver a final written report or make an oral presentation on completion of the Services. Prior to completion of the Services the Provider may supply oral, draft or interim advice or reports or presentations but in such circumstances the Provider's written advice or final written report shall take precedence. No reliance shall be placed by the Council on any draft or interim advice or report or any draft or interim presentation. Where the Council wishes to rely on oral advice or on an oral presentation made on completion of the Services, the Council shall inform the Provider and the Provider shall supply documentary confirmation of the advice concerned.
- 26.6** The Provider shall not be under any obligation in any circumstances, unless agreed as part of the Services, to update any advice, report or any product of the Services, oral or written, for events occurring after the advice, report or product concerned has been issued in final form.

- 26.7 Any advice, opinion, statement of expectation, forecast or recommendation supplied by the Provider as part of the Services shall not amount to any form of guarantee that the Provider has determined or predicted future events or circumstances.
- 26.8 On termination of the Agreement, the Provider may retain sufficient copy documentation that it reasonably requires to support any advice, reports or opinions the Provider may provide to the Council.
- 26.9 The Engagement Team (collectively or individually, Provider Persons (excluding corporate bodies, entities or firms) involved in the provisions of Services under the Agreement) shall not be required, expected or deemed to have knowledge of any information known to Provider Persons who are not members of the Engagement Team (collectively or individually "Different Provider Persons") which is not known to the Engagement Team. The Engagement Team shall not be required to make use of nor to disclose to the Council any information, whether known to them personally or known to Different Provider Persons, which is confidential to another customer of the Provider. The Provider is entitled to protect the confidentiality of information relating to its other customers.
- 26.10 The Provider shall, where appropriate, establish Ethical Dividers (safeguards designed to facilitate the protection of each of the Provider's customers' interests and may include (for example): separate teams, their geographical and operational separation and/or access controls over data, computer servers and electronic mail systems). Provider Persons may be delivering services to, or be approached to deliver services to, another party or parties who has or have interests which compete or conflict with the Council's (a "Conflicting Party" or "Conflicting Parties"). Provider Persons are and shall remain free to deliver services to a Conflicting Party but where the interests of the Conflicting Party conflict with the Council's specifically and directly in relation to the subject matter of the Services provided to the Council: a) members of the Engagement Team shall not deliver services to the Conflicting Party; and b) Different Provider Persons may only deliver services to the Conflicting Party where appropriate Ethical Dividers are put in place. In these circumstances, the effective operation of those Ethical Dividers shall constitute sufficient steps to avoid any real risk of a breach of the Provider's duty of confidence to the Council.

Signed for and behalf of
Liverpool City Council:-



11/7/14.

Signed for and on behalf of
KPMG LLP:-

John Hylen. KPMG LLP

ANNEX 1

Responsibilities of the Provider

- 1 For the Services under which a Provider is appointed by the Council the Provider must:**
 - Agree the key personnel of the Provider who will be responsible for delivering the Services;
 - agree milestones and review points for deliverable tasks;
 - agree any changes and their consequences with the Council prior to their implementation.
- 2 The Provider shall not, without the consent of the Council, change key personnel it has agreed with the Council as responsible for delivering the Services, such consent not to be unreasonably withheld.**
- 3 The Provider agrees to attend such performance monitoring and meetings as are requested by the Council.**
- 4 The Provider must provide administrative facilities and administrative support for their own personnel and be prepared to use the facilities offered by the Council.**
- 5 The Provider shall take appropriate measures to ensure the quality of their work and services provided and comply with any quality system requirements for the Services it provides for the Council.**
- 6 The Provider shall take measures to ensure their personnel (and any subcontractors) selected to deliver the Services will be briefed adequately to deliver support in the business culture of the Council.**
- 7 The Provider shall adhere to their equal opportunities policy and ensure that all outputs comply with the Data Protection Act 1998 (and any subordinate or other data protection legislation) and the Equality Act 2010.**

Definitions of Grades of Provider Personnel

Grade	Experience/Qualifications
Partner	Graduate ACA, 15 years financial advisory experience
Associate Director / Senior Manager	Graduate ACA, 8 years financial advisory experience
Manager / Associate / Senior Analyst	Graduate, 3-7 years financial advisory experience
Junior Analyst / Report Specialist	Graduate, 1-3 years financial advisory experience

- 8 The above grid shows the experience required from each grade.
- 9 Any named personnel of the Provider who are promoted during the period of this Agreement will only be reimbursed at the Agreed Rate for their original grade and not their newly promoted grade.

