

**DATED**

**2011**

**(1) THE COUNCIL OF THE BOROUGH OF HALTON**

**- and -**

**(2) MERSEYSIDE INTEGRATED TRANSPORT AUTHORITY**

**AGREEMENT**

relating to

The River Mersey  
(Mersey Gateway Bridge) Order

and

Halton Borough Council (Mersey Gateway -  
Queensway) Compulsory Purchase Order 2008  
and the Halton Borough Council (Mersey  
Gateway - Central Expressway) Compulsory  
Purchase Order 2008 and certain other  
applications and orders

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**BETWEEN**

- (1) **THE COUNCIL OF THE BOROUGH OF HALTON** of Municipal Building, Kingsway, Widnes, Cheshire WA8 7QF (the "**Borough Council**")
- (2) **MERSEYSIDE INTEGRATED TRANSPORT AUTHORITY** of 24 Hatton Garden, Liverpool L3 2AN (the "**Authority**")

**WHEREAS**

- A The Borough Council submitted the Application on 30 May 2008 and made the RUCO on 5 December 2008 for the purposes *inter alia* of seeking authorisation for the construction of a new bridge over the River Mersey between Widnes and Runcorn, associated works, permanent and temporary changes to the highway network in the Borough of Halton, the imposition of tolls for the use of the new bridge and compulsory acquisition of land and rights for the scheme.
- B The Authority has no objection in principle to the making of the Order or the RUCO or the CPOs and it enters into this Agreement and agrees the Protective Provisions and the RUCO Protective Provisions with the Borough Council in order to protect the Authority's interests.
- C The parties have entered into this Agreement in relation to the Application, the Order and the RUCO and will be bound by the terms of this Agreement.
- D The Authority is an integrated transport authority by virtue of the Local Transport Act 2008.

**NOW THIS DEED WITNESSETH** as follows:

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement where the context so admits the following expressions shall have the following meanings:

"**Application**" means the application for the Order under sections 3 and 5 of the Transport and Works Act 1992 submitted to the Secretary of State under section 6 of that Act by the Borough Council on 30 May 2008;

"**Concessionaire**" means any person with whom the Borough Council enters into a concession agreement from time to time together with the successors and assigns of such person;

"**CPOs**" means the Halton Borough Council (Mersey Gateway - Queensway) Compulsory Purchase Order 2008 and the Halton Borough Council (Mersey Gateway - Central Expressway) Compulsory Purchase Order 2008;

"**Interoperability Regulations**" means the Road Tolling (Interoperability of Electronic Road User Charging and Road Tolling Systems) Regulations 2007;

"**Interoperability Standards**" means technical standards to ensure the interoperability of electronic road toll systems used at the Mersey Tunnels and in the operation of the Project in addition to the Interoperability Regulations;

"**Liaison Group**" means the group formed of the Members and convened by the Borough Council in accordance with clause 2.4;

"**Members**" means the members of the Liaison Group established pursuant to clause 2.4 of this Agreement which shall include the representatives of the Authority, its agents and any other body acting on behalf of the Authority; the Borough Council its agents and any other body acting on behalf of the Borough Council; the Concessionaire and any other person or body who it is agreed between the parties acting reasonably should be a member;

"**Mersey Tunnels**" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the River Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Acts 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii);

"**Order**" means the River Mersey (Mersey Gateway Bridge) Order 2011 as made by the Secretary of State on 11 January 2011;

"**Project**" means a new road crossing of the River Mersey together with wider improvements to the highway network in Runcorn and Widnes;

**"Protective Provisions"** means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 1;

**"RUCO"** means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 as confirmed by the Secretary of State;

**"RUCO Plan"** means the plan accompanying the RUCO;

**"RUCO Protective Provisions"** means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 2;

**"Scheme Road"** means that part of the A533 road that approaches and crosses the Silver Jubilee Bridge as shown on the RUCO Plan;

**"Secretary of State"** means the Secretary of State for Transport;

**"Transferee"** means a person to whom the Borough Council transfers its powers under the Order, or the RUCO; and

**"Works"** means the scheduled works and any other works authorised by the Order.

- 1.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.3 Unless the context requires otherwise references in this Agreement to clauses, sub-clauses, paragraphs, recitals, sub-paragraphs, annexures and appendices are references to those in this Agreement.
- 1.4 The word "including" shall mean "including without limitation or prejudice to the generality of any description, defining term or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly.
- 1.5 Words and provisions defined in the Order and in the RUCO shall unless the context requires otherwise bear the same meaning as in the Order and the RUCO respectively.
- 1.6 In this Agreement (where the context so admits) words importing the singular shall include the plural and vice versa and words importing one gender shall include all other genders.

