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(1) HEREFORDSHIRE COUNCIL

(2) BALFOUR BEATTY LIVING PLACES LIMITED

PUBLIC REALM SERVICES CONTRACT

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This contract is based on the Highways Agency's Conditions of Contract for Managing Agent Contractor (Issue 8 Model 2009), the copyright of which belongs to the Highways Agency.

The above Conditions of Contract are in turn based on the NEC family of contracts, the copyright in which belongs to the Institution of Civil Engineers.

The original Conditions of Contract are shown in black text. Amended or substituted text is shown in **blue text**. Note that some of the blue text re-uses text from the Highway Agency's Conditions of Contract for Managing Agent Contractor but is shown in blue to highlight the fact that some, possibly minor, change has been made.

CORE CLAUSES

1 GENERAL

10 Actions

10.1 The *Employer*, the *Provider* and the *Service Manager* shall act as stated in this contract and in a spirit of mutual trust and co-operation.

10.2 The *Provider* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest in or under it without the prior agreement of the *Employer*.

10.3 A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation is stated in the Contract Data [or in this contract](#).

10.4 Neither the *Provider* nor anyone employed by him or acting on his behalf

offers or gives to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer* or

enters into this contract or any other contract with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

11 Identified and defined terms

11.1 In these Conditions of Contract, terms identified in the Contract Data are in italics and defined terms have capital initials.

"Acceptable Strategic Performance"

is defined in Part IV of Schedule 2.

"Annual Plan"

is the plan to be prepared by the *Provider* for each Financial Year falling wholly or partly within the Contract Period as detailed in clause 21.2.

"Area Network"

is the highway network and other associated areas within the boundary of the County of Herefordshire (such boundary as more particularly shown in the Public Realm Asset Information) for which the *Employer* is responsible in his capacity as Highways Authority.

"Assessment Date"

means the 1st day in each month.

"Associated Company"

is:

- a Consortium Member or
- any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Provider* or a Consortium Member. The word "control" in this context means the ability or entitlement to exercise, directly or indirectly, at least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity and the words "control" and "controlled" are construed accordingly.

"Authorised Functions"

are the statutory functions of the *Employer* as specified in Schedule 11 which the *Provider* is authorised to exercise under this contract.

"Benchmarking"

has the meaning set out in clause 217.1.

"Budget Report"

is the report to be prepared by the *Provider* detailing the financial performance and forecasts of the *Provider* against the Capital Services Budget and the Revenue Services Budget (respectively) in the form specified in the Service Information.

"Budget Report Action Plan"

is the action plan to be prepared by the *Provider* in accordance with clause 17.8 (and in the form set out in the Service Information) detailing:

- the risks affecting the delivery of the Services that may result following an overspend of the Services Budget;
- the options for corrective action to be carried out by the *Provider*; and
- the *Provider's* recommendation for the corrective action necessary to prevent an overspend of the Services Budget.

"Business Continuity Plan"

is the plan prepared and updated by the *Provider* in accordance with clause 40.2.

"Capital Payment(s)"

is a payment or payments under this contract which the *Employer* is required to treat for local government accounting purposes as capital expenditure.

"Capital Services"

are services that will be treated as capital expenditure for the purposes of local government accounting regulations and which will therefore be fundable from the Capital Services Budget. Capital Services may comprise a mixture of Lump Sum, Target Cost and Cost Reimbursable Services.

"Capital Services Budget"

is the part of the Services Budget that is treated as capital for the purposes of local government capital expenditure accounting regulations.

"Capital Services Lump Sum"

is the total of all lump sums under individual Service Orders for Lump Sum Services which are also Capital Services delivered in any Financial Year.

"Capital Services Target Cost"

is the total of all target costs in relation to Target Cost Services that are also Capital Services delivered in any Financial Year. For the avoidance of doubt, the Capital Services Target Cost will include the Fee.

"Cashable Savings"

are efficiencies that release financial resources whilst maintaining outputs and output quality, thereby enabling the resources that are released to be redeployed by the *Employer*.

"CDM Regulations"

are the Construction (Design and Management) Regulations 2007.

"Code of Practice"

is any code of practice issued under section 45 of the Freedom of Information Act 2000 or pursuant to powers contained in the Environmental Information Regulations 2004.

"Consortium Member"

is an organisation which is a member of the consortium comprising the *Provider*, whether as a participant in a non-integrated joint venture or a shareholder in a limited company.

"Contract Date"

is the date when this contract came into existence.

"Contract Period"

is the *contract period* or any extended period fixed under this contract.

"Core Services"

are the Services set out in Part 1 of Schedule 3 together with any Non-Core Services that the *Employer* may instruct the *Provider* to carry out from time to time in accordance with this contract.

"Cost of Services Provided to Date"

is the total of the Defined Cost of the Services which have been carried out by the *Provider* during the relevant Financial Year (less payments made to the *Provider* during the relevant Financial Year), plus the resulting Fee.

"Cost Reimbursable Services"

are services carried out under Service Orders which the relevant Services Order states will be paid for on a cost reimbursable basis.

"Data Protection Acts"

are the Data Protection Act 1998 and any other laws or regulations relating to privacy or personal data.

"Defective Service"

is:

- a part of the Services which has not been carried out in accordance with the Service Information; or
- a part of the Services designed by the *Provider* which is not in accordance with the applicable law or the *Provider's* design which the *Service Manager* has accepted.

"Defined Cost"

is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
 - payments to Others and
 - the supply of equipment, supplies and services included in the charge for overhead costs incurred within the Working Areas in this contract and
- the cost of the components in Schedule 1 for other work

less

- the cost of preparing quotations for compensation events and
- Disallowed Cost.

"Defined Cost Report"

is a report detailing, on a cumulative basis, the Defined Cost plus the Fee for the Services delivered by the *Provider* from the beginning of each Financial Year to the date of the report (inclusive) in the format specified in the Service Information.

"Disallowed Cost"

is cost which the *Service Manager* decides:

- is not justified by the *Provider's* accounts and records;
- should not have been paid to a Subcontractor or supplier in accordance with this contract;
- was incurred only because the *Provider* did not:
 - follow a process or procedure stated in his Quality Plan; or
 - give an early warning notice which this contract required him to give;

and the cost of:

- work or remedial action caused by the *Provider's* failure to Provide the Services in accordance with this contract;

- Materials not used (after allowing for reasonable wastage) unless resulting from a change to the Service Information;
- resources not used (after allowing for reasonable availability and utilisation);
- preparation for and conduct of an adjudication or proceedings of the *tribunal*.

“Dispute Resolution Provisions”

are the provisions set out in clause 90.

"Documents"

are data (including Personal Data), records, reports, documents, manuals, designs, drawings, plans, specifications and other works or materials of any nature in any form or medium (excluding proprietary software).

"Emergency Services"

are representatives of the police, ambulance or fire services or other bodies having statutory powers to issue instructions following an Incident when engaged in an action either on the Public Realm or which affects the provision of the Services.

"Employer's Objectives"

are to manage and improve the Public Realm assets effectively, putting customers first, understanding and responding to their needs in a way that enhances the reputation of public services in the County. Successful stewardship of the Public Realm will include:

- ensuring the Public Realm is accessible, safe, clean and well-maintained;
- maintaining the delivery of essential services;
- achieving value for money, facilitated by process improvement and transparency through open book accounting;
- achieving service delivery which is efficient and responsive to local needs and priorities; and
- contributing to the regeneration of the economy and social capital in Herefordshire.

"Employer's Policies"

are any policies of the *Employer* from time to time in force that relate to the provision of the Services and which are notified to the *Provider*.

"Employer's Premises"

are the office space, compounds, depots and storage facilities made available by the *Employer* for the use of the *Provider* during the Contract Period as specified in Schedule 9.

"Employer's Share Of Enhanced Third Party Margin"

is the amount of any Enhanced Third Party Margin due to the *Employer* and calculated by reference to the table in Clause 50.23.6.

"Employer's Stocks"

are:

- the [supplies of Materials and/or](#) items of Equipment listed in the [Service Information](#) provided by the *Employer* free of charge for use by the *Provider* in Providing the Services and
- any items of equipment replaced by Employer's Stocks.

"Employer's Supply Chain"

means the contractors, sub-contractors or suppliers listed in clause 222 who are engaged by the *Employer* (whether pursuant to a framework arrangement or otherwise) to provide Equipment, Materials, Employer's Stock, Employer's Vehicles or other goods and services required for the delivery of the Services and are managed on behalf of the *Employer* by the *Provider*.

"Employer's Vehicles"

are the vehicles listed in the Service Information which the *Provider* may use to Provide the Services.

"Enhanced Third Party Margin"

is the sum of monies calculated by deducting any Third Party Costs from any Third Party Income.

"Equipment"

is items of plant, machinery and equipment provided by the *Provider* and used by him to Provide the Services.

"Fee"

is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work provided that the Fee will not be applied to:

- any pass-through costs from the *Employer* (including the property costs payable by the *Provider* under any leases and/or licences granted by the *Employer*);
- any costs originating from the *Employer* (including, for the avoidance of doubt, the cost of any ICT services provided by the *Employer*); and/or
- any statutory fees payable by the *Provider* in the course of Providing the Services.

"Fee Performance Element"

is 25% of the Fee.

"Fee Schedule"

is the schedule setting out the breakdown of the *subcontracted fee percentage* and the *direct fee percentage* into their component elements, supported by data showing how each element of each fee percentage has been calculated. The Fee Schedule is in the document which the Contract Data states it is in.

"Financial Year"

is the period commencing on 1 April in any calendar year and ending on 31 March in the following calendar year save for (i) the first Financial Year of the Contract Period which will commence on the *access date* and end on 31 March 2014 and (ii) for the last Financial Year of the Contract Period which will commence on 1 April 2023 and end on 31 March 2024 (subject to the Contract Period being extended in accordance with clause 31).

"Forward Programme"

is the outline plan of the priorities for the provision of the Services prepared by the *Provider* and agreed with the *Employer* on a rolling four year basis in accordance with clause 21.1.

"Good Industry Practice"

is the degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced provider engaged in a similar type of undertaking under the same or similar circumstances.

"Guaranteed Enhanced Third Party Margin"

means the sums detailed in the table contained at Clause 50.23.2 and which the *Provider* has guaranteed to the *Employer* that it will generate as Enhanced Third Party Margin.

"Herefordshire Compact"

is a document of the same name setting out the essential guide for good working practice between sectors in Herefordshire.

"Incoming Provider"

is the agent or contractor appointed by the *Employer* to manage the Public Realm after the expiry of the Contract Period or termination of this contract.

"Incident"

is:

- an unforeseen event which directly or indirectly affects the Public Realm and or threatens the safety of the public or is an immediate or imminent threat to the long term integrity of any part of the Public Realm or to land adjacent to the Public Realm or likely to be affected by events on the Public Realm;
- breakdown or damage rendering the communications installations serving the Public Realm or any part of them inoperable; or
- causes or has the potential to cause disruption to the free flow of traffic on the Area Network.

"Insurance Table"

is the table detailing the insurances to be provided by the *Provider* set out in clause 84.

"Intellectual Property Rights"

are any current and future legal and equitable interests in patents, trade marks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.

"Lease"

is the lease to be granted to the *Provider* in the manner set out in, and substantially in the form annexed to, Schedule 9.

"Local Overhead Cost"

is the cost to the *Provider* of his employees engaged in the management of, and support to, the delivery of the Services (but not directly involved in the delivery of the Services) and of the property and costs of the provision of necessary medical and first aid facilities, necessary security, and office facilities including copying, telephone and necessary office sundries, management and other costs (including ICT costs) attributable to the provision of the Services contemplated in the Annual Plan for the relevant Financial Year.

"Locality Working Budget"

Is the sum from the Services Budget allocated to fund Locality Working in any Financial Year.

"Locality Working"

is working with Localities in accordance with the Service Information and the provisions of clause 219.

"Localities"

are the nine localities comprising Mortimer, Kington, Weobley, Leominster, Bromyard, Golden Valley, Hereford, Ledbury and Ross-on-Wye localities, together with the town and parish councils and other community representatives within these localities.

"Lump Sum Services"

are Services carried out under Service Orders which the relevant Service Order states will be paid for on a lump sum basis.

"Major Schemes"

are schemes of works and/or services which the *Employer* considers (acting in his absolute discretion):

- do not ordinarily fall within the scope of the Services; or
- are agreed between the *Provider* and the *Service Manager* as having an estimated cost in excess of the relevant threshold for such work/services under the EU procurement rules from time to time; or
- are required to be procured through a competitive tender process as a result of conditions attached to the source of funding for any such scheme.

"Managing Agent Arrangement"

the delivery of any part of the Services by the *Provider* utilising the Named Suppliers and in accordance with the procedure set out in Clause 223 and the relevant Method Statement.

"Materials"

are items intended to be used or included in, or in relation to, the Public Realm in the course of Providing the Services.

“Method Statements”

are the method statements contained at Schedule 10 which detail the *Provider's* methodology for the delivery of the Services in accordance with the processes set out in the Quality Plan.

"Mobilisation Period"

is the period from the *starting date* to the *access date*.

“Mobilisation Plan”

the plan to be developed and agreed in accordance with Clause 214 outlining the mobilisation activities to be provided during the Mobilisation Period and the costs associated with such activities.

"Named Supplier"

an approved contractor, sub-contractor or supplier that may be utilised by the *Provider* for the delivery of the Services under the Managing Agent Arrangement.

"Non-Core Services"

are the services set out in Part 2 of Schedule 3 which are not envisaged to be carried out under this contract at the Contract Date but which, following discussion with the *Provider* may be carried out as Core Services if so instructed by the *Employer*.

“Open Book Cost Records”

means detailed cost records:

- in the same format and containing the same details and for the same period, as the *Provider* is required to keep; or
- providing a breakdown of its actual costs into the actual costs of its labour, plant and materials.

"Operational Performance Indicators"

are the Performance Indicators that relate to the operation of the Services as set out in Part III of the Annex to Schedule 2 (Performance Management).

"Operations Board"

is the board to be established in accordance with clause 19 by the Parties to oversee the management of the delivery of the Services.

"Outgoing Provider"

is any agent or contractor appointed by the *Employer* or Others to carry out works or provide services similar to the Services in relation to the Public Realm during the period immediately before the *access date*.

"Others"

are people or organisations who are not the *Employer*, the *Service Manager*, the *Adjudicator*, the *Provider* or any employee, Subcontractor or supplier of the *Provider*.

"P3 Scheme"

is the existing contractual arrangement between the *Employer* and Parish and Town Councils in Herefordshire for the provisions of community-based services to public rights of way within the scope of this contract.

"Parish Lengthsman Scheme"

is the existing contractual arrangement between the *Employer* and Parish and Town Councils in Herefordshire for the provisions of community-based services within the scope of this contract.

"Parties"

are the *Employer* and the *Provider* and a Party is either of them.

"Pay Less Notice"

has the meaning set out in clause 50.8.

"Performance Indicators"

are the performance indicators as set out in Parts II and III of Schedule 2 (Performance Management), comprising the Operational Performance Indicators and the Strategic Performance Indicators.

"Personal Data"

is information received by the *Provider* in relation to this contract, which relates to living individuals who can be identified

- from that information; or
- from that information combined with other details in (or likely to come into) the possession of the *Employer*.

"to Provide the Services"

means to do the work necessary to perform the Services in accordance with this contract and all incidental work, services and actions which this contract requires and references to "Providing the Services" shall be construed in the same way.

"Provider's Representative"

is the *Provider's* representative appointed in accordance with clause 211.

"Public Realm"

is the Area Network together with all properties, public open spaces and the associated buildings, infrastructure and amenities for which the *Employer* is responsible within the area boundaries identified in the Public Realm Asset Information unless amended in accordance with this contract.

"Public Realm Asset Information"

is information which

- describes the Public Realm and its surroundings; and
- is in the document of that name referred to in the Schedule 5.

"Quality Plan"

is the quality plan relating to the *Provider* carrying out the Services (as the same may be updated and amended with the prior written approval of the *Employer* during

the Contract Period) a copy of which is to be developed by the *Provider* and approved by the *Employer* during the Mobilisation Period and following that will be deemed to be attached to this contract at Schedule 10.

"Relevant Period(s)"

has the meaning set out in clause 31.2.

"Revenue Payment(s)"

is a payment or payments under this contract which the *Employer* is required to treat for local government accounting purposes as revenue expenditure.

"Revenue Services"

are services that will be treated as qualifying as revenue expenditure for the purposes of local government accounting regulations and which will therefore be fundable from the Revenue Services Budget. Revenue Services may comprise a mixture of Lump Sum, Target Cost and Cost Reimbursable Services.

"Revenue Services Budget"

is the part of the Services Budget that is treated as revenue for the purposes of local government revenue expenditure accounting regulations.

"Revenue Services Lump Sum"

is the total of all lump sums under individual Service Orders for Lump Sum Services which are also Revenue Services delivered in any Financial Year.

"Revenue Services Target Cost"

is the total of all target costs in relation to Target Cost Services that are also Revenue Services delivered in any Financial Year. For the avoidance of doubt, the Revenue Services Target Cost will include provision for payment of the Fee.

"Risk Register"

is a register of the risks which is prepared in relation to the Services to be delivered in each Financial Year in accordance with clause 17.1.

"Scheme"

is an item of work carried out (whether by the *Provider* or Others) with the objective (as agreed or determined by the *Service Manager*) of

- enhancing the assets forming part of the **Public Realm**;
- replacing assets forming part of the **Public Realm** that have reached the end of their economically viable life; or
- repairing or enhancing the condition of roads outside the **Public Realm** used by the *Employer* as diversion routes;

but excluding the repair or replacement of Employer's Stocks.

"Service Information"

is the document of that name referred to in the Contract Data Part One which

- specifies and describes the Services;
- states any constraints on how the *Provider* Provides the Services; and

- identifies the performance requirements applicable to each of the Services.

"Service Order"

is an instruction from the *Service Manager* to the *Provider* to carry out services within the scope of the Services substantially in the form set out in Schedule 6.

"Service Order Completion"

is when the *Provider* has done all the work in a Service Order and corrected any Defective Services.

"Service Order Completion Date"

is the date for completion stated in a Service Order unless later changed in accordance with this contract.

"Service Order Plan"

is the plan or programme for the carrying out of the works and/or services set out in any Service Order.

"Service Order Risk Register"

is the risk register maintained in relation a Scheme which sets out the risks identified for that Scheme, including any risks which the *Provider* or the *Service Manager* has notified as an early warning matter in relation to that Scheme; it also includes a description of each risk and a description of the actions which are to be taken to avoid or reduce that risk.

"Services"

are the duties to be performed by the *Provider* under this contract comprising the Core Services and any Non-Core Services as may be instructed by the *Employer* from time to time in accordance with this contract.

"Services Budget"

is the *Employer's* known budget at the start of each Financial Year to spend on the Services in accordance with this contract within that Financial Year (as notified by the *Employer* to the *Provider*). The Services Budget comprises the total of the Capital Services Budget and the Revenue Services Budget.

"Staff"

are employees employed by the *Provider* or an Associated Company or any Subcontractor to Provide the Services at any time.

"Statutory Body"

is a person or corporate body who has a statutory right or a right pursuant to a licence granted under any statute to place or maintain any apparatus (including any pipe, conduit, sewer, drain or tunnel) on, under or over the *Public Realm* or to inspect, adjust, repair, alter, renew, reposition or remove such apparatus.

"Strategic Performance Indicators"

are the Performance Indicators that relate to the strategic objectives for the Services as set out in Part II of the Annex to Schedule 2 (Performance Management).

"Strategic Partnering Board"

is the board to be established in accordance with clause 19 by the Parties to oversee the management of the *Public Realm* and the delivery of the *Employer's* Objectives within the *Public Realm*.

"Street Works Legislation"

is the New Roads and Street Works Act 1991, the Traffic Management Act 2004 and the Highways Act 1980 and any Acts amending or supplementing these statutory provisions.

"Subcontractor"

is a person or organisation (other than an employee or contract worker engaged by the *Provider* or an Associated Company) who has a contract with the *Provider* or an Associated Company to provide part of the Services or to supply Materials which the person or organisation has wholly or partly designed specifically for the Services.

"Target Cost Services"

are services carried out under Service Orders which the relevant Services Order states will be paid for on a target cost basis.

"Tendered Cost Information"

has the meaning set out in clause 50.22 and are the documents attached to this contract at Schedule 12.

"Third Party Costs"

means the Defined Cost plus the Fee for providing the Third Party Services.

"Third Party Income"

is monies received or to be received by the *Provider* from the provision of the Third Party Services.

"Third Party Services"

means any works and/or services delivered by the *Provider* using staff, labour, plant or other resources under this contract to any party other than the *Employer*.

"Total Cost of Lump Sum Capital Services"

has the meaning set out in clause 50.16.1.1.

"Total Cost of Lump Sum Revenue Services"

has the meaning set out in clause 50.16.1.2.

"Total Cost of Target Cost Capital Services"

has the meaning set out in clause 50.13.1.1.

"Total Cost of Target Cost Revenue Services"

has the meaning set out in clause 50.13.1.2.

"Transition Plan"

the plan to be developed and agreed in accordance with Clause 215 detailing:

- the transformation activities necessary for the delivery of the Services and the costs involved;
- the proposed actions of the *Provider* to reduce the impact on staff and the costs of redundancy; and

- the benefits to the *Employer* in respect of cost savings and services improvements.

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

"TUPE Information"

is the information contained in the Annex to Schedule 7.

"Working Areas"

are the Public Realm and any other premises occupied by the *Provider* which are necessary for Providing the Services and used only for provision of Services.

"Working Day"

is a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

12 Interpretation and the Law

- 12.1 In this contract, except where the context shows otherwise:
- 12.1.1 words in the singular also mean in the plural and the other way round;
 - 12.1.2 words in the masculine also mean in the feminine and neuter and the other way round;
 - 12.1.3 references to a document include any revision made to it in accordance with this contract;
 - 12.1.4 references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it; and
 - 12.1.5 references to a standard include any current relevant standard that replaces it.
- 12.2 Each of the Schedules and Annexes to this contract form part of it and shall apply.
- 12.3 In the event of any conflict or inconsistency between the provisions of the body of this contract and the Schedules (including their relevant Annexes), the body of this contract takes precedence. In the event of any conflict or inconsistency between the Service Information and the Quality Plan, the Service Information takes precedence.
- 12.4 No change to this contract, unless provided for by this contract, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.5 This contract constitutes the entire agreement between the Parties and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this contract.
- 12.6 This contract is enforceable by the original parties to it and by their successors in title and permitted assignees.