ANNEX 2

Pricing Schedule

The Fee for the Services is a fixed fee of £170,000.

- 1 For additional transaction related financial advisory services outside the scope of our Services, we will provide a separate proposal and fee quote to you on a project to project basis. The discounted rates included below will apply to additional services until completion of our Services for financial appraisal of Regional Growth Fund and Growing Places Fund applications and the proposed acquisition of Liverpool Direct Limited.

Other Costing Related Matters

Payment Profiles

- 2 Appropriate milestones and/or timescales against which to link payments of the Fee will be agreed between the Council and Provider and set out in this Agreement.
Fees for individual projects within the scope of this Agreement will be invoiced following completion of the final report.

Meetings

- 3 Performance monitoring and/or Council care meetings between the Council and the Provider, will be on the basis that no charge is made .
- 4 Meetings are included within the agreed Fee.

Agreed Rates

- 5 The Agreed Rates is agreed in accordance with clause 4 of this Agreement. Daily rates shall be calculated assuming a 7.5 hour day.

All Inclusive Daily Rates (VAT not included) at the Commencement Date

The rates below are inclusive of all overheads, expenses (travelling, subsistence and any other expenses), typing, copying, postage, faxes, storage, retrieval and other secretarial and

administrative support (unless other expenses are agreed between the parties in writing) and exclusive of VAT (chargeable separately).

	Daily Discounted Rates				
Provider Grade					
Partner / Director	£2400				
Associate Director / Senior Manager	£1800				
Manager / Associate/ Senior Analyst	£1200				
Junior Analyst / Support	£560				

Invoices

- 6 The Council shall not be obliged to pay any invoice received from the Provider until the Provider has carried out the agreed elements of the Services to which the invoice relates.
- 7 The Provider shall maintain full and accurate accounts in relation to the costs and expenses for provision of the Services. Such accounts shall be retained for at least 6 years after the end of the financial year in which the last payment was made under this Agreement. Input and output VAT shall be included as separate items in such accounts.
- 8 The Provider shall permit duly authorised staff or agents of the Council or the National Audit Office to examine such accounts at any reasonable time and shall furnish oral or written explanations of the accounts if required. The Council reserves the right to have such staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Provider has used the Council's resources in the performance of the Services.
- 9 Invoices shall be prepared by the Provider in arrears or against an agreed payment profile and shall clearly detail the expenditure to which they relate. The Council reserves the right to require the Provider to provide certification (whether from an accountant or other nominated representative) that the amounts claimed on the Provider's invoice were

Incurred/expended (as appropriate) wholly and necessarily by the Provider in the provision of Services.

- 10 The Provider's invoice shall be sent, within 30 days of the agreed payment profile, to the Council. The Council undertakes to pay the invoice no later than 30 days after receipt of the correctly completed invoice. The Council shall not be responsible for any delay in payment caused by an incomplete, incorrect or illegible invoice.
- 11 The Provider shall have regard to the need for economy in all expenditure. Where the fee or part of the Fee claimed in the Provider's invoice, in the Council's reasonable opinion, is excessive having due regard to the purpose for which it was incurred and to the terms of this Agreement, the Council shall only be liable to reimburse so much (if any) of the Fee (or part of the Fee) which in the Council's reasonable opinion after consultation with the Provider, was reasonably necessary for that purpose.
- 12 Subject to paragraph 13 below, this Agreement is terminated by the Council due to the Provider's insolvency or default at any time before completion of the Services required under this Agreement, the Council shall only be liable to reimburse that part of the Fee due to the Provider before the date of termination.
- 13 The Council shall not be bound to make any payment to the Provider under paragraph 12 above, until the amount of any sum due to the Council, by virtue of the indemnities in clause 8.4 of this Agreement, have been ascertained and notified in writing to the Provider. The Council shall be entitled to deduct from any sum due to the Provider, under paragraph 12 above, the amount of any Indemnity payable by the Provider. In the event that the amount of such Indemnity exceeds that part of the Fee due to the Provider under paragraph 12 above, the difference shall be a debt payable to the Council by the Provider.
- 14 On completion of the Services or upon termination of this Agreement, the Provider shall promptly draw-up a final invoice covering any outstanding Fee due for the Services performed. The final invoice shall be submitted to the Council not later than 30 days after the date of completion of the Services or termination of this Agreement.
- 15 The Council shall not be obliged to pay the final invoice until the Provider has carried out all the elements of the Services specified in this Agreement or specified as at the date of termination.