- 1.7 Any covenant by the Borough Council or the Authority not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred and any covenant by the Borough Council or the Authority to do an act or thing may be deemed to include an obligation to procure that the act or thing is done.
- 1.8 In this Agreement the expressions "the Borough Council" and "the Authority" shall include their respective statutory successors in respect of the functions to which this Agreement relates and/or successors in title and/or Transferees as the case may be.
- 1.9 If any provision in this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be deemed thereby to be affected, impaired or called into question.
- 1.10 In the event of any conflict between this Agreement and any document annexed hereto or referred to herein, including the Order and the RUCO, the terms, conditions and provisions of this Agreement will prevail.
- 1.11 The Interpretation Act 1978 shall apply to this Agreement.

## **2. THE BOROUGH COUNCIL'S COVENANTS**

Subject to the Authority complying with its obligations made under the terms of this Agreement the Borough Council hereby covenants with the Authority as follows:

- 2.1 the Borough Council shall:
- 2.1.1 comply with the Protective Provisions from the date the Order comes into force, in accordance with the provisions of this Agreement; and
  - 2.1.2 comply with the RUCO Protective Provisions from the date the RUCO comes into force, in accordance with the provisions of this Agreement.
- 2.2 the Borough Council shall inform the Authority prior to the Borough Council making or proposing any material amendment to the RUCO and/or the Order, or should the Secretary of State propose to make any such material amendment, and the Borough

Council shall have regard to any representation the Authority may make on any such proposed material amendment;

- 2.3 the Borough Council shall use reasonable endeavours to procure that the electronic road tolling system to be used in relation to the bridge roads and the Scheme Road will meet the Interoperability Standards save to the extent that the same would conflict with the requirements of the Interoperability Regulations;
- 2.4 no later than six months after the award of a concession for the Project the Borough Council shall establish and thereafter maintain the Liaison Group, initially by giving written notice to the Members and by procuring and holding a meeting (and thereafter such subsequent meetings as are necessary) to establish so far as is practicable:
  - 2.4.1 the means of communication for the Liaison Group;
  - 2.4.2 the frequency of meetings of the Liaison Group; and
  - 2.4.3 the terms of reference of the Liaison Group.
- 2.5 Prior to their issue to bidders, the Borough Council shall share with the Authority, and have regard to any representations the Authority may make on:
  - 2.5.1 the invitation to tender documents for the appointment of a Concessionaire responsible for the operation of the bridge roads and/or Scheme Road; and
  - 2.5.2 subject to 2.7, the documents setting out the method by which the Borough Council will evaluate and score any tenders that are submitted in response to the invitation to tender.
- 2.6 Subject to 2.7, the Borough Council shall share with the Authority any report the Borough Council has prepared documenting how any such tenders have been evaluated and scored.
- 2.7 The Borough Council shall not disclose any information which is subject to duty of confidence to a bidder.

### **3. THE AUTHORITY'S COVENANTS**

- 3.1 Subject to the Borough Council complying with the terms of this Agreement, the Authority will not after the date hereof:

- 3.1.1 make any formal or other objections to the Application, and/or the Order and/or the RUCO;
- 3.1.2 assist or encourage any third party to submit any objection to the Application and/or Order and/or the RUCO;
- 3.1.3 lodge a statutory challenge against the making of the Order and/or confirmation of the RUCO and/or decision upon any other application relating to the Project, except in the event of amendments being made to the Order or the RUCO which materially affect the Authority.

**4. INTERPRETATION OF PROTECTIVE PROVISIONS AND RUCO PROTECTIVE PROVISIONS**

Schedule 3 shall have effect.

**5. DISPUTE RESOLUTION**

- 5.1 The provisions of this clause 5 shall be the dispute resolution procedure (hereinafter referred to as "Dispute Resolution Procedure").
- 5.2 Without prejudice to any other provision of this Agreement, the parties shall attempt to resolve any lack of agreement, dispute or difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions between them by discussion and agreement.
- 5.3 Save where the statutory duties of either of the parties provide otherwise, the parties agree to use reasonable efforts to avoid any publicity regarding any dispute or difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions between them in the local or national press or by means of television, radio or internet newscasting or broadcasting.
- 5.4 In exercising the powers and rights and in observing the obligations and duties set out in this Dispute Resolution Procedure, the parties shall at all times have regard to the need to resolve any dispute or difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions with reasonable expedition and without incurring or causing others to incur unreasonable costs.