- 12.7 A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the person or organisation is an Incoming Provider and it is stated in this contract in relation to the relevant term that the Incoming Provider has the right under that Act to enforce the term.
- 12.8 The *Provider* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest in or under it without the prior agreement of the *Employer*.
- 12.9 This contract is governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

13 Communications

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the English language.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Service Manager* or the *Provider* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Service Manager* may extend the *period for reply* to a communication if the *Service Manager* and the *Provider* agree to the extension before the reply is due. The *Service Manager* notifies the *Provider* of the extension which has been agreed.
- 13.5 A notification which this contract requires is communicated separately from other communications.
- 13.6 The *Service Manager* may withhold acceptance of a submission by the *Provider*. If he withholds acceptance, he states his reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Provider's* submission fully. Withholding acceptance for a reason stated in this contract is not a compensation event.
- 13.7 Neither the *Provider* nor anyone employed by him or acting on his behalf:
- gives information concerning the subject matter of this contract for publication in the press or on radio, television, screen, electronically or any other media or
 - publishes or circulates any photographs of the **Public Realm** or any part of it or any Incident (other than as necessary to Provide the Services)
- without the written consent of the *Service Manager*. The *Provider* conducts any liaison with the media in accordance with the Service Information.
- 13.8 The *Provider* keeps (and ensures that anyone employed by him or acting on his behalf keeps) confidential and does not disclose to any person:

- the terms of this contract; and
- any confidential or proprietary information (including Personal Data) provided to or acquired by the *Provider* in the course of Providing the Services;

except that the *Provider* may disclose information:

- to his legal or other professional advisers;
- to anyone employed by him or acting on his behalf as needed to enable the *Provider* to Provide the Services;
- where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Provider* consults the *Service Manager* and takes full account of the *Service Manager's* views about whether (and if so to what extent) the information should be disclosed;
- which he receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- which is in the public domain at the time of disclosure other than due to the fault of the *Provider*; or
- with the consent of the *Service Manager*.

13.9 The *Provider* does not (and ensures that anyone employed by him or acting on his behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Services.

13.10 Not used

13.11 If required by any statute to obtain express authorisation from the *Employer* before taking any action, the *Provider* obtains such authorisation.

13.12 Not used

13.13 Not used

13.14 Not used

13.15 Subject to the *Employer's* obligations under the Freedom of Information Act 2000 and related statutory obligations (see clause 107 post), the *Employer* does not disclose any confidential or proprietary information provided by the *Provider* other than in accordance with the administration of this contract.

14 The *Service Manager*

14.1 Acceptance by the *Service Manager* of:

- a communication from the *Provider*;
- any design or work carried out by the *Provider*; or

- the key persons named in the Quality Plan or any replacement persons;

does not change the *Provider's* responsibility to Provide the Services or his liability for his design.

- 14.2 The *Service Manager*, after notifying the *Provider*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Service Manager* in this contract includes an action by his delegate.
- 14.3 The *Service Manager* may give an instruction to the *Provider* which changes the Service Information.
- 14.4 The *Service Manager* may at any time issue an instruction changing the Public Realm. Where the change results from a Major Scheme, the instruction takes effect on the date the relevant works are completed. In other cases, unless the Parties agree otherwise, the instruction takes effect on the date stated or the date three months after it is received, whichever is later.
- 14.5 The *Employer* may replace the *Service Manager* after he has notified the *Provider* of the name of the replacement.

15 Not used

16 Access to and use of the Public Realm and other areas

- 16.1 The *Employer* allows access to and use of each part of the Public Realm to the *Provider* as necessary to Provide the Services, subject to any limitations set out in the Public Realm Asset Information. Access and use is allowed on or before the access date.
- 16.2 The *Provider* liaises as necessary with the *Employer* and Others responsible for the management and maintenance of roads and systems adjacent to or serving the Public Realm or otherwise as stated in the Service Information in order to enable the *Provider* to Provide the Services. The *Employer* assists the *Provider* in liaising with Others as required.

17 Risk management, progress meetings and early warning

- 17.1 During the Mobilisation Period the *Provider* carries out (with assistance from the *Employer*, the *Service Manager* and any relevant *Subcontractors* engaged in relation to the Services as considered appropriate) a risk assessment to identify:
- 17.1.1 potential risks relating to the carrying out of the Services during the first Financial Year of the Contract Period (and thereafter for each ensuing Financial Year during the Contract Period) the occurrence of which are capable of adversely affecting the time for completion, cost or quality of the Services during that Financial Year;
- 17.1.2 the probability of these risks occurring;
- 17.1.3 a financial estimate of the most likely consequences of each risk occurring; and
- 17.1.4 (without prejudice to the risk allocation under, and terms of, this contract) those risks that are within the control of, or are best managed by, the

Employer, the *Service Manager* or the *Provider* or any other relevant *Subcontractors* engaged in relation to the relevant Services (provided that such risk allocation does not change the contractual risk allocation under this contract);

and the results of this risk assessment will be included in a risk register produced by the *Provider* which will become the "Risk Register" for the purposes of this contract for the particular Financial Year.

- 17.2 Throughout each Financial Year, in collaboration with the Operations Board and with assistance from the *Employer*, the *Service Manager* and any other relevant *Subcontractors* engaged in relation to the Services as considered appropriate, the *Provider* carries out further risk assessments and regularly reviews and updates the Risk Register at monthly intervals (or such other intervals as may be agreed by the Parties from time to time) in relation to:
- 17.2.1 any new risks that have arisen since the date of the last review;
 - 17.2.2 the steps taken to prevent/mitigate previously identified risks;
 - 17.2.3 risks which have been successfully prevented/mitigated (which can be removed from the Risk Register); and
 - 17.2.4 (without prejudice to the risk allocation under, and terms of, this contract) the prioritisation of all continuing risks and agreement of an action plan in respect of, and risk owners for, all risks prioritised as serious risks.
- 17.3 In addition to, or as part of, any risk reduction meetings in accordance with clause 17.8, the *Provider* or the *Service Manager* arrange regular meetings to review the Risk Register in accordance with clause 17.2.
- 17.4 Unless otherwise agreed, the *Provider* and the *Employer* operate a similar procedure to that set out in this clause 17 in relation to the carrying out of Services in relation to individual Service Orders in order to produce a Service Order Risk Register for the relevant works and/or services comprised in the relevant Service Order.
- 17.5 The *Provider* arranges regular progress meetings at monthly intervals (or at such other intervals as may be agreed from time to time by the Parties) with the Operations Board to report on progress in relation to individual Service Orders and Schemes and generally in relation to the performance of the Services and the actual and estimated further cost of Providing the Services during the relevant Financial Year.
- 17.6 Throughout the Contract Period the *Provider* seeks to identify and mitigate potential risks affecting the delivery of the Services. The *Provider* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could:
- 17.6.1 increase the cost of Providing the Services;
 - 17.6.2 affect the progress or performance of the Services;
 - 17.6.3 impair the performance of the Public Realm in use; or

- 17.6.4 result in the aggregate of all amounts due under this contract in relation to a Financial Year exceeding the relevant Services Budget and/or the aggregate of all Capital Payments exceeding the Capital Services Budget and/or the aggregate of all Revenue Payments exceeding the Revenue Services Budget for that Financial Year (as indicated by any Budget Report).
- 17.7 If appropriate, the *Service Manager* instructs the *Provider* to enter early warning matters in the Risk Register or (if applicable to a particular Scheme) in the relevant Service Order Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.
- 17.8 If an early warning notice is issued in accordance with clause 17.6, the *Provider* discusses the issue that has arisen, or may arise, with the *Service Manager* and provides a Budget Report Action Plan to the *Service Manager* within 10 Working Days.
- 17.9 If the *Provider* fails to issue an early warning notice in accordance with clause 17.6 and/or fails to provide a Budget Report Action Plan in accordance with clause 17.8 the *Provider* is not entitled to recover any additional payment in respect of the risk that has arisen.
- 17.10 If either the *Service Manager* or the *Provider* considers that a matter notified is sufficiently important to require a risk reduction meeting, they may instruct the other to attend. Either the *Service Manager* or the *Provider* may instruct other people to attend if the other agrees.
- 17.11 At a risk reduction meeting those who attend co-operate in:
- 17.11.1 making and considering proposals for how the effect of the registered risks can be avoided or reduced;
 - 17.11.2 seeking solutions that will bring advantage to all those who will be affected;
 - 17.11.3 deciding on the actions which will be taken and who, in accordance with this contract, will take them; and
 - 17.11.4 deciding which risks have now been avoided or have passed and can be removed from the Risk Register or (as the case may be) the relevant Service Order Risk Register.
- 17.12 The *Provider* takes all reasonable steps to minimise risks that could have an adverse effect on the cost, time to complete or quality of the Services and reports to the *Service Manager* at, or before, each progress meeting on the nature, likelihood and possible effect of such areas of potential risk.
- 17.13 If appropriate, the *Provider* revises the Risk Register or (as the case may be) the relevant Service Order Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register or (as the case may be) the relevant Service Order Risk Register to the *Service Manager*. If the decision needs a change to the Service Information and/or to any relevant Service Order, the *Service Manager* instructs the change as soon as practicable after he receives the revised Risk Register or the relevant Service Order Risk Register.

18 Ambiguities and inconsistencies

- 18.1 The *Service Manager* or the *Provider* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Employer* resolves the ambiguity or inconsistency [taking into account clause 12.3 so far as it applies](#).
- 18.2 The *Provider* notifies the *Service Manager* as soon as he considers that the Service Information requires him to do anything which is illegal or impossible. If the *Service Manager* requests, the *Provider* submits proposals for overcoming the illegality or impossibility to the *Service Manager* within the *period for reply*. The *Employer* decides how the illegality or impossibility is to be overcome and what (if any) changes are required to the Service Information and the *Service Manager* notifies the *Provider* of the *Employer's* decision.

19 Operation and management of the Services

The Strategic Partnering Board and the Operations Board

19.1 Strategic Partnering Board

- 19.1.1 The Strategic Partnering Board comprises 3 representatives of the *Employer*, two being executive members or holders of senior posts within the *Employer* with a direct connection to the provision of the Services and one being the *Service Manager*, together with 3 representatives of the *Provider*, two being directors or senior managers of the *Provider* having responsibility for the delivery of the Services but not being involved in the day to day provision of them and one being the *Provider's Representative*. Others may be invited by the Employer or the Provider to attend meetings of the Strategic Partnering Board to assist with decision making. For the avoidance of doubt, any such Others shall not be entitled to vote on the business of the Strategic Partnering Board.
- 19.1.2 No later than one month prior to the *access date*, the *Employer* and the *Provider* each appoint their respective representatives to the Strategic Partnering Board and ensure that the designated representatives are able to attend all meetings of the Strategic Partnering Board or that one or more of the designated alternatives set out in the table attends in their place. The first appointees and the designated alternatives are set out in the Contract Data. The replacement of the designated representatives takes place only with the prior consent of all other members of the Strategic Partnering Board (such consent not to be unreasonably withheld).

19.2 The Strategic Partnering Board is responsible for:

- 19.2.1 giving strategic direction to the management of the Public Realm and the achievement of the Employer's Objectives;
- 19.2.2 reviewing and assessing the *Provider's* overall performance in performing the Services;
- 19.2.3 reviewing and approving the composition of the Forward Programme and the Annual Plan;

- 19.2.4 making any necessary representations regarding the Services Budget to be included in the Forward Programme;
 - 19.2.5 giving direction for, reviewing and approving, all key tasks for management of the Public Realm including any relevant asset management plans;
 - 19.2.6 promoting continuous improvement by challenging the performance of the Services and the delivery of the Employer's Objectives;
 - 19.2.7 reviewing any risks identified in the Risk Register which are identified as strategic risks;
 - 19.2.8 agreeing priorities and targets and year-on-year improvements in relation to the Strategic Performance Indicators;
 - 19.2.9 promoting the development of an aligned, shared culture and behaviour based on a "one-team approach" and promoting and reinforcing a shared culture and behaviour throughout the Contract Period;
 - 19.2.10 providing leadership, commitment and motivation for a successful partnership between the *Employer* and the *Provider*;
 - 19.2.11 approving any variations to the Revenue Services Budget or the Capital Services Budget (as the case may be), and considering any projected overspends and any mitigating activities; and
 - 19.2.12 considering and deciding any issues referred to it by the Operations Board.
- 19.3 For the avoidance of doubt, the Strategic Partnering Board does not by itself have any power to vary the terms of this contract. The Strategic Partnering Board meets once every 3 months and whenever the *Employer* considers necessary. The Strategic Partnering Board provides the forum for the discussion and agreement of the Forward Programme and Annual Plan with the *Provider* leading in relation to Schemes, works and services necessary to achieve the Employer's Objectives and the *Employer* providing necessary input in relation to the prioritisation of Schemes, works and services in order to meet the needs of the local community, consistent with the achievement of the Employer's Objectives.
- 19.4 Decisions of the Strategic Partnering Board are made by majority vote of the representatives of the Parties attending each meeting, provided that two representatives of each Party are present. Subject as set out in clause 21.5.2.3 in the event of a tied vote, the *Employer's* representatives have a casting vote.
- 19.5 **The Operations Board**
- 19.5.1 The Operations Board comprises 3 representatives from each Party. On the *Provider's* side, the Provider's Representative is one representative together with another representative involved in the management of the delivery of the Services. On the *Employer's* side, the *Service Manager* is one representative together with another representative involved in the monitoring of the *Provider's* performance.

- 19.5.2 Prior to the Contract Date, the *Provider* and the *Employer* each shall appoint 3 representatives to the Operations Board and ensure that the designated representatives are able to attend all meetings of the Operations Board or that one or more of the designated alternatives set out in the table attends in their place. The first appointees and the designated alternatives are set out in the Contract Data. The replacement of the designated representatives takes place only with the prior consent of all other members of the Operations Board (such consent not to be unreasonably withheld).
- 19.6 The Operations Board is responsible for:
- 19.6.1 monitoring and reviewing the performance of the *Provider* in the delivery of the Services, in particular, the performance of the *Provider* against the Operational Performance Indicators and the progress against the Service Order Plans;
 - 19.6.2 reviewing the risk assessments carried out in accordance with clause 17.1 and reviewing and managing the risks as set out in the Risk Register;
 - 19.6.3 making recommendations and observations to the *Provider* and the *Employer* regarding the operational performance of the *Provider* and the ways in which performance needs to be, or might be, improved;
 - 19.6.4 liaising with the Strategic Partnering Board and sharing the results of its monitoring of the *Provider's* performance of the Services with a view to identifying any lessons that can be learnt or practices that can be improved upon;
 - 19.6.5 considering and providing recommendations to the Strategic Partnering Board on budget and programme issues to meet the Employer's Objectives;
 - 19.6.6 making recommendations to the Strategic Partnering Board regarding the prioritisation of all revenue and capital spending including the aim to move from reactive to planned maintenance;
 - 19.6.7 monitoring the effectiveness and implementation of the shared culture and behaviours, considering proposals for improvement, and making recommendations to the Strategic Partnering Board.
- 19.7 The Operations Board meets monthly and otherwise as required by the *Employer* to consider and review the delivery of the Services.
- 19.8 All members of the Strategic Partnering Board and the Operations Board act in a spirit of mutual trust and co-operation.

2 THE PROVIDER'S MAIN RESPONSIBILITIES

20 The Provider's main responsibilities

20.1 Providing the Services

20.1.1 The *Provider* Provides the Services so as not to cause, or contribute to, a breach of the Employer's Policies, and in accordance with the Service Information, the Method Statements, the relevant Annual Plan and any Service Orders.

20.1.2 Subject to clause 210, the *Provider* carries out all Services which are not Major Schemes which are:

20.1.1.1 identified in the relevant Annual Plan; or

20.1.1.2 contained within a Service Order; or

20.1.1.3 otherwise agreed between the *Provider* and the *Service Manager*.

20.1.3 In Providing the Services, the *Provider* uses reasonable endeavours to minimise the interference caused to the Public Realm and the activities taking place on or in it (as the case may be) provided that the *Provider* is not responsible for the acts or omissions of the *Employer* or Others save where any such act or omission arises as a result of the *Provider* failing to Provide the Services in accordance with this contract.

20.1.4 The *Provider* continually seeks to carry out the Services and maintain the Public Realm in a manner that achieves greater value for money for the *Employer*, year on year, by reducing costs and delivering the Services more efficiently whilst seeking to maximise the achievement of the Employer's Objectives, year on year.

20.1.5 If the *Provider* considers that any requirements of the Service Information should be amended so as to:

20.1.1.4 reduce the cost of carrying out the relevant Services; and/or

20.1.1.5 deliver better value for money, without adversely affecting the achievement of the Employer's Objectives,

the *Provider* notifies the *Employer* accordingly and both Parties meet (via the Operations Board, if appropriate) to discuss and agree any necessary changes to, or relaxations of, the Service Information. The *Service Manager* gives an instruction in respect of any agreed changes to the Service Information and any such changes are documented in writing.

20.1.6 The *Provider* corrects or otherwise makes safe all defects in accordance with the timescales set out in the Service Information.

21 Planning the delivery of the Services

21.1 The Forward Programme

- 21.1.1 The *Provider* draws up, as soon as practicable after the Contract Date, a Forward Programme setting out the priorities for the provision of the Services over the initial four years of the Contract Period.
- 21.1.2 The Forward Programme is considered and reviewed by the Strategic Partnering Board on an annual basis. Following the approval of an Annual Plan in accordance with clause 21.2, the Forward Programme is reviewed and updated as necessary to take account of the approved Annual Plan. The Provider takes account of all requirements of, and comments by, the Strategic Partnering Board in relation to the Forward Programme.
- 21.1.3 The *Provider* continually reviews and updates the Forward Programme in consultation with the Strategic Partnering Board on a rolling basis so as to have a Forward Programme looking forward for the next period of four years starting from the beginning of each Financial Year.
- 21.1.4 As part of the Forward Programme, the *Provider* takes the lead in developing the proposed Services Budget for the same four year period in accordance with:
- 21.1.4.1 the relevant guidance issued by the *Employer* from time to time; and
 - 21.1.4.2 the requirement for the *Provider* to work with the *Employer* to achieve Cashable Savings of 3% in the relevant Financial Year as against the projected total spend by the *Employer* on all of the Services in the previous Financial Year (or whatever equivalent efficiency measure that may be placed upon the *Employer* by central government or reasonably agreed between the *Employer* and the *Provider* during the Contract Period).
- 21.1.5 The *Provider*, in conjunction with the Strategic Partnering Board, reviews, refines and (if necessary) re-works the proposed Services Budget to be included in the Forward Programme in order to meet the overall budgetary needs of the *Employer* from time to time.
- 21.1.6 The Forward Programme is prepared in accordance with the Service Information.

21.2 The Annual Plan

- 21.2.1 The *Provider* takes the lead in drawing up the Annual Plan, in consultation with the Strategic Partnering Board. As soon as practicable after the Contract Date, the *Provider* prepares an Annual Plan in respect of the first Financial Year of the Contract Period setting out the programme of the Services to be provided during that Financial Year. Where Services are to be provided in relation to a Scheme that will continue beyond the end of the relevant Financial Year, the Annual Plan

identifies the Services to be provided during that Financial Year in relation to that Scheme.

21.2.2 During the course of each Financial Year the *Provider* takes the lead in drawing up an Annual Plan for the following Financial Year so that a new Annual Plan for the next Financial Year is prepared and approved by the Strategic Partnering Board prior to the start of the next Financial Year.

21.2.3 Each Annual Plan is approved by the Strategic Partnering Board prior to the start of the Financial Year to which it relates. Grounds for not approving an Annual Plan are that:

- the Annual Plan will not meet the Employer's Objectives; or
- the delivery of the Annual Plan will exceed the Services Budget and/or the delivery of the Services set out in the Annual Plan that will be treated as Revenue Services or Capital Services (respectively) exceed the relevant Revenue Services Budget or Capital Services Budget (respectively); or
- the Annual Plan does not sufficiently demonstrate that it is capable of delivering on the target of Cashable Savings of 3% in the relevant Financial Year as against the projected total spend by the *Employer* on all of the Services in the previous Financial Year (or whatever equivalent efficiency measure that may be placed upon the *Employer* by central government or reasonably agreed between the *Employer* and the *Provider* during the Contract Period); or
- the Annual Plan is not in accordance with the Service Information; or
- the Annual Plan does not address priorities for the relevant Financial Year agreed by the Strategic Partnering Board.

Following approval in accordance with this clause, the *Service Manager* approves any final version of the Annual Plan reflecting matters approved by the Strategic Partnering Board in accordance with clause 21.3.3.

21.2.4 The Annual Plan is based on, and represents a development of, the Forward Programme.

21.3 Details to be contained in the Annual Plan

21.3.1 The Annual Plan seeks to set out details of the Services to be provided during the relevant Financial Year in order to best meet the achievement of the Employer's Objectives within the Services Budget whilst demonstrating value for money for the relevant budgetary spend. The *Provider* develops the Annual Plan in accordance with clause 21.2. The *Provider* submits the final version of the Annual Plan (in accordance with clause 21.2.3 above) and any amended version during the course of any Financial Year to the *Service Manager* for acceptance.

21.3.2 The *Provider* shows on each Annual Plan which he submits for acceptance:

- the Financial Year to which the Annual Plan relates;
- the estimated Defined Cost plus Fee, plus any risk contingency in relation to each activity and/or Scheme shown in the Annual Plan so as to provide a complete breakdown of the proposed expenditure against the Revenue Services Budget and the Capital Services Budget respectively;
- the *Provider's* proposals for working with the *Employer* to achieve the target of Cashable Savings of 3% in the relevant Financial Year as against the projected total spend by the *Employer* on all of the Services in the previous Financial Year (or whatever equivalent efficiency measure that may be placed upon the *Employer* by central government or reasonably agreed between the *Employer* and the *Provider* during the Contract Period);
- the estimated Local Overhead Cost (including, for the avoidance of doubt, all property and ICT costs payable by the *Provider* to the *Employer* in connection with the provision of the Services);
- the order and timing of the work of the *Employer* and Others as last agreed with them by the *Provider*;
- the dates when, in order to Provide the Services in accordance with the Annual Plan, the *Provider* will need:
 - access to the Public Realm;
 - acceptances;
 - Materials, equipment and other things to be provided by the *Employer*, and
 - information from Others.
- which part or parts of the Services will be carried out as Target Cost Services and/or Lump Sum Services and/or Cost Reimbursable Services and
- other information which the Service Information requires the *Provider* to show on an Annual Plan submitted for acceptance.

21.3.3 Within 20 Working Days of the *Provider* submitting an Annual Plan to him for acceptance, the *Service Manager* either accepts the Annual Plan or notifies the *Provider* of his reasons for not accepting it. Reasons for not accepting an Annual Plan are that:

- it does not reflect the matters approved by the Strategic Partnering Board in accordance with clause 21.2.3;
- the *Provider's* plans which it shows are not practicable;
- it does not show the information which this contract requires;

- it does not represent the *Provider's* plans realistically; or
- it does not comply with the Service Information.