- 7
- 16 It shall be the responsibility of the Provider to ensure that the final invoice covers any outstanding Fee payable by the Council. Provided all previous invoices have been duly paid by the Council, on payment of the final invoice by the Council all amounts due to the Provider under this Agreement shall be deemed to have been paid and the Council shall have no further liability to make reimbursement of any kind.

SCHEDULE 1

SERVICES

The Provider shall provide to the Council the following Services:-

1. Financial appraisal of 10 proposed RGF/GPF Investments

For each Project, provide a report and advice on the proposed transaction under State Aid rules and the Market Economy Investor Principle (MEIP).

Scope of work

- Provide an overview of the proposed transaction
- Comment on the proposal in terms of the investment including NPV calculations
- Comment on the proposal in terms of a loan using European State Aid reference rates.
- Comment on the key financials of the recipient, including the following:
 - Summary of historical revenue by source and historical drivers of revenue;
 - Summary of historical costs and drivers of these costs;
 - Provide comment on forecast trading performance
 - Summarise and comment on the historical balance sheet;
 - Provide comment on the forecast balance sheet
 - Summarise and comment on existing debt facilities;
- Comment on the collateral available for the loan or other possible sources of security

2. Financial and tax due diligence in relation to the proposed acquisition of Liverpool Direct Limited

Financial due diligence

- Summarise the reported P&L, BS and CF for the historical and forecast period, including KPIs for each service line / revenue stream for LDL
- Understand the key accounting policies underlying the financial statements and comment specifically on the revenue recognition policy for contracts.

- Also comment if these policies have been consistently applied during the Historical and Current trading period.
- Analyse any relevant reconciliations performed at 30 March 2013 and 30 March 2014 between management accounts and the audited financial statements and comment on the nature of any significant reconciling items.
- From enquiries of management, provide an overview of the accounting function and describe the key accounting procedures performed on a monthly and annual basis.
- Comment specifically on transactions relating to third party contracts which may be involved via Liverpool City Council.
- Comment on the key drivers of historical revenue and gross margin development, by reference to major contracts, including LCC, SIA (BT), Amey, Glendale and education customers.
- Comment on any customer and supplier dependence during the Historical Period.
- Read the top 10 customer and supplier contracts and summarise the key terms of service, remaining contract period and value where stated.
- Comment on the nature of the cost base (i.e. fixed or variable) and key trends identified. Highlight which of these costs are provided by related parties and the key terms with those suppliers.
- Comment on the composition of central costs including management recharges and costs shared with any related parties such as property (LCC) and IT costs (BT).
- Comment on the basis and consistency of the allocation of these costs over the Historical Period.
- Comment on staff costs with reference to headcount and the employment terms of key employees, in particular note the difference in terms of Liverpool City Council and BT employees and headcount by department.
- Comment on the basis of remuneration of key employees including bonuses and pension contributions
- Summary of the underlying earnings of the business highlighting non-recurring items identified through the course of our work including:
 - BT management charges
 - Provision movements
- Comment on the underlying sales and earnings split by LCC contracts, BT contracts and other third party contracts / trading.
- Comment on the key assumptions used in the preparation of the FY16 budget, in particular sales and gross margin by contract and overhead costs for the Budget Period. In particular comment on the key drivers of budgeted margin growth.