5.5 Unless otherwise agreed between the parties, any difference under any provision of this Agreement, the Protective Provisions or the RUCO Protective Provisions (other than a difference relating to a question of law or touching or concerning the meaning or construction of this Agreement) shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

## **6. SERVICE OF NOTICES**

All notices, requests, demands or other written communications to or upon the respective parties hereto pursuant to this Agreement shall be deemed to have been properly given or made if despatched by first class letter to the party to which such notice, demand or written communication is to be given or made under this Agreement and addressed as follows:

6.1 if to the Borough Council, to the address above marked for the attention of the Operational Director and Monitoring Officer (Legal, Organisational Development and Human Resources); or

6.2 if to the Authority, to the address above marked for the attention of the Chief Executive.

## **7. CONSENT**

Neither the Authority nor the Borough Council shall unreasonably withhold or delay any consent or approval in relation to any matter provided for in this Agreement or in the Protective Provisions or in the RUCO Protective Provisions where reference is made to the consent or approval of the Authority or the Borough Council.

## **8. VARIATION**

No variation of this Agreement shall be effective unless made by deed.

## **9. TRANSFER OF POWERS**

9.1 This clause shall not apply to the delegation of powers of the Borough Council pursuant to a concession agreement. For the avoidance of doubt, the Borough Council remains liable for the performance of its obligations under this Agreement where any of its powers are delegated pursuant to a concession agreement.

9.2 If any of the powers of the Borough Council under the Order or the RUCO are transferred by the Borough Council to another person then the Borough Council shall prior to such transfer procure a direct covenant from the Transferee in favour of the Authority to observe and perform such of the obligations of the Borough Council under this Agreement as relate to the exercise of the powers which have been transferred to the Transferee and thereupon the Borough Council shall be relieved of liability for those obligations thereunder.

9.3 Nothing in this Agreement shall prevent the Borough Council procuring the Works or their operation by the appointment of an agent or contractor to enable the Works to be carried out or operated.

## **10. THIRD PARTY RIGHTS**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **11. JURISDICTION**

11.1 This Agreement shall be governed by and construed in accordance with English law.

11.2 Subject to the provisions of clauses 4 and 5 the parties to this Agreement irrevocably agree that the courts of England shall have jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Agreement and for such purpose the parties irrevocably submit to the jurisdiction of the courts of England.

## **12. STATUTORY POWERS**

Nothing contained or implied in this Agreement shall avoid, diminish, limit, prejudice or affect in any way the exercise by the Borough Council of any of its existing or future powers or duties as local authority or planning authority in respect of the Project and all the rights, powers and duties of the Borough Council under all public and private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Project as if this Agreement had not been entered into provided that nothing in this clause 12 shall permit the Borough Council to avoid any of its obligations on its part to the Authority contained in this Agreement and/or the Protective Provisions and/or the RUCO Protective Provisions.

**13. ENTIRE AGREEMENT**

This Agreement contains the whole agreement between the parties.

**14. COUNTERPARTS**

This Agreement may be executed in original and any number of counterparts.

**IN WITNESS** whereof this Agreement has been executed by the parties hereto and delivered as a Deed on the date first written above.

## SCHEDULE 1

### Protective Provisions

1. All words and phrases used in this Schedule shall unless the context requires otherwise or is so provided bear the same meaning in this Schedule as in the Order.

2. In this Schedule—

"the Authority" means the Merseyside Integrated Transport Authority;

"the Mersey Tunnels" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the river Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Act 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii);

"the Order" the River Mersey (Mersey Gateway Bridge) Order 2011 as made by the Secretary of State on 11 January 2011; and

"the undertaker" includes any other person exercising the functions of the undertaker by virtue of any arrangement made under article 43 of the Order, or otherwise.

3. In exercising the functions set out in paragraph 4 of this Schedule, the undertaker must have regard to:-

(a) the likely effect of the exercise of those functions on the Mersey Tunnels, including the levels of traffic passing through them;

(b) matters likely to impact on the potential for interoperability between the Mersey Tunnels and the charging of tolls or charges for the passage of vehicles over the new crossing; and

(c) the implications of the exercise of those functions in the event that Halton Borough Council becomes a constituent council of an integrated transport authority for an integrated transport area.