21.4 Provision of budgetary information

- 21.4.1 The *Employer* provides details of the estimated Services Budget (and of the breakdown of the estimated Services Budget between the estimated Revenue Services Budget and the estimated Capital Services Budget) for the forthcoming Financial Year and for the ensuing 3 Financial Years comprised in the Forward Programme and updates this information as appropriate from time to time. The *Employer* provides details of the actual Services Budget and of the breakdown of the Services Budget between the Revenue Services Budget and the Capital Services Budget as soon as practicable and in any event, not less than 4 weeks prior to the start of each Financial Year.
- 21.4.2 The *Provider* takes into account the estimated Services Budget (and his breakdown into the estimated Revenue Services Budget and the Capital Services Budget) referred to in clause 21.4.1 when preparing the Forward Programme and the Annual Plan.
- 21.4.3 For the avoidance of doubt, the *Employer* can only apply the Capital Services Budget for the carrying out of Capital Services.

21.5 Changes to the Annual Plan during a Financial Year

21.5.1 Discussion of actual or proposed changes to the Services Budget

The *Employer* informs the *Provider* of any actual or proposed changes to the Revenue Services Budget and/or to the Capital Services Budget during any Financial Year. The Parties discuss any such changes with a view to agreeing what changes are, or may be, necessary to the Services set out in the Annual Plan and to the relevant Capital Services Target Cost and/or the relevant Revenue Services Target Cost to reflect the change in the Revenue Services Budget and/or Capital Services Budget. The changes may increase or reduce the Services to be provided by the *Provider* in the relevant Financial Year. The Parties act reasonably and with a view to mitigating the effects of any actual or proposed reduction in the Services Budget. The consequences of any actual changes in the Services are dealt with in accordance with clauses 21.5.2, 21.5.3 or 28.

21.5.2 Changes to Services in the Annual Plan which are not subject of an issued Service Order

- 21.5.2.1 The *Employer* (acting via the *Service Manager*) may instruct changes in the Services set out in the Annual Plan which are not the subject of an issued Service Order. The changes may increase or reduce the Services to be provided by the *Provider* in the relevant Financial Year.
- 21.5.2.2 If the changes will increase the Services to be provided by the *Provider* within the relevant Financial Year and the *Provider* reasonably considers that the additional Services will not be capable of completion within the relevant Financial Year, the

Provider discusses this with the *Employer*. Unless the Parties agree that the change can be dealt with in accordance with clause 21.5.2.3, the *Employer* issues an additional Service Order for such additional services, which is dealt with in accordance with clause 28.

21.5.2.3 Subject to the operation of clause 21.5.2.2, both Parties act reasonably and with a view to mitigating the effects of any increase or reduction in the Services and use their respective reasonable endeavours to agree any necessary changes to the Capital Services Target Cost, the Revenue Services Target Cost. The Capital Services Lump Sum and/or to the Revenue Services Lump Sum (as the case may be). If the Parties fail to agree the consequences of the change within 4 weeks of the change (or whatever alternative period may be agreed), the matter is decided by the Strategic Partnering Board or, if the Strategic Partnering Board does not reach a decision at the first meeting to discuss the matter (the *Employer's* representatives on the Strategic Partnering Board not having a casting vote in the event of a tied vote in relation to any such decision), either party may seek resolution of the matter in accordance with the Dispute Resolution Provisions.

21.5.3 Changes to Services in the Annual Plan which are the subject of an issued Service Order

21.5.3.1 The *Employer* (acting via the *Service Manager*) may instruct a change to the Services set out in an issued Service Order. The change may increase or reduce the Services to be provided by the *Provider* in the relevant Financial Year.

21.5.3.2 If the change will increase the Services to be provided by the *Provider* within the relevant Financial Year and the *Provider* reasonably considers that the additional Services will not be capable of completion within the relevant Financial Year, the *Provider* discusses this with the *Employer*. Unless the Parties agree that the change can be dealt with in accordance with clause 21.5.3.3, the *Employer* issues an additional Service Order for such additional services in accordance with clause 28.

21.5.3.3 Subject to the operation of clause 21.5.3.2, the consequences of any change to an existing Service Order are dealt with as a compensation event in accordance with clause 60.

21.5.4 Recording changes to the Annual Plan, any existing Service Order or the Capital or Revenue Services Target Costs

Any changes to the Annual Plan, the Capital Services Target Cost, the Revenue Services Target Cost, the Capital Services Lump Sum and/or to the Revenue Services Lump Sum or any existing Service Order are recorded in writing.

- 22.1 The *Provider* carries out all Services required by this contract in accordance with:
- 22.1.1 all relevant statutory provisions;
 - 22.1.2 Good Industry Practice;
 - 22.1.3 in a good and workmanlike manner; and
 - 22.1.4 to the quality and standards specified in the Service Information.
- 22.2 Where in the provision of any of the Services the *Provider* is providing any professional services, the *Provider* exercises the degree of skill, care and diligence reasonably to be expected from an appropriately qualified and competent professional person holding himself out as competent to perform such services.
- 22.3 The *Provider* obtains approval of his design from the *Employer*, the *Service Manager* or Others where required by the Service Information and within the timescales stated in the Service Information.

23 Authorised Functions

- 23.1 The *Employer* authorises the *Provider* to exercise the Authorised Functions in respect of the Area Network for the Contract Period pursuant to the Contracting Out (Highway Functions) Order 1995.
- 23.2 The *Provider* exercises the Authorised Functions in accordance with the principles of administrative law governing the conduct of the *Employer*.
- 23.3 The *Provider* indemnifies the *Employer* against claims, proceedings, compensation and associated costs arising from the wrongful exercise or failure to exercise any of the Authorised Functions by the *Provider*.
- 23.4 The *Employer* may at any time withdraw or revoke the *Provider's* authorisation to exercise any Authorised Function.
- 23.5 If an authorisation to exercise any Authorised Function expires or is withdrawn or revoked by the *Employer*, the *Provider* co-operates with the *Employer* as necessary to facilitate a transfer to the *Employer* or a replacement nominated by the *Employer*.
- 23.6 The *Provider* informs any interested third parties that he is authorised to exercise the Authorised Functions.
- 23.7 The *Provider* does not subcontract or delegate to any other person the exercise of any Authorised Function.

24 People

- 24.1 The *Provider* either employs each key person named to do the job stated in Part 2 of the Contract Data or employs a replacement person who has been accepted by the *Service Manager*. The *Provider* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that his relevant

qualifications and experience are not as good as those of the person who is to be replaced.

24.2 Prior to engaging any person to provide the Services, the *Provider* undertakes:

24.2.1 security and other relevant statutory or regulatory checks relevant to the Services being provided in respect of Staff and

24.2.2 training of Staff

as specified in the Service Information.

24.3 The *Service Manager* may (acting reasonably), having stated his reasons, instruct the *Provider* to remove an employee or other person engaged in Providing the Services. The *Provider* immediately, or within such other time period as the *Service Manager* specifies, arranges that the employee or person has no further connection with Providing the Services.

25 Co-operation with the *Employer* and Others

25.1 The *Provider* co-operates with Others in obtaining and providing information which they need in connection with the Public Realm.

25.2 The *Provider* co-operates with Others and provides access to the Public Realm and facilities for them as stated in the Service Information or as instructed by the *Service Manager* from time to time.

25.3 The *Employer*, the *Service Manager* and the *Provider* co-operate in carrying out the actions set out in the Risk Register.

25.4 The *Provider* co-operates with Others appointed by the *Employer* to manage and carry out works on the Public Realm. The *Provider* provides these Others with information about the Services and attends meetings as requested by these Others to discuss any issues that relate to the carrying out of works on the Public Realm.

25.5 As set out in the Service Information, the *Provider* liaises with the Emergency Services and provides information to them as required to enable them to perform their duties.

25.6 The *Provider* is responsible for liaising with, and managing all work to be carried out by, all relevant statutory undertakers and Others in relation to the provision of the Services.

25.7 In accordance with the OJEU Notice relating to the award of this contract, other contracting authorities may join in and/or procure Services under this contract. In such an event or events, the *Employer* may either procure the provision of Services on behalf of one or more of the other contracting authorities or request the relevant contracting authorities to issue Service Orders direct to the *Provider*, in either case, the *Employer* or the relevant other contracting authority complies with the terms of this contract and the *Provider* provides separate invoices in respect of such Services provided in favour of the relevant contracting authority or authorities. The parties will consider any changes to processes and practices necessary to give effect to any such arrangements provided always that any

change which involves the actual or potential transfer of staff to the *Provider* may only take place with the written consent of the *Provider*.

26 Subcontracting

- 26.1 If the *Provider* subcontracts any part of the Services, he is responsible for Providing the Services as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Provider's*.
- 26.2 The *Provider* submits the name of each Subcontractor to the *Service Manager* before the Subcontractor commences work.
- 26.3 The conditions of contract for each subcontract are to include:
- 26.3.1 provisions embodying the principles of supply chain management set out in the Quality Plan;
 - 26.3.2 (subject to the operation of clause 26.6) an obligation on the Subcontractor to work with the *Provider* to assist the *Employer* to achieve the *Employer's Objectives* and to seek continual improvement in the delivery of the Services;
 - 26.3.3 (subject to the exceptions set out in clause 26.6) an obligation on the Subcontractor to keep Open Book Cost Records and to make the records available to the *Provider* and the *Employer* and his representatives (including the *Service Manager*) on request;
 - 26.3.4 obligations substantially similar to those in clause 29;
 - 26.3.5 an obligation on the Subcontractor to ensure that title in Equipment and Materials passes to the *Provider* not later than when the *Provider* pays the Subcontractor for them;
 - 26.3.6 a term requiring (at the *Employer's* option) the novation of the subcontract to the *Employer* or an Incoming *Provider* following the termination of this contract;
 - 26.3.7 a term requiring the Subcontractor to assist and co-operate in responding to any requests received by the *Employer* in relation to FOIA or EIR;
 - 26.3.8 a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation; and
 - 26.3.9 a term requiring the *Provider* to pay the Subcontractor within a specified period not exceeding 20 Working Days from receipt by the *Provider* of a valid application for payment from the Subcontractor.
- 26.4 The *Service Manager* may(acting reasonably), having stated his reasons, instruct the *Provider* to remove a Subcontractor. The *Provider* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with this contract.
- 26.5 If the *Provider* subcontracts any part of the Services to an Associated Company, the Defined Cost of the work subcontracted is assessed in accordance with

Schedule 1 as if the work had not been subcontracted unless otherwise agreed by the *Service Manager*.

26.6 The *Provider* seeks to engage all Subcontractors on terms that require them to keep Open Book Cost Records. Exceptions to this requirement are:

26.6.1 Subcontractors who carry out less than £10,000 of work (net of VAT) in any Financial Year;

26.6.2 Subcontractors who the *Employer* has agreed (following consultation with the *Provider*) are not required in any Financial Year to provide the above information; or

26.6.3 Subcontractors who are not required to provide Open Book Cost Records during the period agreed in accordance with clause 26.7.

26.7 The *Provider* provides reasonable support to Subcontractors who are not presently able to provide Open Book Cost Records and do not fall within the exceptions in the first two bullet points in clause 26.6 to enable them to provide this information. The *Provider* discusses each case with the *Employer* and provides details of:

- the support being provided;
- the date by which the relevant Subcontractor should be able to provide the relevant cost records (not exceeding 6 months); and
- any other information reasonably required by the *Employer*.

The *Employer* (acting reasonably) considers the above details and agrees the date by which the relevant Subcontractor will be expected to provide Open Book Cost Records. Up to this date, the relevant Subcontractor shall not be required to provide Open Book Cost Records.

26.8 Subject to the exceptions set out in clause 26.6, the *subcontracted fee percentage* is reduced in relation to the work carried out by such Subcontractors who do not provide Open Book Cost Records by 25%.

27 Health and safety

27.1 The *Provider* acts in accordance with the health and safety requirements stated in the Service Information.

27.2 The *Provider* assists the *Employer* as required in order to fulfil his duties as a “client” under the CDM Regulations.

27.3 The *Provider* holds the health and safety file (being the file in respect of the **Public Realm** containing the information required by regulation 20(2)(e) of the CDM Regulations) on behalf of the *Employer* and keeps it up to date and available for inspection by any person who may need to refer to the information contained in it (including any prospective tenderer).

27.4 The *Provider* complies with all health and safety obligations applicable to the Services by virtue of any legislation from time to time in force.

- 27.5 The *Employer* provides to the *Provider* copies of any health and safety information in his possession relating to any works being carried out by the *Provider*.

28 Issue of Service Orders

28.1 Issue of Service Orders in relation to the Services set out in the Annual Plan

28.1.1 In consultation with the Strategic Partnering Board, the *Service Manager* issues Service Orders for approximately 80% of the Revenue Services Budget and 50% of the Capital Services Budget as soon as possible before the start of the relevant Financial Year (if possible) and in any event within 4 weeks of the commencement of each Financial Year. It is intended that individual Service Orders will relate to multiple Schemes and/or services with a view to enabling the *Provider* to plan the delivery of the majority of the services comprised in the Annual Plan over the whole of the relevant Financial Year, rather than receiving Service Orders piecemeal throughout the Financial Year.

28.1.2 The *Service Manager* works closely with the *Provider* and the *Employer* via the Operations Board to manage the issue of Service Orders pursuant to this clause 28 for the remainder of the Capital Services Budget during the course of the Financial Year with the aim of ensuring the efficient provision of the Services to best meet the *Employer's* Objectives without exceeding the Services Budget.

28.2 Form and content of Service Orders and Service Order Plans

28.2.1 All Service Orders include:

28.2.1.1 a detailed description of the work and/or services comprised in the Service Order;

28.2.1.2 (where relevant) the elements of work and/or services comprised in a Scheme that are to be completed before the end of the relevant Financial Year;

28.2.1.3 details of the basis for payment in respect of the Service Order (i.e. whether the relevant services are Lump Sum, Target Cost or Cost Reimbursable Services);

28.2.1.4 details of any activities within the ambit of the relevant Service Order that will be treated as compensation events; and

28.2.1.5 (where required by the relevant Service Order) a Service Order Plan setting out the *Provider's* programme for the carrying out of the works and/or services comprised in the relevant Service Order (for the avoidance of doubt, a Service Order Plan does not show a Service Order Completion Date extending beyond the end of the relevant Financial Year unless expressly agreed by the *Employer*).

28.2.2 The *Service Manager* consults the *Provider* about the contents of a Service Order before he issues it.

28.2.3 The *Provider* starts work or Provides the Services included in the Service Order with effect from the date of the issue of the relevant Service Order. The *Provider* does the work and/or provision of the services so that Service Order Completion is on or before the Service Order Completion Date. No Service Order is issued after the end of the Contract Period.

28.2.4 The *Provider* submits any Service Order Plan required by a Service Order to the *Employer* for acceptance.

28.2.5 The *Provider* shows on any Service Order Plan which he submits for acceptance:

28.2.5.1 the Scheme to which the Service Order Plan relates;

28.2.5.2 the order and timing of any works and/or services required to be undertaken by the *Employer* and/or Others as agreed with the *Employer*;

28.2.5.3 Provision for:

- time risk allowances;
- health and safety requirements;
- the procedures set out in this contract;
- the dates when, in order to Provide the Services in accordance with the relevant Service Order, the *Provider* will need:
 - (i) access to the Public Realm;
 - (ii) acceptances;
 - (iii) any things to be provided by the *Employer*, and
 - (iv) information, approvals and consents from Others.

28.2.6 Within 2 weeks of the *Provider* submitting a Service Order Plan to him for acceptance, the *Service Manager* either accepts the Service Order Plan or notifies the *Provider* of his reasons for not accepting it. Reasons for not accepting a Service Order Plan are that:

28.2.6.1 the *Provider's* plans which it shows are not practicable;

28.2.6.2 it does not show the information which this contract requires;

28.2.6.3 it does not represent the *Provider's* plans realistically; or

28.2.6.4 it does not comply with the information contained within the Service Order.

28.3 Issue of Service Orders in respect of Non-Core Services

The *Employer* instructs the carrying out of Non-Core Services by the issue of relevant Service Orders. Before issuing any such Service Orders, the *Employer* discusses with the *Provider* the inclusion of the relevant Non-Core Services as part of the Services. The *Employer* may only instruct the carrying out of Non-Core Services following agreement with the *Provider*. Once Non-Core Services are instructed as part of the Services, the expectation is that they will remain part of the Services and the *Provider* will perform his obligations under this contract on this basis, subject to the operation of clause 217.

29 Discrimination

- 29.1 The *Provider* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the [Equality Act 2010](#).
- 29.2 Where possible in Providing the Services, the *Provider* co-operates with and assists the *Employer* to satisfy his duty under the [Equality Act 2010](#) to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.
- 29.3 Where any employee or Subcontractor employed by the *Provider* is required to carry out any activity on the [Public Realm](#) or alongside the *Employer's* employees in any *Employer's* Premises, the *Provider* ensures that each such employee or Subcontractor complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.
- 29.4 The *Provider* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Provider* under the [Equality Act 2010](#) in connection with this contract and
- 29.4.1 provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- 29.4.2 attends (and permits a representative from the *Employer* to attend) any associated meetings,
- 29.4.3 promptly allows access to any relevant documents and information and
- 29.4.4 cooperates fully and promptly with the investigatory body, court or tribunal.
- 29.5 The *Provider* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the [Equality Act 2010](#) resulting from any act or omission of the *Provider*.

210 Major Schemes

- 210.1 It is intended that the delivery of Major Schemes will be dealt with separately from the provision of the Services and the Annual Plan will not be required to deal with the delivery of Major Schemes unless the *Provider* is providing Services in relation to them.

- 210.2 The *Employer* may, at his sole discretion, ask the *Provider* whether he is interested in the delivery of any Major Scheme, which at the *Employer's* option may be procured on the basis of this contract or a form of contract chosen by the *Employer*.
- 210.3 Following an approach from the *Employer* under clause 210.2, the *Provider* may opt either:
- 210.3.1 to tender for the Major Scheme (in which case the *Employer* may request the *Provider* to provide technical assistance to enable the *Employer* to prepare tender documentation for the Major Scheme); or
 - 210.3.2 to provide support to the *Employer* in respect of such Major Scheme (in which case the *Provider* will carry out services which include but are not limited to:
 - 210.3.2.1 the preparation of tender documentation;
 - 210.3.2.2 evaluation of tenders received from organisations which submit bids for the Major Scheme; and
 - 210.3.2.3 management of the delivery of the Major Scheme.)
- 210.4 The *Provider* provides services in relation to Major Schemes as requested by the *Employer* in any Service Order(s).

211 Provider's Representative

- 211.1 The *Provider* appoints the Provider's Representative to act on his behalf for the Contract Period. The Provider's Representative is the representative of the *Provider* in relation to the day to day operation of this contract. Any instructions or representations made or information needing to be passed by the *Employer* or the *Service Manager* under this contract (other than information communicated via the Strategic Partnering Board or the Operations Board) is communicated to the Provider's Representative.
- 211.2 The *Provider* submits the name, relevant qualifications and experience of any proposed replacement of the Provider's Representative to the *Service Manager* for acceptance. A reason for not accepting the person is that the relevant qualifications and experience are not as good as those of the person who is to be replaced.

212 Not used

213 Incidents

- 213.1 Where so required by the Service Information, the *Provider* obeys an oral instruction given by the Emergency Services following an Incident. The *Provider* notifies the *Service Manager* of an instruction given by the Emergency Services following an Incident at the earliest suitable opportunity.
- 213.2 Following an Incident the *Provider* cooperates and provides such support as may be necessary to Others in relation to any damage and/or works which may need to be carried out to the Public Realm and/or any adjacent property for which Others may from time to time be responsible for managing on behalf of the *Employer*.
- 213.3 Following an Incident, the *Service Manager* may instruct the *Provider* to:

- 213.3.1 stop Providing the Services (or part of them);
 - 213.3.2 remove Equipment and Materials from the Public Realm; and
 - 213.3.3 take such other actions as are necessary to enable the Public Realm (or part of it) to be brought back into use by the public and/or traffic as soon as possible and to minimise disruption to the free flow of traffic on traffic sensitive sections of the Area Network.
- 213.4 If the *Service Manager* instructs the *Provider* to stop Providing the Services (or part of them) following an Incident, the *Employer* may himself provide or procure from another provider such Services as are required to enable the Public Realm (or part of it) to be brought back into use by traffic and to minimise disruption to the free flow of traffic on traffic sensitive sections of the Area Network. The *Employer* bears the cost of such Services, unless the Incident was due to an act or default of the *Provider* or would not have occurred if the *Provider* had Provided the Services in accordance with this contract.

214 Mobilisation

- 214.1 Prior to agreement of the Mobilisation Plan, the *Provider* carries out mobilisation in readiness to provide the Services in accordance with his Method Statement set out in Schedule 10 and any requirements set out in the Service Information.
- 214.2 The *Employer* and the *Provider* work together during the Mobilisation Period to develop and agree a Mobilisation Plan. Once agreed, the *Provider* carries out mobilisation in accordance with the Mobilisation Plan.
- 214.3 The *Provider* is entitled to recover the Defined Cost plus his Fee in relation to his costs of mobilisation up to, but not exceeding the sum of £400,000. Only those costs identified in the agreed Mobilisation Plan will be allowable as the costs of mobilisation.

215 Transition Plan

- 215.1 The Transition Plan is prepared by the *Provider* and provided to the *Employer* no later than 10 Working Days after the *access date*. The *Employer* and the *Provider* work together to finalise and agree the Transition Plan.
- 215.2 The *Provider* carries out the transition activities in accordance with the agreed Transition Plan.
- 215.3 In respect of the transition activities, the *Provider* is only entitled to recover the costs identified and agreed in the Transition Plan.

216 Third party claims

- 216.1 The *Provider* will carry out safety inspections and repair all defects in the Public Realm in accordance with the agreed frequencies and timeframes set out in the Service Information. These will be set using a risk-based approach.
- 216.2 In the event of a claim against the *Employer*, the *Employer* will defend the claim supported by the relevant *Provider*. The *Employer* will be responsible if a successful claim results from an inadequate inspection/repair regime specified by the *Employer*

and the *Provider* will be responsible if a successful claim arises as a result of the *Provider's* failure to carry out inspections and repairs in accordance with the agreed levels of services.

217 Benchmarking

- 217.1 The *Employer* may benchmark all or part of the Defined Cost of Providing the Services with the equivalent cost incurred by other contractors providing similar services under similar contractual arrangements ('**Benchmarking**').
- 217.2 The *Employer* may carry out Benchmarking of all or part of the Defined Cost of Providing the Services starting in the second year of the Contract Period and not more frequently than once in any period of 12 months.
- 217.3 The *Provider* provides the *Service Manager* with access to accounts and records for Benchmarking purposes and demonstrates value for money and that his costs are competitive in the open market.
- 217.4 If the Benchmarking shows that the Defined Cost of Providing the Services (or any part of them) by the *Provider* exceeds by 5% or more costs that may reasonably be expected from other contractors providing similar services under similar contractual arrangements:
- 217.4.1 the *Provider* provides a detailed explanation of any difference (including meeting the requirements of the law) and
 - 217.4.2 the results are discussed by the Strategic Partnering Board.
- 217.5 If, as a result of Benchmarking, the Strategic Partnering Board decides that the Defined Cost of Providing the Services is more than may reasonably be expected and the *Provider* does not reduce this cost the *Service Manager* may instruct that:
- 217.5.1 the Services (or any part of them) are not provided by the *Provider* in the next Financial Year or
 - 217.5.2 the *Provider* stops Providing the Services (or any part of them) until he provides proposals to reduce cost which are accepted by the *Service Manager*.