- Comment on the level of profitability budgeted from existing contracts in the context of historical results.
- Analyse and comment on the composition of key items on the balance sheet at 31 March 2014 and at the latest available date, including :
 - fixed asset profile,
 - ageing of debtors and creditors
 - Prepayments, accruals and indirect tax creditors
 - Deferred income and restricted cash balances / other creditors
 - significant one-off items and cash, debt or debt-like items (including dilapidation provisions or related party balances with LCC and BT)
- Comment specifically on the accounting treatment of contract revenues and costs held on the balance sheet.
- Analyse and comment on the level of provisions required for bad / doubtful debt.
- From discussions with management summarise the existence and level of contingent liabilities and capital commitments.
- Analyse and comment on monthly working capital trends and comment on potential one off / non trading adjustments during the Historical and Current Trading Periods.
- Analyse and comment on receivable days and payable days in the historical period.
- Comment on the underlying working capital requirement based on the monthly working capital profile.
- If available, summarise and comment on the forecast working capital and cash flows for the Budget period.

Corporation Tax due diligence

- Summarise the status of open corporation tax returns
- Comment on the potential impact of any material outstanding issues in open computations arising from correspondence with HMRC
- Summarise the tax payment position for FY13
- Summarise any material tax attributes carried forward at the end of FY13 and comment on their availability for use in future periods
- Comment on the corporation tax implications of transactions between the companies and the Director/Shareholder
- Comment on any elections for tax concessions or similar arrangements which have been accepted by HMRC

- Comment on the basis of the corporation tax and deferred tax provisions included in the statutory accounts for FY13
- Analyse the effective tax rate for FY13 and comment on material variances from the relevant statutory rates
- Review the reasonableness of the current and deferred tax calculations prepared by the business/ its advisors for the annual FY14 accounting period for each company

VAT due diligence

- Summarise the UK VAT registration status of LDL and comment on whether all registration obligations have been complied with. Enquire whether LDL is or has been a member of any current or previous UK VAT groups
- Summarise the VAT treatment applied to supplies made by LDL
- Comment on LDL's VAT recovery status and the application of any partial exemption method, where appropriate
- Summarise the status of all UK VAT returns due for submission and payments required in the last year
- Comment on any VAT errors identified and voluntary disclosures notified to HMRC in the last 4 years and comment on whether appropriate controls have been introduced to prevent reoccurrence
- Comment on LDL's most recent HMRC VAT inspection. Summarise the outcome including whether additional liabilities and/or penalties were imposed and controls introduced to prevent reoccurrence
- Comment on the VAT treatment adopted by LDL, in relation to property interests including any ongoing obligations to carry out VAT Capital Goods Scheme adjustments and whether any options to tax have been made in relation to property interests
- Comment on any VAT planning arrangements that LDL has been involved in and whether such arrangements have been disclosed to HMRC



Appendix 1

Scope of work - Financial due diligence (1)

Financial due diligence	
Area	Scope
Financial overview of LDL	Summarise the reported P&L, BS and CF for the historical and forecast period, including KPIs for each service line / revenue stream for LDL
Accounting fundamentals	<p>Understand the key accounting policies underlying the financial statements and comment specifically on the revenue recognition policy for contracts. Also comment if these policies have been consistently applied during the Historical and Current trading period.</p> <p>Analyse any relevant reconciliations performed at 30 March 2013 and 30 March 2014 between management accounts and the audited financial statements and comment on the nature of any significant reconciling items.</p> <p>From enquiries of management, provide an overview of the accounting function and describe the key accounting procedures performed on a monthly and annual basis.</p> <p>Comment specifically on transactions relating to third party contracts which may be invoiced via Liverpool City Council.</p>
Contracts	<p>Comment on the key drivers of historical revenue and gross margin development, by reference to major contracts, including LCC, SIA (BT), Amey, Glendale and education customers.</p> <p>Comment on any customer and supplier dependence during the Historical Period.</p> <p>Read the top 10 customer and supplier contracts and summarise the key terms of service, remaining contract period and value where stated.</p>