4. The functions referred to in paragraph 3 are:

- (a) setting of the tolls within the initial toll range under paragraph 1 of Schedule 11 of the Order;
  - (b) the revision of toll ranges under paragraph 7 of Schedule 11 of the Order;
  - (c) variations to the classification of vehicles or classes of vehicles in respect of which tolls may be charged under paragraph 7 of Schedule 11 of the Order;
  - (d) the granting of exemptions from tolling, discounts or any other waiving or suspending of tolls or charges (or any part of such tolls or charges) under article 41 of the Order or otherwise;
  - (e) the entry into a concession agreement under article 43 of the Order and the terms of any such agreement; and
  - (f) any function the exercise of which is likely to impact on the potential for interoperability between the Mersey Tunnels and the charging of tolls or charges for the passage of vehicles over the new crossing.
5. Before exercising any of the functions set out in paragraph 4 the undertaker must consult the Authority, and have regard to the Authority's response to such consultation, in such manner and to such extent as may be agreed between the undertaker and the Authority.
6. Any difference arising under this Schedule shall be determined in accordance with clause 5 of this Agreement.

## SCHEDULE 2

### RUCO Protective Provisions

1. All words and phrases used in this Schedule shall unless the context requires otherwise or is so provided bear the same meaning in this Schedule as in the RUCO.

2. In this Schedule—

"the Authority" means the Merseyside Integrated Transport Authority;

"the Council" includes any other person exercising the functions of the Council by virtue of any arrangement made under section 192(b) of the 2000 Act, or otherwise;

"the Mersey Tunnels" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the river Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Act 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii); and

"RUCO" means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 as confirmed by the Secretary of State.

3. In exercising its functions under the RUCO, and in particular those functions set out in paragraph 4 of this Schedule, the Council must have regard to -

(a) the likely effect of the exercise of those functions on the Mersey Tunnels, including the levels of traffic passing through them;

(b) matters likely to impact on the potential for interoperability between the Mersey Tunnels and the imposition of charges for the passage of vehicles over the scheme road; and

(c) the implications of the exercise of those functions in the event that the Council becomes a constituent council of an integrated transport authority for an integrated transport area,

to the extent that the consideration in question is applicable to the relevant function.

4. The functions referred to in paragraph 3 are -

- (a) the setting of the level of the charge under paragraph 7(1) of the Schedule of the RUCO;
  - (b) the waiver or suspension of charges (or any part of such charges) under paragraph 4(2) of the Schedule of the RUCO or otherwise;
  - (c) any variations to the scheme made by way of an order under section 168(2) of the 2000 Act;
  - (d) the entry into any arrangement in respect of the scheme under section 192(b) of the 2000 Act, or otherwise; and
  - (e) any function the exercise of which is likely to impact on the potential for interoperability between the Mersey Tunnels and the imposition of charges for the passage of vehicles over the scheme road.
5. Prior to exercising any of the functions set out in paragraph 4 the Council must consult the Authority, and have regard to the Authority's response to such consultation, in such manner and to such extent as may be agreed between the Council and the Authority.
6. Any difference arising under this Schedule shall be determined in accordance with clause 5 of this Agreement.

### SCHEDULE 3

#### Interpretation and Operation of Protective Provisions and RUCO Protective Provisions

1. This Schedule shall have effect for the purpose of governing the approach to and interpretation of the Protective Provisions and the RUCO Protective Provisions.
2. All words and phrases used in this Schedule shall unless the context requires otherwise or is so provided bear the same meaning in this Schedule as in the Order or the RUCO (as applicable).
3. In this Schedule—

"the Authority" means the Merseyside Integrated Transport Authority;

"the Mersey Tunnels" means the undertaking managed, operated and maintained by the Authority comprising a tunnel for vehicular traffic under the River Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Acts 1980 (c. x) as amended *inter alia* by the Mersey Tunnels Act 2004 (c. ii);

"the Order" means the River Mersey (Mersey Gateway Bridge) Order 2011 as made by the Secretary of State on 11 January 2011;

"the Project" means a new road crossing of the River Mersey together with wider improvements to the highway network in Runcorn and Widnes;

"the Protective Provisions" means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 1;

"the RUCO" means the A533 (Silver Jubilee Bridge) Road User Charging Scheme Order 2008 as confirmed by the Secretary of State; and

"the RUCO Protective Provisions" means the provisions for the protection of the Authority agreed between the Borough Council and the Authority attached hereto in Schedule 2.