218 Street Works Legislation

- 218.1 The *Provider* complies with the Street Works Legislation and keeps a record of all penalties and/or fines he incurs in the course of Providing the Services under the Street Works Legislation. The *Provider* provides reports to the *Employer* in relation to any such penalties and/or fines in accordance with the Service Information.
- 218.2 Notwithstanding clause 218.1, the *Employer* agrees that the *Provider* is not required to pay to the *Employer* any penalties and/or fines he incurs under the Street Works Legislation unless the *Employer* notifies the *Provider* that he is required to commence making such payments in accordance with clause 218.3.
- 218.3 Where the *Service Manager* considers the *Provider* is failing to comply with any requirements imposed on him by the Street Works Legislation and as a result the *Provider* should be incurring (either for the *Employer* or itself) an unacceptable level of penalties and/or fines under the Street Works Legislation (if such fines were

being levied against the *Provider* or the *Employer*) in comparison to the degree of compliance with the Street Works Legislation being achieved by Others working on or occupying the Public Realm such that the *Employer* considers (acting reasonably) that there is not parity of treatment between the *Provider* and any such Others (as a result of the *Provider* not actually having such fines levied against it), the *Service Manager* notifies the *Provider* that from the date of such notice the *Provider* will pay to the *Employer* all penalties and/or fines which the *Provider* incurs under the Street Works Legislation in Providing the Services and the Parties agree that such penalties and/or fines will be deducted from payments due to the *Provider* in accordance with clause 50.

- 218.4 The *Employer* will from the date of any notice issued under clause 218.3 continue to charge the *Provider* for all penalties and/or fines which the *Provider* incurs under the Street Works Legislation until the *Employer* (acting reasonably) is satisfied that the *Provider* is Providing the Services in accordance with the Street Works Legislation and/or that there is parity of treatment between the *Provider* and any Others working on or occupying the Public Realm and when the *Employer* is so satisfied he will notify the *Provider* and following the *Provider's* receipt of such a notice (unless the *Provider* receives a notice from the *Employer* under clause 218.3) no further monies in respect of any penalties and/or fines will be deducted from payments due to the *Provider* pursuant to clause 218.3.

219 Locality Working

- 219.1 The *Provider* works in partnership with all Localities within Herefordshire and Town and Parish Councils in developing the Forward Programme and the Annual Plan.
- 219.2 The *Provider*, as an integral part of the Services, administers the Parish Lengthsman Scheme and the P3 Scheme.
- 219.3 The *Employer* may audit the Parish Lengthsman Scheme and the P3 Scheme at any time to ensure, that:
- 219.3.1 the funding as allocated is being used to deliver services through the appropriate community body;
 - 219.3.2 there is compliance with accepted processes and standards; and
 - 219.3.3 value for money is being achieved.
- 219.4 The *Provider* will apportion a sum from the Services Budget each Financial Year to fund Locality Working which will comprise the Locality Working Budget. This will be allocated in its entirety from the part of the Services Budget that is identified as a Revenue Budget by the *Employer*. This sum shall be no less than that required to fund the Parish Lengthsman Scheme and the P3 Scheme.
- 219.5 Each Financial Year the Locality Working Budget that is in addition to the sum required to fund the Parish Lengthsman Scheme and the P3 Scheme will be shared amongst the Localities (in such proportion as may be directed by the *Employer*).
- 219.6 The *Provider*, as an integral part of the Services, administers the Locality Working Budget.
- 219.7 The *Employer* may audit the Locality Working Budget at any time to ensure, that: the funding as allocated is being used to deliver Services through the appropriate

community body; there is compliance with accepted processes and standards; and value for money is being achieved.

- 219.8 If the *Provider* proposes to change the level or proportion of the sum from the Services Budget each Financial Year to fund Locality Working, that proposal is discussed and agreed by the Strategic Partnering Board.
- 219.9 The *Employer* may instruct the *Provider* to reduce the proportion of the sum from the Services Budget each Financial Year to fund Locality Working or the funding for the Parish Lengthsman Scheme and the P3 Scheme; after having consulted with the relevant Localities, Town and Parish Councils in accordance with the Herefordshire Compact.
- 219.10 If the *Provider* is required by the *Employer* to reduce the proportion of the sum from the Services Budget each Financial Year to fund Locality Working or the funding for the Parish Lengthsman Scheme and the P3 Scheme by no more than 25% of the previous proportion in any one Financial Year, this requirement will not be considered as a compensation event.
- 219.11 The *Provider* provides all reasonable assistance to the *Employer* to comply with the obligations under the Localism Act 2010 and The Public Services (Social Value) Act 2012 that affect, or may affect, the *Employer* and which relate to, or have an effect on, the provision of the Services.

220 Customer care and dealing with complaints

The *Provider* provides a response service to enquiries, requests and complaints from the public, local councils, councillors, members of parliament and the emergency services relating to the Services and deals efficiently and effectively with customer complaints at all times. The *Provider* notifies the *Employer* of all complaints received and keeps the *Employer* informed of all dealings with members of the public and others referred to above with a view to allowing the *Employer* to deal direct where the *Employer* considers this may be more appropriate. The *Provider* responds to, and provides notice to the *Employer* in time to enable the *Employer* to respond to (should it wish to deal directly with the complaint), all complaints within the periods specified in the Service Information, or if no period is specified, a period of 10 Working Days (or whatever other period for responding to complaints is adopted by, and communicated to, the *Provider* during the Contract Period) from the date the complaint is made.

221 Operation of ICT systems

- 221.1 The *Provider* implements and maintains a computerised ICT system or systems in connection with the provision of the Services that is or are compatible with, and input relevant information records into, the Employer's ICT system or systems for:
- 221.1.1 monitoring the progress and cost of the Services and progress against the relevant Annual Plan;
 - 221.1.2 maintaining up to date records of the state and condition of the Public Realm; and
 - 221.1.3 the storage of all reports and records produced in relation to the performance of the Services.

- 221.2 All information stored on ICT systems maintained by the *Provider* in connection with the provision of the Services is in a format that can be accessed by the *Employer* and is capable of being transferred to the *Employer* or a third party at the expiry or earlier termination of this contract. The *Provider* ensures that all necessary licences are in place in relation to software provided by the *Provider* under this contract to enable the *Employer* to continue to operate any ICT system or systems utilising such software without infringing any copyright or third party rights. The *Provider* ensures that the *Employer* has ownership of all data and information stored on ICT systems maintained by the *Provider* relating to the Public Realm.
- 221.3 The *Provider* provides the *Employer* access to the *Provider's* ICT systems necessary for the provision of the Services and ensures the compatibility of his ICT systems with the *Employer's* ICT systems. The *Provider* grants, or procures the grant of, licences to enable the *Employer* to access and use the ICT systems developed, procured or otherwise provided from time to time by the *Provider* in Providing the Services.
- 221.4 The *Provider* complies with the *Employer's* ICT policies (as the same may be updated from time to time), including but not limited to information security policies and procedures in respect of communications, access controls and the safeguarding of any information and data relating to the *Employer's* business.
- 221.5 The *Provider* stores information and data which relates to the *Employer* and the Services only as necessary for the *Provider* to Provide the Services. Where the *Provider*:
- 221.5.1 stores any such information and data it takes responsibility for preserving the integrity of such information and data and prevents its corruption or loss; and
 - 221.5.2 backs up any such information and data on a secure system which complies with the *Employer's* ICT policies (as the same may be updated from time to time).
- 221.6 The *Provider* gives appropriate training to its employees and, where relevant, any Subcontractors, so that when they are Providing the Services they have knowledge of and are competent to use the ICT systems maintained by the *Provider* and/or the *Employer* (as the case may be).

222 The Employer's Supply Chain

- 222.1 The *Provider* shall use the *Employer's* Supply Chain to Provide the Services unless agreement to do otherwise is obtained from the *Employer* through the *Service Manager*.
- 222.2 To obtain the agreement of the *Employer* not to use the *Employer's* Supply Chain, the *Provider* must submit to the *Service Manager* a proposal that shall include a business case (including a cost/benefit analysis) setting out details of:
- 222.2.1 how any benefits or cost savings resulting from the implementation of the proposal are to be shared,
 - 222.2.2 how any risks associated with the implementation of the proposal are to be allocated,

- 222.2.3 how the *Provider* will demonstrate value for money to the *Employer* now and in the future through the implementation of the proposal,
- 222.2.4 how any costs associated with the development and implementation of the proposal are to be funded, and
- 222.2.5 any consequential changes to the remainder of the Service Information.
- 222.3 The *Service Manager* shall review all proposals not to use the Employer's Supply Chain within 4 weeks of receipt and shall make a recommendation to the *Employer* that the proposal:
- is approved, or
 - is rejected, or
 - is returned to the *Provider* for further development.
- 222.4 The *Employer* shall consider the *Service Manager's* recommendation and decide to approve, reject or return proposals not to use the Employer's Supply Chain within 8 weeks of receipt of the *Provider's* proposal by the *Service Manager*. If the *Employer* does not reply within this period then the *Provider* may proceed to implement his proposal as if it had been approved.
- 222.5 The Employer may accept, reject or return any proposal not to use the Employer's Supply Chain for any reason. The Employer need not give any reason for his decision to accept, reject or return any proposal, but shall provide views on what further development the *Provider* should consider to transform any returned proposal into one that can be approved by the *Employer*.

Procurement and delivery of the Employer's Supply Chain

- 222.6 The responsibility for establishing the contract with the members of the Employer's Supply Chain rests with the *Employer*.
- 222.7 Any re-negotiation or re-procurement of any contract with the Employer's Supply Chain shall take place in consultation with the *Provider*.
- 222.8 The *Provider* is free to tender in open competition for any or all of the works, services, materials or plant identified as provided by the Employer's Supply Chain at the time of any re-procurement.
- 222.9 Wherever it is reasonably practicable for the *Employer* to do so, the conditions of contract for each contract between the *Employer* and the Employer's Supply Chain will include:
- 222.9.1 provisions embodying the principles of supply chain management set out in the Quality Plan,
- 222.9.2 an obligation to work with the *Provider* to assist the *Employer* to achieve its strategic aims and objectives for the maintenance, operation and improvement of the Public Realm and to seek continual improvement in the delivery of the Services,
- 222.9.3 an obligation to keep detailed cost records in the same format and containing the same details and for the same period, as the *Provider* is

required to keep, and to make the records available to the *Provider* and the *Employer* and his representatives (including the *Service Manager*) on request,

- 222.9.4 obligations substantially similar to those in clause 29,
- 222.9.5 an obligation to ensure that title in Equipment and Materials passes to the *Provider* not later than when the *Employer* pays for them,
- 222.9.6 a statement that the parties shall act in a spirit of mutual trust and co-operation and
- 222.9.7 a term requiring the *Employer* to pay the contractor or supplier within a specified period not exceeding 20 days from receipt by the *Provider* of a valid invoice from the contractor or supplier.

222.10 If the *Provider* is required by the *Employer* to increase or decrease the financial value of contribution from the Employer's Supply Chain by no more than 5% in any one Financial Year then any such requirement shall not be considered as a compensation event.

The management of the Employer's Supply Chain by the Provider

- 222.11 The *Provider* shall Provide the Services using the Employer's Supply Chain at no additional cost to the *Employer*.
- 222.12 The *Provider* shall manage the Employer's Supply Chain on the *Employer's* behalf in total compliance with the contracts between the Employer and the members of the Employer's Supply Chain, the *Provider* having been made fully aware of the relevant terms and conditions of the contracts beforehand. All requisitions shall be made within agreed limits of financial authorisations.
- 222.13 The *Provider* shall arrange to receive all invoices and applications for payment from the Employer's Supply Chain and shall certify that the works, services, materials or plant that have been received are fit for purpose, and that the amounts applied for in any such invoice or application for payment are correct and all in accordance with the relevant contract.
- 222.14 Whenever the *Provider* identifies an invoice or application for payment that has not been correctly submitted, for any reason, he shall arrange for the appropriate correction to be made prior to certifying.
- 222.15 Once certified the *Provider* will pass the invoice or application for payment to the *Employer* for payment. The *Employer* will then pay the Employer's Supply Chain directly.
- 222.16 The *Provider* shall ensure that all invoices or applications for payment from the Employer's Supply Chain are processed and submitted to the *Employer* in good time to allow for payment by the *Employer* to the Employer's Supply Chain to take place in accordance with the requirements of the relevant contract.

Disputes involving the Employer's Supply Chain

222.17 Disputes in regard to the works, services, materials or plant as supplied by the Employer's Supply Chain shall be resolved by the *Provider*, on behalf of and in the

best interests of the *Employer* in accordance with the requirements of the relevant contract between the *Employer* and the Employer's Supply Chain. Where no particular dispute resolution mechanisms exist in the relevant contract, the *Provider* shall refer the matter to the *Employer* for resolution.

222.18 The *Provider* shall work for and with the *Employer* in the resolution of any disputes involving the Employer's Supply Chain.

222.19 The *Provider* shall give early warning to the *Employer* as soon as he becomes aware of a dispute involving the Employer's Supply Chain. The *Employer* may instruct the *Provider* to attend an early warning meeting and each may instruct other people to attend if the other agrees.

222.20 At an early warning meeting those who attend co-operate in:

222.20.1 making and considering proposals for how the effect of each non-conformance can be resolved, or reduced,

222.20.2 seeking solution that will bring advantage to all those who will be affected,

222.20.3 deciding upon actions which they will take and who, in accordance with the relevant contract, will take them.

The *Provider* shall record the proposals considered and the decisions taken at these early warning meetings and shall provide all attendees with a copy of this record.

Scope of the Employer's Supply Chain

222.21 The members of the Employer's Supply Chain are set out in the table below (as may be updated in writing from time to time by the Employer):

| Contract Title | Contract Description | Supplier | Type of Supply |
|----------------------------|--|--|---|
| Open Road Weather Forecast | Open Road Weather Forecast | Met Office Vaisala | Services - Ice conditions on road to inform decisions on gritting |
| Highway Condition Survey | Highway Condition Surveys | WDM through a Consortium contract with 3 other authorities | Road condition data to inform works programme and NI168 and NI169 |
| Traffic Signal Maintenance | The repair and maintenance of Traffic signal and traffic control equipment | Telent | Services |
| SCOOT | Traffic Management System | Siemens | Services |
| Salt (for winter services) | Road Salt | Amey Wye Valley Ltd | Product |
| Street lighting energy | Energy supply to all street lights, illuminated signs and bollards | West Mercia Supplies | Energy |

223 Managing Agent Arrangement

- 223.1 The *Employer* instructs the carrying out of Services using the Managing Agent Arrangements through the issue of relevant Service Orders. Prior to issuing any such Service Order, the *Employer* discusses the proposed use of the Managing Agent Arrangement with the *Provider*. The *Employer* may only instruct the carrying out of Services using the Managing Agent Arrangement following agreement with the *Provider*.
- 223.2 Following the issue of a Service Order instructing the *Provider* to deliver any part of the Services using the Managing Agent Arrangements, the *Provider* is responsible for procuring and placing all orders with the Named Suppliers for the delivery of such Services.

Named Suppliers

- 223.3 The *Provider* submits proposals for adding a supplier to the list of Named Suppliers to the *Service Manager* for acceptance and/or the *Employer* notifies the *Provider* that a supplier is to be a Named Supplier.
- 223.4 The *Employer* does not have to accept any proposals by the *Provider* for adding a supplier to the list of Named Suppliers.

Certification of payment for Services using the Managing Agent Arrangements

- 223.5 The *Provider* shall arrange to receive all invoices and applications for payment from the Named Suppliers and shall certify that the works, services, materials or plant that have been received are fit for purpose, and that the amounts applied for in any such invoice or application for payment are correct and all in accordance with the relevant contract. For the avoidance of doubt, all such invoices and applications from the Named Suppliers shall be addressed to the *Employer*.
- 223.6 Whenever the *Provider* identifies an invoice or application for payment that has not been correctly submitted, for any reason, he shall arrange for the appropriate correction to be made prior to certifying.
- 223.7 For all Service Orders using the Managing Agent Arrangement the amount due shall be assessed using an equivalent procedure to that contained at Clause 50.4.2 but with the Managing Agent Fee in place of the Fee.
- 223.8 Once certified the *Provider* passes the invoice or application for payment to the *Employer* for payment.
- 223.9 On or before each Assessment Date, the *Provider* submits to the *Service Manager* an application for payment in respect of the Managing Agent Arrangements showing the:
- 223.9.1 amount due to the Named Supplier; and
- 223.9.2 the Managing Agent Fee due to the *Provider*.
- 223.10 The Named Supplier shall be paid the certified amount directly by the *Employer* in accordance with the procedure set out in Clauses 50.6 to 50.9.

- 223.11 The *Provider* shall be paid the certified amount directly by the *Employer* in accordance with the procedure set out in Clauses 50.6 to 50.9.
- 223.12 The *Provider* shall ensure that all invoices or applications for payment from the Named Suppliers are processed and submitted to the *Employer* in good time to allow for payment by the *Employer* to the Named Suppliers to take place in accordance with the requirements of the relevant contract.

3 TIME

30 Contract Period

30.1 The *Provider* begins to provide those of the Services identified in the Service Information on the *starting date* and begins fully to Provide the Services on the *access date*. The *Provider* continues to Provide the Services until the later of:

30.1.1 the expiry of the Contract Period; and

30.1.2 the date when all the items of work commenced by the *Provider* prior to the expiry of the Contract Period have been completed.

30.2 Not used.

30.3 Not used.

30.4 Not used.

31 Extensions to the Contract Period

31.1 With effect from the commencement of the 2014/2015 Financial Year, the performance of the *Provider* against the Performance Indicators is considered for each of the following Relevant Periods.

31.2 For the purposes of this clause 31, the “**Relevant Periods**” means each of the following periods:

31.2.1 the 3 Financial Years from and including 2014/15 to 2016/17;

31.2.2 the 3 Financial Years from and including 2017/18 to 2019/20;

31.2.3 the 2 Financial Years from and including 2020/21 to 2021/22;

31.2.4 the 2 Financial Years from and including 2022/23 to 2023/24; and

31.2.5 (subject to extensions to the Contract Period having been granted in accordance with clause 31.3) the 2 Financial Years from and including 2024/5 to 2025/26;

and “Relevant Period” means any one of the above Relevant Periods

31.3 The *Provider* is entitled to one year's extension to the Contract Period for each Relevant Period in which he achieves:

31.3.1 Acceptable Strategic Performance in each of the Financial Years comprising the Relevant Period; or

31.3.2 (in respect of all of the Financial Years comprising the Relevant Period) the total performance score is greater than the total score for Acceptable Strategic Performance for those Financial Years comprising the Relevant Period;

subject to:

- 31.3.3 the operation of clauses 31.4 to 31.6;
 - 31.3.4 the Contract Period (including any extensions in accordance with this clause 31) having at least 2 years' still to run at the time of considering any further extension; and
 - 31.3.5 the Contract Period not exceeding the *extension period*.
- 31.4 If the *Provider* has not achieved Acceptable Strategic Performance for any Relevant Period, any extensions to the Contract Period accrued in accordance with clauses 31.3 and/or 31.7 are reduced by a period of 1 year.
- 31.5 If the *Provider* has not achieved Acceptable Strategic Performance for any 2 consecutive Relevant Periods, all extensions to the Contract Period accrued in accordance with clauses 31.3 and/or 31.7 are reduced to zero.
- 31.6 Notwithstanding the provisions of clause 31.3, the *Employer* has a discretion to:
- 31.6.1 award an extension to the Contract Period to the *Provider* which is greater than one year; or
 - 31.6.2 award an extension to the Contract Period where the *Provider* has failed to achieve Acceptable Strategic Performance for any Relevant Period; or
- not to award an extension to the Contract Period notwithstanding that the *Provider* has achieved Acceptable Strategic Performance for any Relevant Period (such discretion to be exercised reasonably in the circumstances following discussion with the *Provider*). For the avoidance of doubt, the *Employer* may not, in exercise his discretion, reduce the Contract Period other than in accordance with clauses 31.4 or 31.5.
- 31.7 In addition to the *Provider's* entitlement to extensions to the Contract Period in accordance with clause 31.3, the *Employer* has a discretion to extend the Contract Period for up to a further period of 5 years exercisable at any time during the Contract Period provided that the Contract Period (including any extensions in accordance with this clause 31) has at least 2 years' still to run at the time of considering any further extension and provided always that the Contract Period does not exceed a total of 20 years from the *starting date*.

32 Not used

33 Cost forecasting and monitoring

- 33.1 The *Provider* prepares forecasts of the total cost to the *Employer* of the Services for each Financial Year in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared at monthly intervals from the *starting date* until the expiry of the Contract Period.
- 33.2 The *Provider* submits to the *Service Manager* with each forecast an explanation of the changes made since the previous forecast. The *Provider* provides details of
- 33.2.1 the amount of any actual or forecast overspend or underspend against any of the budget headings specified in the Annual Plan for any Financial Year,

- 33.2.2 a detailed explanation of why it has occurred,
 - 33.2.3 his proposed revisions to the [Annual Plan](#), [any Service Order Plan](#) and (if appropriate) the Forward Programme and
 - 33.2.4 any consequential changes to the Service Information.
- 33.3 The *Service Manager* may instruct an adjustment to the Service Information and may adjust the Forward Programme.

34 Not used

35 Certificate of completion

- 35.1 The *Provider* certifies to the *Employer* when an item of work is completed in accordance with the Service Information.

36 Expiry of Contract Period

- 36.1 During the last 6 months of the Contract Period, the *Service Manager* may instruct the *Provider* not to Provide any part of the Services which:
- 36.1.1 the *Service Manager* considers will not be completed prior to the expiry of the Contract Period or
 - 36.1.2 relate to Schemes which the *Service Manager* considers will not be completed prior to the expiry of the Contract Period.
- 36.2 The *Provider* co-operates with the *Employer* and the Incoming Provider so as to ensure a smooth transfer of functions on the expiry of the Contract Period.

37 TUPE and Pensions

[The Parties agree that the employment and pension provisions in Schedule 7 apply.](#)

38 Not used

39 Not used

4 QUALITY MANAGEMENT, AUDIT AND REPORTING

40 Quality Management

40.1 Quality management system

40.1.1 The *Provider* operates a formal integrated quality management system which:

40.1.1.1 complies with the relevant parts of ISO 9001:2000;

40.1.1.2 incorporates an environmental management system consistent with ISO 14001;

40.1.1.3 includes processes for delivering continual improvement following the guidance in ISO 9004;

40.1.1.4 has third party certification from a UKAS approved accreditation body or is operating in preparation for accreditation within 12 months of the Contract Date; and

40.1.1.5 complies with Good Industry Practice.