4. In exercising the functions referred to in paragraph 4(d) of the Protective Provisions the obligation to consult the Authority and to have regard to those matters set out in paragraph 3 of the Protective Provisions shall not require:
  - 4.1 consultation with the Authority except at the same time as consultation with any other party prior to seeking a variation or amendment to the Order to amend or vary the exemptions set out in Schedule 12 to the Order or where such an amendment or variation is likely to have a material adverse effect upon the levels of traffic passing through, or the toll revenues generated by, the Mersey Tunnels;
  - 4.2 consultation in relation to exemptions, discounts, waivers or suspensions of tolls except in relation to:
    - 4.2.1 any exemptions, discounts, waivers or suspensions specifically envisaged by a concession agreement;
    - 4.2.2 the exemptions, discounts, waivers or suspensions applicable upon the opening day (to the extent that the same are not specified by a concession agreement); and
    - 4.2.3 changes to the exemptions, discounts, waivers or suspensions applicable from time to time where the change is likely to have a material adverse effect upon the levels of traffic passing through, or the toll revenues generated by, the Mersey Tunnels; or
  - 4.3 consultation with the Authority in respect of any exemption, discount, waiver or suspension of tolls in case of urgency.
5. The requirement to consult the Authority under paragraph 4(e) of the Protective Provisions in respect of any concession agreement shall not require consultation in relation to:
  - 5.1 any matter or agreement or part of any agreement that relates solely to construction of the Project, except any such matter or agreement or part of any agreement that could have a material adverse effect upon the levels of traffic passing through the Mersey Tunnels; or
  - 5.2 any operational aspect not likely to fall within paragraph 3 of the Protective Provisions.

6. The requirement referred to in paragraph 5 above to consult the Authority in respect of any concession agreement may be discharged by consultation upon relevant aspects of the concession agreement prior to issuing invitations to tender and prior to completion of a concession agreement.
7. The requirement to consult the Authority under paragraph 4(f) of the Protective Provisions shall not require consultation except in respect of:
  - 7.1 the adoption of electronic systems in relation to tolling that may at any time require integration between the Authority's undertaking at the Mersey Tunnels and the new crossing; and
  - 7.2 financial arrangements consequent upon the adoption of electronic systems in relation to tolling.
8. The requirement to consult the Authority under paragraph 4(b) of the RUCO Protective Provisions shall not require:
  - 8.1 consultation in relation to exemptions, discounts, waivers or suspensions of charges except in relation to:
    - 8.1.1 exemptions, discounts, waivers or suspensions of charges specifically envisaged in a concession agreement;
    - 8.1.2 an exemption, discount, waiver or suspension of any charge applicable upon the day that the RUCO comes into force (to the extent that the same is not specified by a concession agreement);
    - 8.1.3 a change in exemptions, discounts, waiver or suspensions of any charge from time to time where the change is likely to have a material adverse effect upon the levels of traffic passing through, or the toll revenues generated by, the Mersey Tunnels; or
  - 8.2 consultation with the Authority in respect of an exemption, discount, waiver or suspension of charges in case of urgency.
9. The requirement to consult the Authority under paragraph 4(d) of the RUCO Protective Provisions shall not require consultation in respect of any operational aspect not likely to fall within paragraph 3 of the RUCO Protective Provisions.

10. The requirement to consult the Authority under paragraph 4(e) of the RUCO Protective Provisions shall not require consultation except in respect of:
  - 10.1 the adoption of electronic systems in relation to charges that may require integration between the Authority's undertaking at the Mersey Tunnels and the scheme road; and
  - 10.2 financial arrangements consequent upon the adoption of electronic systems in relation to charges
  
11. Where, pursuant to this Schedule, the Council is not required to consult the Authority, the relevant provisions of paragraph 3 of the Protective Provisions or paragraph 3 of the RUCO Protective Provisions, as the case may be, shall not apply.

Executed as a deed by **THE COUNCIL OF** )  
**THE BOROUGH OF HALTON** )  
by the affixing of its Common Seal )  
in the presence of:- )

Authorised Signatory

Executed as a deed by the )  
**MERSEYSIDE INTEGRATED** )  
**TRANSPORT AUTHORITY** by )  
..... )  
the affixing of its Common Seal )  
in the presence of: )

Authorised Signatory