40.2 Business Continuity Plan

40.2.1 The *Provider's* Business Continuity Plan demonstrates how he will manage unforeseen events and ensure continuation of delivery of the Services to enable the *Employer* to meet his duties under the Civil Contingencies Act 2004 ("CCA") insofar as this duty extends to the Services being provided by the *Provider*.

40.2.2 The *Provider* is aware of the legal requirements placed on the *Employer* under the CCA as a "category one responder" and the requirement to maintain plans to ensure that the *Employer* can continue to exercise all of his functions in the event of an emergency insofar as reasonably practicable.

40.2.3 The *Provider* develops his Business Continuity Plan in compliance with the requirements of the Service Information and includes an action plan identifying the timetable for improvement actions that are necessary to ensure the *Provider's* ability to satisfy the duties of the *Employer* under the CCA.

40.2.4 The *Provider* co-operates with the *Employer* in developing the *Provider's* Business Continuity Plan.

40.2.5 The *Employer* approves the *Provider's* Business Continuity Plan prior to it being adopted.

40.3 Quality Plan and Method Statements

40.3.1 The Quality Plan sets out how the *Provider* Provides the Services in accordance with this contract.

- 40.3.2 The Method Statements set out how the *Provider* complies with the Quality Plan and carries out elements of the Services in accordance with this contract.
- 40.3.3 The *Provider* updates the Quality Plan and/or prepares additional Method Statements and/or revises the Method Statements from time to time to respond to any change to this contract and/or the Services.
- 40.3.4 The Quality Plan includes procedures for:
- 40.3.4.1 monitoring the *Provider's* performance in complying with the Quality Plan and Method Statements; and
 - 40.3.4.2 reporting to the Operations Board on the *Provider's* compliance with the Quality Plan and Method Statements.
- 40.3.5 The Quality Plan is sufficiently detailed to demonstrate how the *Provider* will achieve each of the commitments in the Method Statements and deliver the Services in a manner that seeks to achieve the Employer's Objectives. The *Provider* keeps a controlled copy of the Quality Plan and Method Statements available for inspection by the *Employer* and his representatives (including the *Service Manager*) at all times.
- 40.3.6 The *Service Manager* notifies the *Provider* if he considers that the Quality Plan and/or the Method Statements does not comply with the requirements of this contract. Following such notification the *Provider* reviews the Quality Plan and/or the Method Statements and reports to the *Service Manager* setting out his proposed changes. If the *Service Manager* accepts the proposals, the Quality Plan is changed.
- 40.3.7 The *Provider* may submit to the *Service Manager* proposed revisions to the Quality Plan for acceptance within the *period for reply*. If the proposed revision to the Quality Plan will result in a reduction in the Capital Services Target Cost, the Revenue Services Target Cost, the Capital Services Lump Sum and/or the Revenue Services Lump Sum, the *Provider* specifies the amount of the reduction in his submission. A reason for not accepting the proposed revision is that:
- 40.3.7.1 it will not enable the *Provider* to meet a requirement of the Services Information;
 - 40.3.7.2 it will increase the cost of Providing the Services;
 - 40.3.7.3 it will unacceptably increase the risk of failure to meet the standards required by this contract for the provision of the Services;
 - 40.3.7.4 it will not enable the *Provider* to achieve the level of performance specified in the Quality Plan and/or the Method Statements; or
 - 40.3.7.5 it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Plan and/or Method Statements.

40.3.8 An agreed revision to the Quality Plan and/or the Method Statements is not a compensation event.

40.4 **Records**

40.4.1 The *Provider* keeps detailed records relating to the Public Realm and the Services (including performance levels in the Public Realm and records relating to Subcontractors) in the format and containing the details and for the period specified in the Service Information. The *Provider* makes the records available to the *Employer* and his representatives (including the *Service Manager*) on request.

40.4.2 The *Provider* acknowledges that, for the purpose of examining and certifying the *Employer's* accounts or any exercise of a right or power under Section 6 of the Audit Commission Act 1998, the Audit Commission, any auditor appointed by the Audit Commission or any auditor appointed by the *Employer* may (inter alia) examine, copy or take away documents held or controlled by the *Provider* or any Subcontractor and may require the *Provider* or any Subcontractor to provide such oral or written information or explanations as he considers necessary. The *Provider* promptly complies with any such requirements, and as applicable procures that any Subcontractor complies with any such requirements, at his own cost.

41 Not used

42 Not used

5 PAYMENT

50 Payment

50.1 Open book recording of costs

The *Provider* keeps detailed records of the Defined Cost incurred in Providing the Services on an “open book” basis, i.e. on the basis that:

50.1.1 records of Defined Costs are maintained in a fully auditable manner and physical records are made available to the *Employer* in accordance with clause 50.2; and

50.1.2 empirical electronic records are maintained showing all actual costs to which the *Employer* has direct access at all times.

The *Employer* and the *Provider* agree what records need to be kept by the *Provider* in respect of the Defined Cost. The *Provider* keeps such records for a period of 6 years after the Contract Period.

The *Provider's* records show separate allocation of all Defined Costs in relation to:

50.1.3 Capital Services; and

50.1.4 Revenue Services (including a separate record of all Defined Cost in relation to the Local Overhead Cost)

50.1.5 and in relation to:

- Target Cost Services;
- Lump Sum Services; and
- Cost Reimbursable Services.

50.2 Access to original vouchers and books of account

50.2.1 The *Provider* provides to the *Employer* or his representatives or agents, full access to and/or details of, all original vouchers and books of account necessary to demonstrate his Defined Cost if and when reasonably requested to do so by the *Employer*.

50.2.2 The *Provider* grants to the *Employer* and his internal audit team authority to enter any premises or land used by the *Provider* at any time and to have access to all correspondence, documents, books, property or other records relating to the *Employer's* business. The *Provider* further agrees that the *Employer* is entitled to receive such explanation as he considers necessary to establish the correctness of any matter under examination.

50.3 Regular breakdowns of the Cost of Services Provided to Date

50.3.1 No later than 2 Working Days before each Assessment Date, the *Provider* provides the *Employer* with:

50.3.1.1 a statement of the Cost of Services Provided to Date in respect of each continuing Service Order together with a breakdown showing how it is made up and showing separately expenditure in respect of:

(i) Revenue Services; and

(ii) Capital Services;

in the form set out in the Service Information;

50.3.1.2 a Defined Cost Report;

50.3.1.3 a Budget Report; and

50.3.1.4 the forecast of the total cost of the Services for the relevant Financial Year in accordance with clause 33.

50.3.2 The *Employer* and the *Provider* agree what form the breakdown takes before the first Assessment Date. The *Employer* reviews the form of the breakdown during the Contract Period and discusses any proposed changes to the form of breakdown with the *Provider*. The *Provider* complies with all reasonable requests to change the form of breakdown.

50.3.3 The reports and other information to be provided in accordance with clause 50.3.1 are delivered electronically in the format set out in the Service Information (or in such other format as agreed from time to time by the Parties).

50.4 Assessing the amount due

50.4.1 The *Service Manager* assesses the amount due at each Assessment Date.

50.4.2 The amount due is:

- the Cost of Services Provided to Date (subject, for the avoidance of doubt, to the operation of clauses 50.4.3, 50.5, 50.16, 50.17, 50.18 and/or 50.20);
- plus other amounts to be paid to the *Provider* (including any Value Added Tax payable in accordance with clause 50.21);
- less amounts to be paid by or retained from the *Provider*;
- less any Disallowed Cost.

50.4.3 Other than in relation to the first Financial Year of the Contract Period, if an Annual Plan for the relevant Financial Year has not been submitted to the *Service Manager* for acceptance by the start of that Financial Year, one quarter of the Cost of Services Provided to Date is retained in assessments of the amount due until the *Provider* has submitted an Annual Plan to the *Service Manager* for acceptance showing the information which this contract requires.

50.4.4 In assessing the amount due, the *Service Manager* considers any application for payment the *Provider* has submitted on or before the Assessment Date. The *Service Manager* gives the *Provider* details of how the amount due has been assessed.

50.4.5 The *Service Manager* corrects any wrongly assessed amount due in a later payment certificate.

50.5 The effect of exceeding the Revenue Services or Capital Services Target Costs or the Revenue Services or Capital Services Lump Sums

50.5.1 If the cumulative Defined Cost plus Fee in respect of Target Cost Services:

50.5.1.1 which are also Revenue Services exceeds the Revenue Services Target Cost; or

50.5.1.2 which are also Capital Services exceeds the Capital Services Target Cost;

(as the case may be) the *Employer* pays only up to the amount of the Revenue Services Target Cost and the Capital Services Target Cost (as the case may be), subject to a final reconciliation in accordance with clause 50.13.

50.5.2 If the cumulative Defined Cost plus Fee in respect of Lump Sum Services:

50.5.2.1 which are also Revenue Services exceeds the Revenue Services Lump Sum; or

50.5.2.2 which are also Capital Services exceeds the Capital Services Lump Sum;

(as the case may be) the *Employer* pays only up to the amount of the Revenue Services Lump Sum and the Capital Services Lump Sum (as the case may be), subject to a final reconciliation in accordance with clause 50.16.

50.6 Certification of payment

50.6.1 The *Service Manager* certifies payment within 5 Working Days of each Assessment Date. The certificate specifies the payment (if any) the *Employer* considers to be due at the Assessment Date and the basis on which it was calculated

50.6.2 The amount due is calculated in accordance with clause 50.4.2. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Provider* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Provider*.

50.6.3 The amount due is payable within 10 Working Days after the relevant Assessment Date (the “**due date**”).

50.6.4 The *Provider* provides a valid Value Added Tax invoice in respect of all amounts due from the *Employer* in accordance with clause 50.21. The *Employer* is not bound to make final payment of any amounts due until receipt of such an invoice.

50.7 Payment notices

50.7.1 Any certificate issued in accordance with clause 50.6.1 is a payment notice for the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended) and a certificate is issued even if the *Service Manager* considers that the sum due is zero.

50.7.2 If the *Service Manager* fails to issue a payment notice no later than 5 Working Days after the due date, the *Provider's* payment breakdown in accordance with clause 50.3 is treated as the payment notice (provided that it sets out the sum the *Provider* considers to be due and basis on which that sum is calculated). If the payment application does not contain the sum which the *Provider* considers to be due at the Assessment Date and the basis on which that sum was calculated, the *Provider* may, at any time thereafter give the *Employer* (with a copy to the *Service Manager*), a payment notice in respect of the sum the *Provider* considers to be due at the Assessment Date, and the basis for calculation of that sum.

50.7.3 Where pursuant to clause 50.7.2 the *Provider* gives a payment notice, the final date for payment of the sum specified in the notice is for all purposes regarded as being postponed by the same number of days as the number of days after the relevant due date referred to in clause 50.6 that the notice was given.

50.8 Pay Less Notice

If a payment is due from the *Employer* to the *Provider*, the *Employer* may pay to the *Provider* less than the sum stated in the relevant payment notice under clause 50.7 provided that the *Employer* has given notice to the *Provider* of his intention to pay a lesser sum (the "Pay Less Notice") complying with the following requirements:

50.8.1 the notice is given not less than 3 Working Days before the final date for payment; and

50.8.2 it specifies the sum that the *Employer* considers to be due on the date the notice is served under this clause 50.8 and the basis on which that sum is calculated.

50.9 Final date for payment

The final date for payment of any sum specified in a payment notice in accordance with clause 50.7 or a Pay Less Notice in accordance with clause 50.8 is 5 Working Days after the later of:

50.9.1 the due date; or

50.9.2 the receipt by the *Employer* of a valid VAT invoice in accordance with clause 50.21.

50.10 Costs included in the Fee

All the *Provider's* costs which are not included in the Defined Cost are treated as included in the Fee. The *Provider* demonstrates that value for money is being achieved in relation to his Defined Cost from time to time and as requested by the *Employer*, it being recognised that competitive tendering, of itself, will not necessarily be a demonstration of achieving the best value for money.

50.11 The effect of compensation events on relevant target costs and lump sums

If a compensation event occurs in relation to any Service Order for Target Cost or Lump Sum Services, the relevant target cost and/or lump sum will be deemed to be increased or reduced by the amount of the assessment of the compensation event in accordance with clause 60.

50.12 Review of the Capital Services Target Cost and the Revenue Services Target Cost

50.12.1 Throughout each Financial Year at no less than 3 monthly intervals, the *Provider* calculates (if not already calculated) the Capital Services Target Cost and the Revenue Services Target Cost and reviews the total of the Defined Cost plus Fee for the Financial Year to date, together with an estimate of the Defined Cost plus Fee for the remainder of the Financial Year in relation to Target Cost Services, broken down into:

50.12.1.1 Revenue Services (including separately, the Local Overhead Cost); and

50.12.1.2 Capital Services;

with such level of further break down of costs as the *Employer* may reasonably require.

50.12.2 The review in accordance with clause 50.12.1 assesses the extent to which the total Defined Cost plus Fee in respect of Revenue Services and in respect of Capital Services (respectively) are likely to exceed or come below the respective Revenue Services Target Cost and Capital Services Target Cost. The *Provider* shares this information with the *Service Manager* and provides advice on how:

50.12.2.1 a potential overspend against either the Revenue Services Target Cost or the Capital Services Target Cost can be avoided or mitigated; or

50.12.2.2 (subject to the operation of clause 50.14.1) the *Employer's* share of any potential under spend against either the Revenue Services Target Cost or the Capital Services Target Cost can be best applied to fund the provision of additional services before the end of the relevant Financial Year.

50.13 Final review of the Capital Services Target Cost and the Revenue Services Target Cost

50.13.1 At the end of each Financial Year, the *Provider* reviews the total Defined Cost plus Fee in respect of Target Cost Services setting out the respective totals in respect of:

50.13.1.1 Capital Services (the total Defined Cost plus Fee comprising the "**Total Cost of Target Cost Capital Services**"); and

50.13.1.2 Revenue Services (the total Defined Cost plus Fee comprising the "**Total Cost of Target Cost Revenue Services**").

50.13.2 If the Total Cost of Target Cost Capital Services is less than the Capital Services Target Cost and/or if the Total Cost of Target Cost Revenue Services is less than the Revenue Services Target Cost, the respective differences are shared, subject to the requirements of clause 50.14, in accordance with the table set out in the Contract Data.

50.13.3 If the Total Cost of Target Cost Capital Services is more than the Capital Services Target Cost and/or if the Total Cost of Target Cost Revenue Services is more than the Revenue Services Target Cost, the respective differences are shared in accordance with the table set out in the Contract Data.

50.14 Total Cost of Capital or Revenue Services is less than the relevant Capital Services or Revenue Services Target Costs

50.14.1 Provided always that the *Provider* achieves Acceptable Strategic Performance during the relevant Financial Year, the *Provider* shares in the under spend in accordance with the table set out in the Contract Data.

50.14.2 The *Provider's* share in any under spend is not due for payment until the later of:

- 10 Working Days after the end of the relevant Financial Year; or
- 10 Working Days after the assessment of the relevant gain share.

50.14.3 The final date for any such payment is 10 Working Days after the date it became due for payment.

50.15 Sharing in overspends above the Capital Services Target Cost and/or the Revenue Services Target Cost

50.15.1 The *Provider* is entitled to receive the proportion of any excess above the Capital Services Target Cost and/or the Revenue Services Target Cost (as the case may be) in accordance with the table set out in the Contract Data.

50.15.2 Any amount due to the *Provider* is not due for payment until the later of:

- 10 Working Days after the end of the relevant Financial Year; or

- 10 Working Days after the assessment of the relevant gain share.

50.15.3 The final date for any such payment is 10 Working Days after the date it became due for payment.

50.16 Final review of the Capital Services Lump Sum and the Revenue Services Lump Sum

50.16.1 At the end of each Financial Year, the *Provider* reviews the total Defined Cost plus Fee in respect of Lump Sum Services setting out the respective totals in respect of:

50.16.1.1 Capital Services (the total Defined Cost plus Fee comprising the "**Total Cost of Lump Sum Capital Services**"); and

50.16.1.2 Revenue Services (including the Local Overhead Cost) (the total Defined Cost plus Fee comprising the "**Total Cost of Lump Sum Revenue Services**").

50.16.2 If the Total Cost of Lump Sum Capital Services is less than the Capital Services Lump Sum and/or if the Total Cost of Lump Sum Revenue Services is less than the Revenue Services Lump Sum, the balance is paid to the *Provider*, subject to the requirements of clause 50.20. The *Employer* pays the balance to the *Provider* on the later of:

10 Working Days after the end of the relevant Financial Year; or

10 Working Days from receipt of a valid Value Added Tax invoice in respect of the relevant balance.

50.16.3 The final date for any such payment is 10 Working Days after the date it became due for payment.

50.16.4 If the Total Cost of Lump Sum Capital Services is more than the Capital Services Lump Sum and/or if the Total Cost of Lump Sum Revenue Services is more than the Revenue Services Lump Sum, the respective differences are (if, and to the extent that they may have been paid to the *Provider*) immediately refunded by the *Provider* to the *Employer*.

50.17 Where works and/or services comprised in a Service Order are not completed within a Financial Year

Each Service Order clearly indicates what works and/or services are to be completed by the end of the relevant Financial Year. Where such works and/or services are not completed by the end of the relevant Financial Year, the *Service Manager* assesses:

50.3.2 the percentage of the relevant works and/or services that are completed during the relevant Financial Year (the "**Multiplier**"); and

50.3.3 the sum(s) of the relevant target cost and/or lump sum multiplied by the Multiplier.

The resulting calculation of the relevant target cost and/or lump sum is or are then substituted for the previous target cost and/or lump sum and the application of clauses 50.13 and 50.16 are applied in relation to the amended target cost and/or lump sum.

50.18 Payment of the Fee Performance Element

50.18.1 The *Provider's* entitlement to the Fee Performance Element is dependent on the *Provider's* performance against the Operational Performance Indicators in accordance with Part V of Schedule 2.

50.18.2 Following assessment in accordance with clause 50.18.1, the balance of the Fee Performance Element less any deduction in accordance with this clause 50.18.1 (if a positive number) is payable to the *Provider* on the later of:

- 10 Working Days from receipt of a valid Value Added Tax invoice; and
- the completion of the assessment of entitlement to the Fee Performance Element.

50.18.3 The final date for any such payment is 10 Working Days after the date it became due for payment in accordance with clause 50.18.2.

50.19 *Employer's* discretion in the operation of clauses 50.14 and 50.18

Notwithstanding the fact that the *Provider* has not achieved Acceptable Strategic Performance in accordance with clauses 50.14 and/or the required level of performance in accordance with clause 50.18.1, the *Employer* may, in his sole discretion, consider the payment of the whole or part of any saving against the Total Annual Target Costs and/or the whole or part of the Fee Performance Element (as the case may be).

50.20 Review of payments in respect of the Services

Where, following any audit undertaken by the *Employer*, it is discovered that the *Provider* is generating a level of margin which is more than 25% of the Fee greater than the Fee (in relation to Target Cost Services or Lump Sum Services) they will work together to agree reasonable revisions to profit levels and the payment terms and, failing agreement being reached, will share any such excess profit in equal shares.

50.21 Value Added Tax

50.21.1 Unless otherwise stated, all sums payable under this contract are exclusive of Value Added Tax.

50.21.2 The *Provider* presents a valid VAT invoice to the *Employer* together with any other information reasonably requested by the *Employer* in relation to the amount of VAT claimed.

50.21.3 A VAT invoice will not be valid for the purposes of charging VAT if more than 48 months have elapsed since the time of assessment of the amount

due to the *Provider* either in accordance with clause 50.4 or in accordance with the Dispute Resolution Provisions.

50.21.4 The *Employer* is not liable for any penalties or interest arising from any failure by the *Provider* to account to HM Revenue and Customs at the correct time for any VAT due under this clause 50.21.

50.22 Use of cost information provided by the *Provider* as part of his final tender

For the first 18 months the Contract Period, the *Provider* and the *Employer* use the cost information provided by the *Provider* as part of his final tender (as supplemented by the subsequent clarifications to that cost information) (the "**Tendered Cost Information**") as a reference. The *Provider* provides an explanation of any difference between his Tendered Cost Information and estimated costs used in the setting of target costs, lump sums and/or in his Defined Costs. The *Employer's* reasonable expectation is that the Tendered Cost Information will provide an accurate estimate of equivalent costs for at least the first 18 months of the Contract Period. If the *Provider's* estimated costs used in the setting of target costs, lump sums and/or if his Defined Costs over the first 18 months of the Contract Period are higher than the Tendered Cost Information and the *Employer* (acting reasonably) is not satisfied with the explanation, the *Employer* may, in relation to the relevant Services, carry out benchmarking in accordance with clause 217.

50.23 Third Party Income

50.23.1 The *Employer* acknowledges and expects that the *Provider* will undertake activity that will generate Third Party Income during the Contract Period.

50.23.2 The *Provider* has agreed:

50.23.2.1 that it will generate and/or take the risk that it will generate the Guaranteed Enhanced Third Party Margin; and

50.23.2.2 that it expects to generate other Third Party Income during the Contract Period but is not guaranteeing to the *Employer* that it will generate any such additional Third Party Income;

and the amount of the annual Local Overhead Cost will be reduced as set out in the following table to reflect the *Provider's* confirmation that it will generate the Guaranteed Enhanced Third Party Margin:

| | HC Financial Years | | | | | | | | | | |
|-------------------|--------------------|------|------|------|------|------|------|------|------|------|-------|
| | Sep 13 – Mar 14 | Yr 1 | Yr 2 | Yr 3 | Yr 4 | Yr 5 | Yr 6 | Yr 7 | Yr 8 | Yr 9 | Yr 10 |
| LOC Annual Saving | | | | | | | | | | | |
| Cumulative Saving | | | | | | | | | | | |

Calculation of Enhanced Third Party Margin and calculation of the Employer's Share Of Enhanced Third Party Margin

50.23.3 The *Provider* confirms that it will in each Financial Year of the Contract Period generate the Guaranteed Enhanced Third Party Margin and the Parties agree that the level of such Guaranteed Enhanced Third Party Margin shall only be increased and/or decreased pursuant to a compensation event occurring in accordance with Clause 6 of this contract.

50.23.4 The *Provider* agrees that it will each month provide to the *Employer* a report summarising by category the Third Party Income received in the preceding month.

50.23.5 The *Provider* agrees that it will each month provide to the *Employer* a report that:

50.23.5.1 sets out the amount of Third Party Costs incurred by the *Provider* in the preceding month; and

50.23.5.2 identifies the Third Party Income to which each element of the Third Party Costs relate.

50.23.6 The *Provider* agrees that in each Financial Year, the *Provider* shall pay to the *Employer* the Employer's share Of Enhanced Third Party Margin in accordance with the proportions set out in the following table:

| Band | Range of Enhanced Third Party Margin generated in a Financial Year | Employer's Share Of Enhanced Third Party Margin from within the range |
|--|--|---|
| Guaranteed Enhanced Third Party Margin | Up to £25,000 | |
| Band 1 | Any amounts in excess of £25,000 | |

Payments following calculation of the Employer's Share Of Enhanced Third Party Margin

50.23.7 The *Provider* agrees that at the end of each month it will submit to the *Employer* a report setting out in detail any monies received by the *Provider* in that month by reference to invoices raised by the *Provider* arising out of or in connection with Third Party Income.

50.23.8 The *Provider* agrees that the total sum of monies referred to in Clause 50.23.7 shall be used by the Parties to calculate the Employer's Share Of Enhanced Third Party Margin in accordance with the table set out in Clause 50.23.6.

50.23.9 Where calculation of the Employer's Share Of Enhanced Third Party Margin shows that monies are due from the *Provider* to the *Employer* the

Parties agree that such monies shall be paid either 10 Working Days after the end of the relevant Financial Year to which they relate or 10 Working Days after the assessment has taken place (whichever is the later).

6 COMPENSATION EVENTS

60 Compensation events

60.1 The following are compensation events:

60.1.1 the *Service Manager* gives an instruction changing the Service Information during the course of any Financial Year except:

60.1.1.1 a change made in order to accept a Defective Service; or

60.1.1.2 a change to the Service Information which is requested by the *Provider* and which is required as a result of the *Provider's* approach to Providing the Services;

for the avoidance of doubt, the events listed in clauses 60.1.1.1 or 60.1.1.2 shall not be treated as compensation events;

60.1.2 the *Service Manager* instructs or agrees a change to the Service Information unless such change is stated elsewhere in this contract not to be a compensation event;

60.1.3 the *Employer* does not allow access to and use of a part of the Public Realm as the *Provider* reasonably requires to Provide the Services;

60.1.4 the *Service Manager* instructs or agrees a change to the information contained in, or the works/services to be provided under, a Service Order unless such change is stated elsewhere in this contract or in the relevant Service Order as not being a compensation event;

60.1.5 the *Employer* does not provide something which the Service Information states that he is to provide within 4 weeks of a request from the *Provider* to do so (or such longer period either as may be stated as the response period in the Service Information or is agreed by the Parties as being reasonable in the context of the thing being requested);

60.1.6 the *Service Manager* gives an instruction to stop or not to start any element of the Services (except any instruction issued to prevent a breach of this contract);

60.1.7 the Employer or Others do not work in accordance with the relevant Annual Plan or within the conditions stated in the Service Information;

60.1.8 a change to the Public Realm during the course of any Financial Year other than a change as a result of Providing the Services;

60.1.9 the *Service Manager* changes a decision (other than a decision referred to in clause 60.1.1(b)) which he has previously communicated to the *Provider*;

60.1.10 an event which is an *Employer's* risk stated in this contract;

60.1.11 the *Provider* exercises his right to suspend performance of the Services under Section 112 of the Housing Grants, Construction and Regeneration Act 1996;

- 60.1.12 a change in law occurring during any Financial Year which has an effect on the carrying out of the Services, unless the change and its effects could reasonably have been anticipated by the *Provider* prior to the start of the relevant Financial Year (and for the purposes of this clause 60.1.12, a change in law will be treated as being so capable of anticipation by the *Provider* if such change in law has been published at the start of the relevant Financial Year);
- 60.1.13 in relation to a Service Order, the occurrence of an event which is stated to be a compensation event in relation to that Service Order;
- 60.1.14 the *Service Manager* does not reply to a communication where required by this contract within the *period for reply* or, where relevant, other period required by this contract; or
- 60.1.15 a breach of contract or act or prevention by the *Employer* which is not one of the other compensation events in this contract.
- 60.2 The *Employer* does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for purpose of any information he has disclosed to the *Provider* prior to entry into this contract and/or set out or referred to in the Public Realm Asset Information and the *Provider* is deemed to have satisfied himself before entering into this contract:
- 60.2.1 as to the extent of the Public Realm;
- 60.2.2 as to the scope and nature of the Services and his obligations under this contract;
- 60.2.3 as to the basis of payment for the Services; and
- 60.2.4 that he has all the information and resources necessary to enable him to Provide the Services in accordance with this contract.
- 60.3 Subject to clause 60.1.3, neither the *Employer* nor any of his agents or employees shall be liable to the *Provider* in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:
- 60.3.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information the *Employer* has disclosed to the *Provider* prior to entry into this contract and/or set out or referred to in the Public Realm Asset Information; or
- 60.3.2 any failure to make available to the *Provider* prior to entry into this contract any materials, documents, drawings, plans or other information relating to the Services.
- 60.4 Nothing in clauses 60.2 and 60.3 shall exclude any liability which the *Employer* or any of his agents or employees would otherwise have to the *Provider* in respect of any statements made fraudulently prior to the date of this contract.
- 60.5 The provisions of clauses 60.2 and 60.3 are without prejudice to the *Provider's* express rights and remedies under or pursuant to this contract.

61 Notifying compensation events

61.1 For compensation events which arise from the *Service Manager* giving an instruction or changing an earlier decision, the *Service Manager* notifies the *Provider* of the compensation event at the time of giving the instruction or changing the earlier decision. He also instructs the *Provider* to submit quotations, unless the event arises from a fault of the *Provider* or quotations have already been submitted. The *Provider* puts the instruction or changed decision into effect in accordance with the timescale agreed with the *Service Manager*.

61.2 The *Service Manager* may instruct the *Provider* to submit quotations for a proposed instruction or a proposed changed decision. The *Provider* does not put a proposed instruction or a proposed changed decision into effect, unless and until the *Service Manager* instructs him to do so.

61.3 The *Provider* notifies the *Service Manager* of an event which has happened or which he expects to happen as a compensation event if:

61.3.1 the *Provider* believes that the event is a compensation event; and

61.3.2 the *Service Manager* has not notified the event to the *Provider*.

If the *Provider* does not notify a compensation event within 8 weeks of becoming aware of the event, he is not entitled to any change to the relevant target cost unless the *Service Manager* should have notified the event to the *Provider* but did not.

61.4 The *Provider* is not entitled to any additional Defined Cost or to any change to any Service Order Completion Date(s) if the *Service Manager* decides that an event notified by the *Provider*:

61.4.1 arises from a fault of the *Provider*;

61.4.2 has not happened and is not expected to happen;

61.4.3 was something of which the *Provider* was or ought to have been aware at the time when the Defined Cost for the work affected by the compensation event were assessed;

61.4.4 has no effect upon the Defined Cost or any Service Order Completion Date(s); or

61.4.5 is not one of the compensation events stated in this contract;

and in any such case, the *Service Manager* notifies the *Provider* of his decision that the Defined Cost and/or any Service Order Completion Date(s) are not to be changed. If the *Service Manager* decides otherwise, he notifies the *Provider* accordingly and instructs him to submit quotations.

61.5 If the *Service Manager* does not notify his decision to the *Provider* within either:

61.5.1 one week of the *Provider's* notification; or

61.5.2 a longer period to which the *Provider* has agreed,

the *Provider* may notify the *Service Manager* to this effect. A failure by the *Service Manager* to reply within 2 weeks of the *Provider's* notification is treated as acceptance by the *Service Manager* that the event is a compensation event and an instruction to submit quotations.

61.6 If the *Service Manager* decides that the *Provider* did not give an early warning of the event which an experienced provider acting in accordance with Good Industry Practice could have given, he notifies this decision to the *Provider* when he instructs him to submit quotations.

61.7 If the *Service Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Provider* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Service Manager* notifies a correction.

61.8 A compensation event is not notified after the end of the Contract Period.

62 Quotations for compensation events

62.1 After discussing with the *Provider* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Provider* to submit alternative quotations. The *Provider* submits the required quotations to the *Service Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.

62.2 Quotations for compensation events comprise:

62.2.1 estimated increases or decreases in the Defined Cost plus resulting Fee; and

62.2.2 any changes to any Service Order Completion Date(s); and

62.2.3 any consequential changes to the Revenue Services Target Cost or the Capital Services Target Cost and/or to the Revenue Services Lump Sum or the Capital Services Lump Sum and to the Annual Plan and Service Information;

assessed by the *Provider*. The *Provider* submits details of his assessment with each quotation.

62.3 The *Provider* submits quotations within 3 weeks of being instructed to do so by the *Service Manager*.

62.4 The *Service Manager* replies within 2 weeks of a complete submission. His reply is:

62.4.1 an instruction to submit a revised quotation;

62.4.2 an acceptance of a quotation;

62.4.3 a notification that a proposed instruction will not be given or a proposed changed decision will not be made; or

62.4.4 a notification that he will be making his own assessment.

- 62.5 The *Service Manager* instructs the *Provider* to submit a revised quotation only after explaining his reasons for doing so to the *Provider*. The *Provider* submits the revised quotation within 3 weeks of being instructed to do so.
- 62.6 The *Service Manager* extends the time allowed for:
- 62.6.1 the *Provider* to submit quotations for a compensation event; and
- 62.6.2 the *Service Manager* to reply to a quotation,
- if the *Service Manager* and the *Provider* agree to the extension before the submission or reply is due. The *Service Manager* notifies the extension that has been agreed to the *Provider*.
- 62.7 If the *Service Manager* does not reply to a quotation within the time allowed the *Provider* may notify the *Service Manager* to this effect. If the *Provider* has submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes to be accepted. If the *Service Manager* does not reply to the notification within 2 weeks, and unless the quotation is for a proposed instruction or a proposed changed decision the *Provider's* notification is treated as acceptance of the quotation by the *Service Manager*.
- 62.8 If, due to a compensation event, a planned Service Order Completion Date is delayed and/or the Annual Plan is revised, the delay and/or revision is stated in the *Provider's* quotation for the compensation event and an amended Service Order Plan and/or Annual Plan is submitted with details of the assessment of the delay. Assessments of delay include time risk allowances and are based on the assumption that the relevant Service Order Plan and/or the Annual Plan can be changed and that delays were or will be reasonably incurred. The *Service Manager* may assess the delay and/or revisions if, when the *Provider* submits quotations for a compensation event, the *Provider* has not submitted an amended Service Order Plan and/or Annual Plan as required by this contract.

63 Assessing compensation events

- 63.1 The financial consequences of a compensation event are assessed as the effect of the compensation event upon:
- 63.1.1 the actual Defined Cost of the work already done;
- 63.1.2 the forecast Defined Cost of the work not yet done; and
- 63.1.3 the resulting Fee,
- The date when the *Service Manager* instructed, or should have instructed, the *Provider* to submit quotations divides the work already done from the work not yet done.
- 63.2 If the effect of a compensation event is to reduce the total Defined Cost, the relevant Revenue Services Target Cost or the Capital Services Target Cost and/or to the Revenue Services Lump Sum or the Capital Services Lump Sum are reduced.
- 63.3 Effects on the Defined Cost are assessed separately for:

63.3.1 people who are employed by the *Provider*;

63.3.2 Equipment;

63.3.3 Plant and Materials;

63.3.4 Charges;

63.3.5 Insurance.

The *Provider* shows how each of these effects is built up in each quotation for a compensation event.

63.4 If the *Service Manager* has notified the *Provider* of his decision that the *Provider* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Provider* had given early warning.

63.5 Assessment of the effect of a compensation event includes risk allowances for cost for matters which have a significant chance of occurring and are at the *Provider's* risk under this contract and set out any expected impact on the provision of the Services.

63.6 Assessments are based upon the assumptions that:

63.6.1 the *Provider* reacts competently and promptly to the compensation event;

63.6.2 any additional Defined Cost due to the event is reasonably incurred;

63.6.3 any relevant Service Order Plan can be changed; and

63.6.4 the *Provider* takes all reasonably practicable steps to minimise the increase or maximise the reduction (as the case may be) in Defined Cost.

63.7 A compensation event which is an instruction to change the Service Information in order to resolve an ambiguity or inconsistency is assessed in a manner which is most favourable to the achievement of the Employer's Objectives.

64 The *Service Manager's* assessment

64.1 The *Service Manager* assesses a compensation event:

64.1.1 if the *Provider* has not submitted a required quotation and details of his assessment within the time allowed;

64.1.2 if the *Service Manager* decides that the *Provider* has not assessed the compensation event correctly in a quotation and he does not instruct the *Provider* to submit a revised quotation; or

64.1.3 if, when the *Provider* submits quotations for a compensation event, the *Service Manager* has not accepted the *Provider's* latest relevant Service Order Plan for one of the reasons stated in this contract.

- 64.2 The *Service Manager* notifies the *Provider* of his assessment of a compensation event and gives the *Provider* details of it within the period allowed for the *Provider's* submission of his quotation for the same event. This period starts when the need for the *Service Manager's* assessment becomes apparent.
- 64.3 If the *Service Manager* does not assess a compensation event within the time allowed, the *Provider* may notify the *Service Manager* to this effect. If the *Provider* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Service Manager* does not reply within 2 weeks (or other period as agreed between the Parties) of this notification, the notification is treated as acceptance of the *Provider's* quotation by the *Service Manager*.

65 Implementing compensation events

- 65.1 A compensation event is implemented when:
- 65.1.1 the *Service Manager* notifies his acceptance of the *Provider's* quotation;
 - 65.1.2 the *Service Manager* notifies the *Provider* of his own assessment; or
 - 65.1.3 a *Provider's* quotation is treated as having been accepted by the *Service Manager*.
- 65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

7 TITLE

70 *Employer's title to Materials*

- 70.1 Whatever title the *Provider* has to Materials which are outside the **Public Realm** passes to the *Employer* if the *Provider* has marked them as for this contract.
- 70.2 Whatever title the *Provider* has to Materials passes to the *Employer* if they have been brought within the **Public Realm**. The title to Materials passes back to the *Provider* if they are removed from the **Public Realm** with the *Service Manager's* permission.
- 70.3 If the **Public Realm Asset Information** states that, at the access date, the *Employer* makes available materials (excluding *Employer's Stocks*) for the *Provider* to Provide the Services, the *Provider* supplies the same quantity and quality of materials to the *Employer* at the end of the Contract Period.

71 Use of Employer's Premises

- 71.1 The *Service Manager*, after notifying the *Provider*, may change the *Provider's* permitted use of the *Employer's* Premises from that stated in the *premises document* provided that use of alternative premises is made available to enable the *Provider* to provide the Services.
- 71.2 The *Provider* occupies and maintains the *Employer's* Premises on the terms set out in Schedule 9.
- 71.3 The *Provider* makes office space and facilities (as specified in the Service Information) available in the *Employer's* Premises for the number of *Employer's* representatives stated in the Service Information.
- 71.4 Where the *Provider* carries out services for Others using the *Employer's* Premises, he discloses all relevant information to the *Employer* with a view to discussing and agreeing the sharing of a reasonable proportion of any financial benefit received by the *Provider* with the *Employer*.

72 Removing Equipment

The *Provider* removes Equipment and Materials from the **Public Realm** when they are no longer needed unless the *Service Manager* allows them to be left in or on the **Public Realm**.

73 Employer's Vehicles

- 73.1 The *Provider* carries out maintenance work and performs other functions in relation to the *Employer's* Vehicles as specified in and in accordance with the Service Information.
- 73.2 The *Provider* takes all reasonably practical steps to protect the *Employer's* Vehicles against the risk of loss or damage from any cause. The *Provider* stores the *Employer's* Vehicles in a secure compound when not in use.
- 73.3 If the **Public Realm Asset Information** states that any of the **Operational Vehicles** are returned to the *Employer* before the end of the Contract Period, the *Provider* returns those vehicles to the *Employer* on the dates stated. The *Provider* may return any **Operational Vehicles** to the *Employer* if the *Provider* no longer requires them to

Provide the Services. All other Employer's Vehicles are returned to the *Employer* at the end of the Contract Period.

73.4 All Employer's Vehicles are returned to the *Employer* in good repair having regard to their condition at the access date and their usage, together with all associated records and other information required by the Service Information.

73.5 Not used.

74 Objects and materials within the Public Realm

74.1 The *Provider* has no title to an object of value or of historical or other interest found on, in or under the **Public Realm**. The *Provider* notifies the *Service Manager* when such an object is found and the *Service Manager* instructs the *Provider* how to deal with it. The *Provider* does not move the object without instructions.

74.2 The *Employer* has title to all materials from excavation and demolition unless otherwise stated in the Service Information.

74.3 The *Provider* takes all reasonable steps (by way of sale, re-use or otherwise) to maximise the value to the *Employer* of any waste materials and equipment to which the *Employer* has title arising in the course of Providing the Services. Any amount received by the *Provider* from the sale of such waste materials and equipment belongs solely to the *Employer*.

75 Intellectual Property Rights

75.1 All Intellectual Property Rights in Documents existing at the Contract Date remain the property of the *Provider* or the *Employer* as the case may be.

75.2 All Intellectual Property Rights in Documents created by or on behalf of the *Employer* or the *Provider* in connection with the Services and the **Public Realm** are the property of the *Employer*.

75.3 The *Provider* assigns to the *Employer* all present and future Intellectual Property Rights in all Documents created by the *Provider* or any Subcontractor in Providing the Services. The *Provider* obtains all documents from third parties necessary to ensure that the *Employer* is the owner of the Intellectual Property Rights in the Documents.

75.4 The *Provider* makes available to the *Employer* all Documents created by the *Provider* or any Subcontractor in Providing the Services for use by the *Employer* to carry out any statutory duty or perform any function in relation to the **Public Realm** during or after the expiry of the Contract Period. The *Provider* makes available the Documents in the format specified in the Service Information.

75.5 The *Provider* has the right to use Documents provided by the *Employer* only to Provide the Services. The *Provider* may make this right available to Subcontractors. On completion of the Services the *Provider* returns all the Documents to the *Employer*.

75.6 Where any Documents created by the *Provider* or any Subcontractor are held on computer or in other machine readable format, the *Provider* provides a licence for and supplies any software necessary to enable the *Employer* and his representatives to access and use the Documents for the purpose of performing any

statutory duty or carrying out any function in relation to the [Public Realm](#) during or after the expiry of the Contract Period.

75.7 The *Employer* and the *Provider* do anything necessary to confirm the terms of any assignment of Intellectual Property Rights or licence to use the Documents.

76 Employer's Stocks

76.1 The *Provider* carries out repairs to and otherwise deals with the Employer's Stocks as specified in and in accordance with the Service Information.

76.2 The *Provider* takes all reasonably practical steps to protect the Employer's Stocks against the risk of loss or damage from any cause. The *Provider* stores the Employer's Stocks in a secure place when not in use.

76.3 The *Provider* may at any time request the *Service Manager* to authorise the replacement of an item of Employer's Stocks. The *Service Manager* considers such request in accordance with the criteria specified in the Service Information.

76.4 The title to all Employer's Stocks remains with the *Employer* at all times. The *Provider* returns all unused Employer's Stocks to the *Employer* at the end of the Contract Period.

8 RISKS AND INSURANCE

80 *Employer's risks*

80.1 The following are *Employer's* risks:

80.1.1 Claims, proceedings, compensation and costs payable to Others which are due to:

80.1.1.1 an unavoidable result of Providing the Services;

80.1.1.2 defects in the design or work of persons employed by or contracted to the *Employer* (except the *Provider*);

80.1.1.3 negligence, default, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him (except the *Provider*);

80.1.1.4 an Incident occurring within the Public Realm during the Contract Period, unless the Incident (or any claims, proceedings, compensation or costs incurred by the *Employer* as a result of the Incident) is due to any act or default of the *Provider* or would not have occurred if the *Provider* had Provided the Services in accordance with this contract; or

80.1.1.5 loss of or wear or damage to, any part of the Public Realm by any cause except loss, wear or damage which is due to any act, omission, default or breach of this contract on the part of the *Provider*.

80.1.2 Loss of, or damage to, any part of the Public Realm, or any Materials due to:

80.1.2.1 war, civil war, rebellion, revolution, insurrection, military or usurped power;

80.1.2.2 strikes, riots and civil commotion not confined to the *Provider*, the Subcontractors and Associated Companies' employees; or

80.1.2.3 radioactive contamination.

80.1.3 Loss of or wear or damage to any part of the Public Realm by any other cause, except loss, wear or damage:

80.1.3.1 the repair or reinstatement of which forms part of the Lump Sum Services;

80.1.3.2 which is due to any act, omission, default or breach of this contract on the part of the *Provider*, or

80.1.3.3 to a Scheme during the course of its construction.

65.2.1 Additional *Employer's* risks are stated in the Service Order applicable to any Scheme.

81 The *Provider's* risks

From the *access date* until the end of the Contract Period or until all the Services have been completed (whichever is the later) or until termination if earlier, the risks which are not carried by the *Employer* are carried by the *Provider*.

82 Indemnity

82.1 Unless otherwise stated in this contract, each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

82.2 The liability of each Party to indemnify the other is reduced if events at the other Party's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

82.3 The liability of the *Provider* pursuant to clause 82.1 or in relation to any other breach of this contract shall not exceed the sum of £10 million in respect of any one event save that this limit shall not apply in the event of the *Provider's* fraud or to any claims against the *Provider* for death or personal injury.

83 Not used

84 Insurance cover

84.1 The *Provider* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide as stated in any Service Order. The *Provider* provides additional insurances as stated in any Service Order.

84.2 The insurances are in the name of the *Provider* but notify the interests of the *Employer* on the relevant policy and provide cover for events which are at the *Provider's* risk from the Contract Date until the end of the Contract Period or a termination certificate has been issued.

INSURANCE TABLE

| Insurance against | Minimum amount of cover or minimum limit of indemnity |
|---|--|
| Loss of, or damage caused by the <i>Provider</i> to, the Public Realm | £20 million |
| Loss of, or damage to, Plant and Materials | The replacement cost for the replacement of any Plant and Materials provided by the Employer |
| Loss of or damage to Equipment | The replacement cost of any Equipment |
| | |

| | |
|---|---|
| The Provider's liability for loss of or damage to property (except the Public Realm, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Provider</i>) arising from or in connection with the <i>Provider</i> Providing the Services | £20 million for any one event |
| Liability for death or of bodily injury to employees of the <i>Provider</i> arising out of and in the course of their employment in connection with this contract | £20 million for any one event |
| Professional indemnity insurance in respect of the liability of the <i>Provider</i> | £10 million for any one claim or series of claims arising out of the same cause provided such insurance continues to be available at commercially reasonable rates. |

85 Insurance policies

- 85.1 Before the *access date* and on each renewal of the insurance policy, the *Provider* submits to the *Service Manager* for acceptance written confirmation or a broker's letter which states that the insurance required by this contract is in force. The written confirmation or a broker's letter is signed by the *Provider's* insurer or insurance broker. A reason for not accepting the written confirmation or broker's letter is that they do not comply with this contract.
- 85.2 The Parties comply with the terms and conditions of the insurance policies.
- 85.3 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Provider* for events which are at his risk.

86 If the *Provider* does not insure

The *Employer* may insure a risk which this contract requires the *Provider* to insure if the *Provider* does not submit the written confirmation or broker's letter required by clause 85 above. The cost of the insurance to the *Employer* is paid by the *Provider*.

87 Claims against third parties

- 87.1 Where so required by the Service Information, the *Provider* in accordance with this contract
- 87.1.1 repairs defects in the **Public Realm** caused by a fault in the work of Others (including an Outgoing Provider) and
- 87.1.2 repairs and replaces loss or damage to the **Public Realm** and any Materials and Equipment caused by the act or default of Others.

- 65.3 Where the repair or replacement falls within the [Services](#), the *Provider* may pursue a claim against any third party to recover the costs involved in the name of the *Employer*. The *Provider* bears and indemnifies the *Employer* against any costs and liabilities incurred in pursuing the claim. Any sums recovered by the *Provider* as a result of the claim and received by the *Employer* (other than sums recovered in respect of the repair or replacement of Employer's Stocks, which belong to the *Employer*) are held on trust for the *Provider* and are paid by the *Employer* to the *Provider* on demand. Alternatively the *Provider* may agree with the third party that the third party will carry out the necessary works at no cost to the *Employer*.
- 87.2 Where the repair or replacement does not fall within the [Services](#), the *Employer* may request the *Provider* to pursue a claim against any third party to recover the costs involved on behalf of the *Employer*. The *Provider* conducts the claim in accordance with the Service Information. The *Employer* reimburses the *Provider* in accordance with this contract for any costs incurred by him in pursuing the claim. Any sums recovered by the *Provider* as a result of the claim belong solely to the *Employer*.

9 DISPUTES AND TERMINATION

90 Dispute resolution

- 90.1 Each Party endeavours to notify the other Party of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.
- 90.2 Subject to the operation of clause 90.4, both Parties endeavour to resolve any failures to agree matters or any disputes by direct negotiations between senior representatives of each Party.
- 90.3 Each Party gives serious consideration to the use of mediation if any dispute cannot be resolved by direct negotiation.
- 90.4 The Parties comply with the *dispute resolution hierarchy* set out in the Contract Data in order to resolve any difference or dispute.
- 90.5 Notwithstanding any other provision of this clause 90, either Party may refer a dispute to adjudication in accordance with the Scheme for Construction Contracts (as amended) at any time. The adjudicator, in the absence of agreement between the parties, will be appointed by the president for the time being of the Institution of Civil Engineers.
- 90.6 The decision of any adjudicator will be binding on, and implemented by, the parties pending final determination of the relevant dispute by the courts of England and Wales.

91 Not used

92 Not used

93 Not used

94 Termination

- 94.1 If either Party wishes to terminate the *Provider's* obligation to Provide the Services, he notifies the *Service Manager* and the other Party giving details of his reason for terminating. The *Service Manager* issues a termination notice to both Parties promptly if the reason complies with this contract.
- 94.2 The procedures for termination are implemented immediately after receipt of a termination notice.
- 94.3 Within thirteen weeks of receipt of the termination notice, the *Provider* submits his final invoice which is the *Provider's* assessment of the amount due on termination. Payment is made within 30 days of the *Provider's* invoice.
- 94.4 After a termination notice has been received, the *Provider* stops Providing the Services.

95 Reasons for termination

- 95.1 Either Party may terminate if the other Party has done one of the following or its equivalent:

- 95.1.1 had a winding-up order made against it;
 - 95.1.2 had a provisional liquidator appointed to it;
 - 95.1.3 passed a resolution for winding-up (other than in order to amalgamate or reconstruct);
 - 95.1.4 had an administration order made against it;
 - 95.1.5 had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of his undertaking or assets; or
 - 95.1.6 made an arrangement with his creditors.
- 95.2 The *Employer* may terminate if the *Service Manager* has notified him that the *Provider* has defaulted in one of the following ways and not put the default right within four weeks of the notification:
- 95.2.1 substantially failed to comply with his obligations;
 - 95.2.2 wholly or substantially abandoned the [Public Realm](#) or stopped Providing the Services without reasonable cause; or
 - 95.2.3 persistently or materially failed to meet any of the performance requirements for the Services set out in the Service Information.
- 95.3 The *Employer* may terminate if the *Service Manager* has notified him that the *Provider* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification:
- 95.3.1 substantially hindered the *Employer* or Others; or
 - 95.3.2 substantially broken a health and safety regulation.
- 95.4 The *Employer* may terminate if the *Provider* fails to comply with clause 10.4 or clause 29.1.
- 95.5 The *Provider* may terminate by notifying the *Service Manager* if the *Employer* has not paid an amount due to the *Provider* within eleven weeks of the issue of a notice by the *Provider* to the *Service Manager* that payment is overdue.
- 95.6 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract.
- 95.7 If the *Service Manager* has instructed the *Provider* to suspend the whole or substantially the whole of the Services and an instruction to restart the Services has not been given within 26 weeks
- 95.7.1 the *Employer* may terminate if the instruction was due to a default by the *Provider*;
 - 95.7.2 the *Provider* may terminate if the instruction was due to a default by the *Employer*; and

95.7.3 either Party may terminate if the instruction was due to any other reason.

95.8 Either Party may terminate this contract on notice (without any of the above reasons applying) by serving on the other not less than 24 months' notice in writing.

96 Procedures on termination

96.1 On termination:

96.1.1 the *Employer* may Provide the Services and may use any Materials to which he has title; and

96.1.2 the *Provider* gives to the *Employer* copies of all Documents in his possession which relate to the Services or the **Public Realm**.

96.2 The *Service Manager* may instruct the *Provider* to leave the **Public Realm**, remove any Equipment and Materials from the **Public Realm** and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer* or another person specified by the *Employer*. The *Provider* complies with any such instruction.

96.3 The *Employer* may use any Equipment to which the *Provider* has title to Provide the Services. The *Provider* promptly removes the Equipment from the **Public Realm** when the *Service Manager* notifies him that the *Employer* no longer requires him to Provide the Services.

96.4 If the *Service Manager* so instructs, the *Provider*:

96.4.1 completes the performance of any Services started prior to the date of termination; and

96.4.2 co-operates with the *Employer* and with any Incoming Provider so as to ensure a smooth transfer of functions.

97 Payment on termination

97.1 The amount due on termination includes:

97.1.1 an amount due assessed as for normal payments (subject to clause 97.2);

97.1.2 the Defined Cost for Materials:

97.1.2.1 within the **Public Realm**; or

97.1.2.2 to which the *Employer* has title and of which the *Provider* has to accept delivery;

97.1.2.3 the Defined Cost of removing Equipment from the **Public Realm** if applicable; and

97.1.2.4 other Defined Cost reasonably incurred in expectation of completing the Services.

- 97.2 In the case of termination due to default by the *Provider*, the amount due on termination also includes a deduction of the forecast of the additional cost to the *Employer* of completing the Services and the *Provider* is not entitled to payment of any *Provider's* share.
- 97.3 In the case of termination due to default by the *Employer*, the amount due on termination also includes the fee percentage applied to the *Service Manager's* assessment of the total amount which would have been payable to the *Provider* under this contract in respect of the period of three months immediately following termination.
- 97.4 Not used.
- 97.5 Not used.

10 SPECIAL CONDITIONS

100 Special Requirements

100.1 The *Provider* complies with all special requirements of any Statutory Body listed in the [Public Realm Asset Information](#).

101 Construction Industry Scheme

101.1 In this clause

101.1.1 **Act** means the Finance Act 2004; and

101.1.2 **Regulations** means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

101.2 This contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

101.3 The *Provider* provides the information required by the Regulations to enable the *Employer* to verify (in accordance with paragraph 6 of the Regulations) whether the *Provider* under the Act:

101.3.1 is registered for gross payment;

101.3.2 is registered for payment under deduction;

101.3.3 is exempt from registration as a local authority or other public body; or

101.3.4 is neither registered nor exempt from registration.

101.4 If the *Provider* is registered for payment under deduction or is neither registered nor exempt from registration

101.4.1 the *Provider* submits an application for payment which separately identifies the cost of labour; and

101.4.2 the *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

102 Considerate Constructor Scheme

102.1 The *Provider* registers the [Public Realm](#) or, where that is not possible, the site of any Scheme carried out by the *Provider* under the Considerate Constructor Scheme operated by Construction Umbrella Bodies (Holdings) Limited.

102.2 In Providing the Services, the *Provider* complies with the Considerate Constructor Scheme's Code of Practice.

102.3 The *Provider* assists Construction Umbrella Bodies (Holdings) Limited to develop the Considerate Constructor Scheme so that it applies to contracts for works or services similar to those which the *Provider* carries out under this contract.

103 [Not used](#)

104 Personal Data

- 104.1 For the purposes of this contract and the Data Protection Acts:
- 104.1.1 the *Employer* is the Data Controller; and
 - 104.1.2 the *Provider* is the Data Processor.
- 104.2 The *Provider* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing his obligations under this contract.
- 104.3 The *Provider* has in place for so long as he holds the Personal Data:
- 104.3.1 appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure; and
 - 104.3.2 adequate security programmes and procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.
- 104.4 The *Provider* immediately notifies the *Service Manager* if he receives
- 104.4.1 a request from any person whose Personal Data he holds to access his Personal Data; or
 - 104.4.2 a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.
- 104.5 The *Provider* assists and co-operates with the *Employer* in relation to any complaint or request received, including:
- 104.5.1 providing full details of the complaint or request;
 - 104.5.2 complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Service Manager*; and
 - 104.5.3 promptly providing the *Service Manager* with any Personal Data and other information requested by him.
- 104.6 The *Provider* does not process the Personal Data outside the European Economic Area without the agreement of the *Service Manager*. Where the *Service Manager* agrees, the *Provider* complies with the instructions of the *Service Manager* and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 1998.
- 104.7 The *Provider* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.
- 104.8 The *Provider* immediately notifies the *Service Manager* on becoming aware of any breach or potential breach of this clause 104 or of the Data Protection Acts.

105 Assignment

- 105.1 The *Employer* may only assign this contract to another entity carrying on the functions of the *Employer*.
- 105.2 The *Provider* may not assign this contract.

106 Parent Company Guarantee

- 106.1 If the *Provider* is owned by a parent company, the *Provider* provides to the *Employer* a guarantee by the parent company (or a related company acceptable to the *Employer*) of the *Provider's* performance in the form of the draft attached at Schedule 8.
- 106.2 If the *Provider* comprises more than one organisation, the parent companies for each organisation provides guarantees in the form of the draft attached at Schedule 8 jointly and severally guaranteeing the obligations of the *Provider*.

107 Freedom of Information

- 107.1 The Parties acknowledge that the requirement of Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") may apply to this contract. The Parties undertake to facilitate compliance with the information disclosure requirements pursuant to the same in the manner provided for in this clause 107 to the extent that such obligations relate to information held by a Party on behalf of another party in connection with this contract.
- 107.2 Where a Request for Information has been received by the *Employer* he will consider in his absolute discretion:
 - 107.2.1 the availability of exemptions under the FOIA, the EIR or any other applicable legislation; and
 - 107.2.2 where an exemption being considered requires it, whether or not the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing information relating to this contract (together, an "Exemption");
 - 107.2.3 before responding to such a request (which, where the legislation provides, includes confirming or denying that the information is held by the *Employer* or on the *Employer's* behalf) and/or disclosing information about, or relating to, this contract, notify the *Provider* of this request and stipulate the time period during which the *Provider* needs to respond in order to make representations to the *Employer* (and such time period will not exceed 5 Working Days from the date of the request) considering whether an Exemption applies (including where necessary why the public interest in maintaining the exemption is not outweighed by the public interest in disclosure);
 - 107.2.4 in determining whether an Exemption applies and/or whether to confirm or deny and/or disclose any information pursuant to this clause 107.2, the *Employer* takes into account any reasonable representations made to him by the *Provider*.

107.3 The *Provider* acknowledges that, acting in accordance with the Code of Practice and the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities Functions under Part 1 of the FOIA, the *Employer* may be obliged, or in his discretion decide, under the FOIA or the EIR to disclose information concerning this contract:

107.3.1 without consulting with the *Provider*, or

107.3.2 following consultation with the *Provider* and having taken his views into account.

107.4 A disclosure made in accordance with the FOIA or the EIR is not in breach of any confidentiality agreements between the parties.

108 No agency, partnership or joint venture

Nothing contained in this contract will be construed as creating an agency, partnership or joint venture relationship between the Parties.

109 No guarantee of minimum levels of services

The *Employer* makes no representations regarding the level of Services he will require from the *Provider* in any Financial Year and reserves the right to let the performance of some of the Services in accordance with clause 210.

110 Corrupt gifts

110.1 The *Employer* may terminate this contract forthwith and recover from the *Provider* the amount of any loss resulting from such termination if the *Provider* has offered or given, or agreed to give, to any person any gifts or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done, or forborne to do, any action in relation to the entry into this contract with the *Employer* or for showing or forbearing to show favour or disfavour to any other person in relation to this contract or if similar acts have been done by any person in relation to this contract or if similar acts have been done by any person employed by the *Provider* or acting on behalf of the *Provider* (whether with, or without, the knowledge of the *Provider*).

110.2 The *Employer* may terminate this contract forthwith and recover from the *Provider* the amount of any loss resulting from such termination if, in relation to this contract, the *Provider* or any persons employed by the *Provider* have committed any offence under the Bribery Act 2010.

111 General conduct

The *Provider* Provides the Services in a manner which does not undermine the public's confidence in the *Employer* or bring the *Employer* into disrepute.

SCHEDULE 1 – PAYMENT SCHEDULE

Part I – Operating the payment provisions

1 Defined Cost

The Defined Cost is the actual cost to the *Provider* of components in the Schedule of Cost Components (set out in Part II of this Schedule) of carrying out the Services comprised in any Service Order.

The Defined Cost excludes the Fee and is net of all discounts, rebates and taxes that can be recovered by the *Provider*, ascertained on an open book basis in accordance with clause 50.1.

The Local Overhead Cost is separately identified and is not double counted in the cost of carrying out the Services comprised in any Service Order.

2 Agreement of target costs for Target Cost Services and the Local Overhead Cost

In relation to all Service Orders for Target Cost Services, the *Provider* provides its genuine estimate of the Defined Cost of providing the relevant Services required in accordance with the relevant Service Order. The *Provider* provides, separately, a breakdown of the risks associated with the provision of those services. If requested, the *Provider* provides evidence to demonstrate that its estimates are reasonable and offer value for money.

The Parties use their respective reasonable endeavours to agree the relevant estimate of the Defined Cost of providing the relevant Services and of the risks associated with the provision of those Services. The agreed estimate of the Defined Cost of providing the relevant Services together with the agreed allowance in respect of the risks associated with the delivery of those Services constitutes the relevant target cost for the provision of those Services under the relevant Service Order.

Throughout the delivery of the Services under the relevant Service Order, the *Provider* continually seeks to manage and mitigate risks associated with the delivery of these Services and the *Employer* provides all reasonable assistance.

In relation to the Local Overhead Cost for each Financial Year, the *Provider* provides its genuine estimate of the Defined Cost of the Local Overhead Cost for that Financial Year. The *Provider* provides, separately, a breakdown of any risks associated with the Local Overhead Cost. If requested, the *Provider* provides evidence to demonstrate that its estimate is reasonable and offers value for money.

The Parties use their respective reasonable endeavours to agree the relevant estimate of the Local Overhead Cost. The agreed estimate of the Local Overhead Cost constitutes the target cost for the Local Overhead Cost.

3 Agreement of lump sum prices for Lump Sum Services

Where the *Employer* and *Provider* agree as part of any Annual Plan that one or more parts of the Services are to be carried out as Lump Sum Services, the Parties agree the estimated Defined Cost of carrying out the relevant Services plus the resulting Fee or an alternative method of calculating a lump sum price for such Lump Sum Services and set this out in the relevant Service Order.

For the avoidance of doubt, any lump sum prices are deemed to include the Fee and payments in respect of the Lump Sum Services will be by reference to the Defined Cost plus resulting Fee of carrying out such Services, subject to adjustment in accordance with clause 50.11.

Part II – Schedule of cost components

An amount from this schedule is included only in one cost component and only if it is incurred in order to Provide the Services.

1 People

- 1.1 The following components of the cost of: people who are engaged in Providing the Services and are directly employed by the *Provider* (excluding people engaged only in providing the supporting functions identified in the Fee Schedule).
- 1.2 Wages, salaries and amounts paid by the *Provider* for people.
- 1.3 Payments to people for:
 - 1.3.1 bonuses and incentives;
 - 1.3.2 overtime;
 - 1.3.3 working in special circumstances;
 - 1.3.4 special allowances;
 - 1.3.5 absence due to sickness and holidays;
 - 1.3.6 statutory severance.
- 1.4 Payments made in relation to people for:
 - 1.4.1 Travel;
 - 1.4.2 subsistence and lodging;
 - 1.4.3 relocation;
 - 1.4.4 medical examinations;
 - 1.4.5 passports and visas;
 - 1.4.6 travel insurance;
 - 1.4.7 items 1.4.1 to 1.4.6 for dependants;
 - 1.4.8 protective clothing;
 - 1.4.9 National Insurance contributions;
 - 1.4.10 meeting the requirements of the law;
 - 1.4.11 pensions and life assurance;

- 1.4.12 death benefit;
 - 1.4.13 occupational accident benefits;
 - 1.4.14 medical aid;
 - 1.4.15 a vehicle;
 - 1.4.16 safety training;
 - 1.4.17 vetting in accordance with the Service Information.
- 1.5 The following components of the cost of people who are engaged in Providing the Services and are not directly employed by the *Provider* but are paid for by him according to the time worked (excluding people engaged only in providing the supporting functions comprised in the Fee).
- 1.5.1 Amounts paid by the *Provider*.

2 Equipment and temporary accommodation

The following components of the cost of Equipment and temporary accommodation which is used within the Working Areas.

- 2.1 Amounts for Equipment and temporary accommodation assessed at open market rates multiplied by the time for which the Equipment or temporary accommodation is required.
- 2.2 Payments for the purchase price of Equipment which is consumed.
- 2.3 Unless included in the open market rates, payments for:
 - 2.3.1 transporting Equipment and temporary accommodation to and from the Working Areas other than for repair and maintenance;
 - 2.3.2 erecting and dismantling Equipment and temporary accommodation; and
 - 2.3.3 constructing, fabricating or modifying Equipment and temporary accommodation as a result of a compensation event.
- 2.4 Payments for purchase of materials used to construct or fabricate Equipment and temporary accommodation.
- 2.5 Unless included in the open market rates, the cost of operatives is included in the cost of people.

3 Plant and Materials

The following components of the cost of plant and Materials.

- 3.1 Payments for:
 - 3.1.1 Purchasing plant and Materials;
 - 3.1.2 delivery to and removal from the Working Areas;

- 3.1.3 providing and removing packaging; and
- 3.1.4 samples and tests.
- 3.2 Cost is credited with payments received for disposal of plant and Materials unless the cost is disallowed.

4 Charges

The following components of the cost of charges paid by the *Provider* and which are not covered in the Local Overhead Cost.

- 4.1 Payments for provision and use in the Working Areas of:
 - 4.1.1 water;
 - 4.1.2 gas; and
 - 4.1.3 electricity.
- 4.2 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the Services.
- 4.3 Payments for:
 - 4.3.1 cancellation charges arising from a compensation event;
 - 4.3.2 leasing of land;
 - 4.3.3 compensation for loss of crops or buildings;
 - 4.3.4 royalties;
 - 4.3.5 inspection certificates;
 - 4.3.6 charges for access to the Working Areas;
 - 4.3.7 facilities for visits to the Working Areas by Others;
 - 4.3.8 advertising, leaflet drops and the like in connection with the Services;
 - 4.3.9 specialist services;
 - 4.3.10 consumables and equipment provided by the *Provider* for the *Service Manager's* offices.

5 Insurance

The following are deducted from cost:

- the cost of events for which this contract requires the *Provider* to insure; and
- other costs paid to the *Provider* by insurers.

SCHEDULE 2 – PERFORMANCE MANAGEMENT

Part I – Performance management

1 Self-assessment

The *Provider* monitors its performance against the Operational Performance Indicators on a monthly or other relevant basis. The *Provider* monitors its performance against the Strategic Performance Indicators on a three monthly or other relevant basis. The *Provider* takes any steps reasonably necessary to correct any shortfalls in performance. Within one month before, or after the end of, each Financial Year the *Provider* provides the *Employer* with its assessment of its performance against the Performance Indicators during that Financial Year in accordance with this Schedule provided that the one month period is extended to the extent that any information is required from Others.

2 Records and reporting of performance monitoring

The *Provider* keeps a written record of all performance monitoring carried out under this contract and submits performance monitoring reports against the Performance Indicators on a monthly basis during each Financial Year. The *Provider* provides information on the delivery of the Services to enable the *Employer* to complete statistics and report on its national and local performance indicators of which the *Employer* has notified the *Provider* (which, for the avoidance of doubt, may include statistics going beyond the Performance Indicators). The *Employer* notifies the *Provider* of any changes or developments to the national and local performance indicators during the Contract Period.

3 Services audit

- 3.1 The *Employer* reserves the right for itself and any appointed agents to open up, inspect and/or audit any of the Services carried out by the *Provider* at any time during the Contract Period. The *Employer* uses its right to open up, inspect and/or audit any of the Services as often as it reasonably considers it necessary to do so. The *Employer* is subject to a corporate responsibility to audit its business activities and entry into this contract is likely to see an increased level of audit activity in relation to the operation of this contract which should reduce in intensity over the course of the Contract Period.
- 3.2 In the event that any Services are found not to be in compliance with this contract or any relevant national standards, or are found to have been notified by the *Provider* as completed but which are found to be incomplete or to be a Defective Service, the *Employer* may serve a notice on the *Provider* requiring that any such Defective Service or non-compliance is rectified and setting out the timescales in which such rectification must occur.
- 3.3 The *Provider* carries out any rectifications as required by a notice served in accordance with paragraph 3.2 at his own expense.
- 3.4 The Parties bear their own costs in connection with any inspection and/or audit carried out in accordance with this paragraph 3 save to the extent that any such inspection or audit reveals:
 - 3.4.1 major non-compliance; or
 - 3.4.2 a significant number (judged by the *Employer*, acting reasonably) of minor non-compliances;

with the *Provider's* obligations under this contract, in which cases, the *Provider* pays the *Employer's* reasonable costs in carrying out the original inspection and any further inspections required to monitor the rectification of the relevant non-compliance.

4 Updating of the Performance Indicators

The Parties keep under review the relevance of the Performance Indicators to the successful operation of this contract and may agree from time to time during the Contract Period to make amendments to the Performance Indicators.

5 Annual review of the Performance Indicator thresholds

The Parties review annually the thresholds in relation to each of the Performance Indicators. The expectation is that these levels will increase rather than decrease over the Contract Period. Pending agreement of amended levels, the previous thresholds continue.

Part II – Strategic Performance Indicators

| No | Strategic Indicator | Metric | Threshold | Cap upper or (lower) limit |
|-----|------------------------------------|---|---|-----------------------------|
| S1 | Road Safety Accident / Injury Rate | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: -0.25) |
| S2 | Principal road condition | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.2 (Lower: none) |
| S3 | Non-principal (B) road condition | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.2 (Lower: none) |
| S4 | Non-principal (C) road condition | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.5 (Lower: -1) |
| S5 | Unclassified road condition | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: -1) |
| S6 | Category 1, 1a and 2 footways | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.2 (Lower: -1) |
| S7 | Category 3 and 4 footways | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.2 (Lower: none) |
| S8 | Bridge Condition | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.2 (Lower: none) |
| S9 | Third party claims (Red Claims) | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.5 (Lower: none) |
| S10 | Public realm cleanliness | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 1.5 (Lower: none) |
| S11 | Flooding incidents | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: N/A (Lower: none) |
| S12 | Customer Satisfaction | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: -1) |
| S13 | Community Projects | Calculated as set | To be agreed by both | Upper: 2 |

| No | Strategic Indicator | Metric | Threshold | Cap upper or (lower) limit |
|-----|------------------------|---|---|----------------------------|
| | | out in attached Annex | parties after previous years data has been analysed. | (Lower: none) |
| S14 | Reuse and recycling | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: none) |
| S15 | CO2 Emissions | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: none) |
| S16 | Apprenticeships | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: N/A (Lower: none) |
| S17 | Care2Work | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: N/A (Lower: none) |
| S18 | Local Labour | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: none) |
| S19 | Local SME Supply Chain | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. | Upper: 2 (Lower: - 0.25) |

Part III – Operational Performance Indicators

| No | Operational Indicator | Metric | Threshold |
|-----|-----------------------------|---|---|
| O1 | Category 1 Defects | Calculated as set out in attached Annex | 100% |
| O2 | Defect completion | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. |
| O3 | PROW hazards | Calculated as set out in attached Annex | 100% |
| O4 | Street Lighting faults | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. |
| O5 | Traffic signal maintenance | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. |
| O6 | Winter gritting | Calculated as set out in attached Annex | 99% |
| O7 | Complaints handling | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. |
| O8 | Delivery of monthly reports | Calculated as set out in attached Annex | Yes |
| O9 | Accidents | Calculated as set out in attached Annex | 0.1 |
| O10 | Play equipment | Calculated as set out in attached Annex | 6% |
| O11 | Tree condition | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. |
| O12 | Accuracy of Target Costs | Calculated as set out in attached Annex | To be agreed by both parties after previous years data has been analysed. |
| O13 | Accuracy of timescales | Calculated as set out in attached | To be agreed by both parties after |

| No | Operational Indicator | Metric | Threshold |
|-----|-----------------------------|---|--|
| | | Annex | previous years data has been analysed. |
| O14 | Delivery of the Annual Plan | Calculated as set out in attached Annex | 1% |

Part IV – Acceptable Strategic Performance

Acceptable Strategic Performance is assessed in accordance with the following methodology:

- 1.1 for each Strategic Performance Indicator where the Provider meets the “Upper” threshold he receives one point;
- 1.2 for each Strategic Performance Indicator where the *Provider* achieves the “Lower” threshold he receives a score of zero;
- 1.3 for each Strategic Performance Indicator where the *Provider* fails to meet the “Upper” threshold but exceeds the “Lower” threshold he receives a percentage of one point by reference to the proportion of his score relative to the difference between the two thresholds (see paragraph 1.6 below);
- 1.4 for each Strategic Performance Indicator where the *Provider* exceeds the “Upper” threshold he may score higher than one point (by reference to the proportion of his score relative to the “Upper” threshold) subject to any capped level of increase in relation to individual Strategic Performance Indicators;
- 1.5 for each Strategic Performance Indicator where the *Provider* fails to achieve the “Lower” threshold he may score less than zero (i.e. a negative score) by reference to the proportion of his score relative to the “Lower” threshold, subject to any capped level of reduction in relation to individual Strategic Performance Indicators;
- 1.6 the scoring of paragraphs 1.3, 1.4 and 1.5 above are calculated in accordance with the following formulae:
 - 1.6.1 for Performance Indicators where an Upper and Lower threshold apply: the performance score for individual Performance Indicators will be (performance – “Upper” threshold) divided by (“Upper” threshold – “Lower” threshold) + 1; and
 - 1.6.2 for Performance Indicators where only a “Lower” threshold applies, the performance score for individual Performance Indicator will be (performance divided by “Lower” threshold) - 1
- 2 At, or as soon as practicable after, the end of each Financial Year, the *Provider’s* total score against the Strategic Performance Indicators is calculated.
 - 2.1 Acceptable Strategic Performance is achieved where the following conditions are satisfied:
 - 2.1.1 the *Provider* has not received a negative score against any of the Strategic Performance Indicators numbered 2, 8, 9 or 15;
 - 2.1.2 the *Provider* has not scored lower than 0 in relation to more than 16 of the Strategic Performance Indicators;
 - 2.1.3 the *Provider’s* total aggregated score against the Strategic Performance Indicators is not less than 11.
 - 2.2 Notwithstanding the *Provider’s* failure to achieve Acceptable Strategic Performance in accordance with the provisions of paragraph 2.1 above, the *Employer* has discretion to allow that the *Provider* has achieved Acceptable Strategic Performance for any Relevant Period.

Part V - Entitlement to the Fee Performance Element

Each month the *Provider's* performance against Operational Performance Indicators O1 through to O8 inclusive is assessed. The *Provider's* entitlement to the Fee Performance Element is assessed as follows:

| Number of Operational Performance Indicators where the <i>Provider</i> has achieved the relevant threshold | Percentage of Fee that the <i>Provider</i> is entitled to |
|--|---|
| 7 or 8 | [REDACTED] |
| 4, 5 or 6 | |
| 2 or 3 | |
| 0 or 1 | |

Annex – Further details regarding the Performance Indicators

Strategic Performance Indicators

| Indicator Ref | Title | |
|--|---|---------------------------|
| S1 | Road Safety Accident / Injury Rate | |
| Full Description | | |
| The number of people killed or seriously injured in road traffic accidents | | |
| Format | Decimal Places | Measurement Period |
| Percentage | One | Annually (calendar years) |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>The percentage change in the number of people killed or seriously injured during the calendar year compared to the previous year. Figures are based on a 3 year rolling average, up to the current year.</p> <p>This indicator is based on former NI 47, an updated version of the former best value performance indicator 99a.</p> <p>Include all killed or seriously injured in road traffic accidents in an authority's area on public roads, including those that are not the authority's direct responsibility, such as motorways and trunk roads.</p> <p>The definitions of 'Killed' and 'Seriously Injured' are given in the Department for Transport (DfT) document 'Road Casualties Great Britain and Stats 20 – Instructions for the Completion of Road Accident Reports'.</p> | |
| Formula | <p>Percentage change figure (to 1 decimal place) for the last reported 3-year rolling average compared to the previous year 3-year rolling average (e.g. 2006/7/8 compared to 2005/6/7).</p> <p>e.g. The return for year b would be x.x%, where:</p> $a = (2007 + 2008 + 2009) / 3$ $b = (2008 + 2009 + 2010) / 3$ $\left(\frac{a - b}{a} \right) * 100 = x.x\%$ <p>NB calendar years to be used</p> | |
| Method | Performance to be calculated from Police accident stats received by the Employer. The Employer to collect, calculate and report performance. | |
| Further reference | DfT will publish figures based on statistical returns submitted to it by local authorities. Baseline figures (1994 to 1998), the actual number of | |

| | | |
|---|--|---|
| | <p>casualties and the percentage difference between the baseline and the most recent year will also be published.</p> <p>(DfT document Road Casualties Great Britain:</p> <p>http://www.dft.gov.uk/pgr/statistics/datatablespublications/accidents/casualtieslatables/roadcasualtieslocal06</p> <p>http://www.dft.gov.uk/pgr/statistics/datatablespublications/accidents</p> <p>http://www.dft.gov.uk/pgr/statistics/datatablespublications/accidents/casualtiesbar/stats20instructionsforthecom5094</p> | |
| Notes | | |
| Upper Threshold | | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. |
| Version | | Date |
| Issue 1 Revision 01 | | |

| | | |
|--|--|---------------------------|
| Indicator Ref | Title | |
| S2 | Principal road condition | |
| Full Description | | |
| Percentage of principal roads where maintenance should be considered | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annual |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | |
| Definition | <p>The indicator is the length of principal (A road) carriageway identified as having a condition indicator greater than or equal to 100, as a percentage of the total length surveyed.</p> <p>This indicator is based on SDL 130-01 (former NI 168). The indicator measures the percentage of the local authority's principal (A-road) network where maintenance should be considered.</p> <p>The performance indicator is derived from a survey of the surface condition of the local authority's principal (A road) carriageway network, using survey vehicles that are accredited as conforming to the SCANNER (Surface Condition Assessment for the National Network of Roads) specification and processing software that is accredited as conforming to the UKPMS (UK Pavement Management System) standards.</p> <p>Results are reported annually, based on surveys conducted at any point in the relevant reporting year.</p> <p>Results are required for 100% of the network surveyed in both directions over a two year period.</p> <p>All road surface types should be included. Surveys should physically cover the required network lengths; grossed-up figures from shorter surveys are not permitted.</p> <p>The Employer requires annual performance returns for the entire principal carriageway element of the Highway Network. The thresholds are to be calculated on an annual basis based on forecasted annual spend for the Financial Year.</p> | |
| Formula | | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | | |

| Upper Threshold | Lower Threshold |
|---|---|
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

| | | |
|--|---|---------------------------|
| Indicator Ref | Title | |
| S3 | Non-principal (B) road condition | |
| Full Description | | |
| Percentage of non-principal (B) roads where maintenance should be considered | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annual |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | |
| Definition | <p>The indicator is the length of classified non-principal (B-road) carriageway identified as having a condition indicator greater than or equal to 100, as a percentage of the total length surveyed.</p> <p>This indicator is based on SDL 130-02 (former NI 169). The indicator measures the percentage of the local authority's non-principal (B-road) network where maintenance should be considered.</p> <p>The Performance Indicator is derived from a survey of the surface condition of the classified non-principal (B road) carriageway network, using survey vehicles that are accredited as conforming to the SCANNER (Surface Condition Assessment for the National Network of Roads) specification and processing software that is accredited as conforming to the UKPMS (UK Pavement Management System) standards.</p> <p>Results are reported annually, based on surveys conducted at any point in the relevant reporting year.</p> <p>Results are reported for 100% of the B-class network surveyed in one direction in each year giving data in both directions no more than two years old..</p> <p>All road surface types should be included. Surveys should physically cover the required network lengths; grossed-up figures from shorter surveys are not permitted.</p> <p>The Employer requires annual performance returns for the entire non principle carriageway element of the Highway Network. The thresholds are to be calculated on an annual basis based on the forecasted annual spend for the Financial Year.</p> | |
| Formula | | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |

| | |
|---|---|
| Notes | |
| Upper Threshold | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

| Indicator Ref | Title | |
|--|--|--------------------|
| S4 | Non-principal (C) road condition | |
| Full Description | | |
| Percentage of non-principal (C) roads where maintenance should be considered | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annual |
| Objectives | <p>The Public Realm is accessible, safe, and well-maintained</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | |
| Definition | <p>The indicator is the length of classified non-principal (C road) carriageway identified as having a condition indicator greater than or equal to 100, as a percentage of the total length surveyed.</p> <p>This indicator is based on SDL 130-02 (fomer NI 169b). The indicator measures the percentage of the local authority's classified non-principal (C-road) network where maintenance should be considered.</p> <p>The Performance Indicator is derived from a survey of the surface condition of the classified non-principal (C road) carriageway network, using survey vehicles that are accredited as conforming to the SCANNER (Surface Condition Assessment for the National Network of Roads) specification and processing software that is accredited as conforming to the UKPMS (UK Pavement Management System) standards.</p> <p>Results are reported annually, based on surveys conducted at any point in the relevant reporting year.</p> <p>Results are reported for 50% of the classified non-principal (C-road) network surveyed in one direction each year giving 100% coverage in one direction with data no more than two years old.</p> <p>All road surface types should be included. Surveys should physically cover the required network lengths; grossed-up figures from shorter surveys are not permitted.</p> <p>The Employer requires annual performance returns for the entire non principle carriageway element of the Highway Network. The thresholds are to be calculated on an annual basis based on the forecasted annual spend for the Financial Year.</p> | |
| Formula | | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |

| | |
|---|---|
| Notes | |
| Upper Threshold | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

| Indicator Ref | Title | | | | | | | | | |
|---|--|---------------------------|-------------------------------|-----------------|---------------|----|---------|----|-------------------|----|
| S5 | Unclassified road condition | | | | | | | | | |
| Full Description | | | | | | | | | | |
| Percentage of the unclassified road network where maintenance should be considered. | | | | | | | | | | |
| Format | Decimal Places | Measurement Period | | | | | | | | |
| Percentage | Two | Annual | | | | | | | | |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | | | | | | | | | |
| Definition | <p>The indicator is the length of the entire unclassified carriageway for which at least one of the UKPMS Rules and Parameters 8.01 Condition Index thresholds shown in the following table have been equalled or exceeded, divided by the total length of unclassified carriageway network.</p> <table border="1"> <thead> <tr> <th>UKPMS RP8.01* Condition Index</th> <th>Threshold Value</th> </tr> </thead> <tbody> <tr> <td>Structural CI</td> <td>85</td> </tr> <tr> <td>Edge CI</td> <td>50</td> </tr> <tr> <td>Wearing Course CI</td> <td>60</td> </tr> </tbody> </table> <p>This indicator is based on the former BVPI 224b.</p> <p>The Provider is required to carry out a visual survey of the unclassified roads within the Area Network using either a UKPMS Coarse Visual Inspection Survey (CVI) or an equivalent Detailed Visual Inspection survey (DVI). Visual surveys must be carried out in accordance with "Visual Data Collection for UKPMS", Volume 2 of the UKPMS User Manual.</p> <p>Concrete or part-covered roads should be included in the visual survey for this indicator.</p> <p>If DVI surveys are to be used as the basis for the survey, they should be converted to a "CVI-equivalent" survey and processed as a CVI survey.</p> <p>Where CVI and DVI results are combined, CVI data must not be mixed with unconverted DVI data.</p> <p>The survey result must be based on data for the entire unclassified element of the Area Network.</p> <p>Results are reported for at least 25% of the unclassified network each</p> | | UKPMS RP8.01* Condition Index | Threshold Value | Structural CI | 85 | Edge CI | 50 | Wearing Course CI | 60 |
| UKPMS RP8.01* Condition Index | Threshold Value | | | | | | | | | |
| Structural CI | 85 | | | | | | | | | |
| Edge CI | 50 | | | | | | | | | |
| Wearing Course CI | 60 | | | | | | | | | |

| | |
|---|--|
| | <p>year giving 100% coverage in one direction no more than 4 years old.</p> <p>Note that the cross sectional position (XSP) level used for any section should remain consistent over the cycle. Data should not be collected using a mixture of Minimal and Full XSPs for the same section.</p> <p>The Employer requires annual performance returns for the entire unclassified carriageway element of the Highway Network. The thresholds are to be calculated on an annual basis based on the forecasted annual spend for the Financial Year..</p> |
| Formula | $\left[\frac{x}{y} \right] * 100$ <p>where</p> <p>x = length of non-principal classified carriageway surveyed identified as having a condition indicator greater than or equal to 100;</p> <p>y = total length of non-principal classified roads surveyed.</p> |
| Method | <p>112 Data should be processed using a UKPMS system accredited by the UKPMS Annual Health Check to produce BVPI 224b for 2007/08 and configured using UKPMS Rules and Parameters 8.01*. The processing should use variable length processing and default inventory. Users of Tranche 3 accredited systems should note that, at this stage, condition projection is not required to be used.</p> <p>113 Data to be supplied through the Provider's system</p> |
| Collection interval | Annual survey, taken at any point in the Financial Year. |
| Further reference | |
| Notes | |
| Upper Threshold | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

| | | |
|--|--|---------------------------|
| Indicator Ref | Title | |
| S6 | Category 1, 1a and 2 footways | |
| Full Description | | |
| Percentage of the Category 1, 1a and 2 footway network where maintenance should be considered. | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Annually |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>Footway Categories are defined in Well-Maintained Highways, the code of practice for highway maintenance management published in July 2005</p> <p>This indicator is based on the former BVPI 187.</p> <p>This indicator is based on the collection and analysis of Detailed Visual Inspection (DVI) or Footway Network Survey (FNS) measurements. It is designed to provide the percentage length of the footway network with a Footway Condition Index greater than a defined threshold value.</p> <p>It will be based on a 50 % survey of Category 1, 1a and 2 footways each year, so that the complete Category 1, 1a and 2 network will be covered every two years.</p> | |
| Formula | The Provider should measure the percentage length of the footway Category 1, 1a and 2 network with a Footway Condition Index greater than or equal to a threshold value of 20.0. | |
| Method | <p>Step 1. Identify those UKPMS sections with Category 1, 1a or 2 footways. All those sections with a "Default Footway Hierarchy" of 1, 1a or 2 are included.</p> <p>Step 2. From those sections, select one half, randomly, by number rather than section length (i.e. if there are 200 sections, select 100). The remaining half of the sections would be included in the following year.</p> <p>Data to be supplied through the Provider's system</p> | |
| Further reference | | |
| Notes | | |
| Upper Threshold | Lower Threshold | |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. | |
| Version | Date | |

| | | |
|---|---|---------------------------|
| Indicator Ref | Title | |
| S7 | Category 3 and 4 footways | |
| Full Description | | |
| Percentage of the Category 3 and 4 footway network where structural maintenance should be considered. | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Annually |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>Footway Categories are defined in Well-Maintained Highways, the code of practice for highway maintenance management published in July 2005.</p> <p>This indicator is based on the former BVPI 187.</p> <p>This indicator is based on the collection and analysis of Detailed Visual Inspection (DVI) or Footway Network Survey (FNS) measurements. It is designed to provide the percentage length of the footway network with a Footway Condition Index greater than a defined threshold value.</p> <p>It will be based on a 50 % survey of Category 3 and 4 footways each year, so that the complete Category 3 and 4 network will be covered every two years.</p> | |
| Formula | The Provider should measure the percentage length of the footway Category 3 and 4 network with a Footway Condition Index greater than or equal to a threshold value of 20.0. | |
| Method | <p>Step 1. Identify those UKPMS sections with Category 3 or 4 footways. All those sections with a "Default Footway Hierarchy" of 3 or 4 are included.</p> <p>Step 2. From those sections, select one half, randomly, by number rather than section length (i.e. if there are 200 sections, select 100). The remaining half of the sections would be included in the following year.</p> <p>Data to be supplied through the Provider's system</p> | |
| Further reference | | |
| Notes | | |
| Upper Threshold | Lower Threshold | |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. | |
| Version | Date | |

| | | |
|---|---|---|
| Indicator Ref | Title | |
| S8 | Bridge Condition | |
| Full Description | | |
| Average Bridge Condition Index (BCI Ave). | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annual (calendar year) |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>Bridge Condition Index: The BCI Score is based on the individual bridge scores based on the inspections undertaken and recorded.</p> <p>Bridge Inspection: Undertake inspection of individual bridges on two yearly rotation for general inspections and six to twelve yearly rotation to undertake principal inspection in line with the Structures Code of Practice (CoP).</p> | |
| Formula | | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | <p>This definition will be developed further when the approach to the management of bridge data is clear</p> <p>The formula will be described when the approach to the management of bridge data by the Provider is clear</p> | |
| Upper Threshold | | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. |
| Version | | Date |
| Issue 1 Revision 01 | | |

| Indicator Ref | Title | |
|--|---|--------------------|
| S9 | Third party claims (Red Claims) | |
| Full Description | | |
| Reduction in money paid out for Indemnified third party claims | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Annually |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services are efficient and responsive to local needs</p> | |
| Definition | <p>The baseline performance for the purpose of this indicator is £ per annum.</p> <p>The upper threshold relates to a year-on-year reduction in the amount paid by the Provider for Indemnified Claims.. To reduce the risk of annual fluctuations distorting performance, the Parties have agreed that year-on-year upper thresholds and lower thresholds will be represented in the form of Annual Cumulative upper thresholds and Annual Cumulative lower thresholds as defined below:</p> <p>Annual upper threshold – The upper threshold per Financial Year in respect of monies paid out by the Provider for Indemnified Claims as set out in Table 1 of this detailed definition.</p> <p>Annual lower threshold – The lower threshold per Financial Year in respect of monies paid out by the Provider for Indemnified Claims as set out in Table 1 of this detailed definition.</p> <p>Annual Cumulative upper threshold – The cumulative total of the Annual upper threshold for each Financial Year from the Contract Date up to the Measurement Period as set out in Table 1 of this detailed definition.</p> <p>Annual Cumulative lower threshold - The cumulative total of the Annual lower threshold for each Financial Year from the Contract Date up to the Measurement Period as set out in Table 1 of this detailed definition.</p> | |
| Formula | <p>To calculate performance against the upper threshold:-</p> $\left(\frac{x + y}{z} \right) * 100$ <p>where</p> <p>x = money paid out for Indemnified Claims during the measurement period</p> <p>y = the total money paid out for Indemnified Claims for all previous Financial Years .</p> <p>z = the Cumulative upper threshold for the measurement period</p> <p>To calculate performance against the lower threshold:-</p> | |

$$\left[\frac{x + y}{z} \right] * 100$$

where

x = money paid out for Indemnified Claims during the measurement period

y = the total money paid out for Indemnified Claims for all previous Financial Years.

z = the Cumulative lower threshold for the measurement period

Table 1

| Financial Year | Annual upper threshold | Cumulative upper threshold | Annual lower Threshold | Cumulative lower Threshold |
|----------------|------------------------|----------------------------|------------------------|----------------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |

| | |
|--------------------------|---|
| Method | <p>The Provider will maintain a Claims history log containing details of all Third Party Claims. The Provider will produce an electronic monthly report in a format agreed with the Employer to justify performance level for that Measurement Period.. The report will hold sufficient detail to allow the Employer to audit Provider performance under this indicator (including case by case detail).</p> <p>Data to be supplied through the Provider's system</p> |
| Further reference | N/A |
| Notes | <p>Claims arising prior to the Access Date, but settled after the Access Date will not be measured as part of this indicator.</p> <p>The recording of the payments made in respect of Indemnified Claims must</p> |

| | |
|---|--|
| | <p>relate to the date on which the payment was made.</p> <p>Baseline performance has yet to be established</p> <p>Table 1 will be populated when baseline data has been analysed</p> |
| Upper Threshold | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

| | | | | | | | | | | | | | | | | | |
|---|---|---|---|-----|--|---|-----|--|---|-----|---|---|-----|--|---|--|---|
| Indicator Ref | Title | | | | | | | | | | | | | | | | |
| S10 | Public Realm cleanliness | | | | | | | | | | | | | | | | |
| Full Description | | | | | | | | | | | | | | | | | |
| The percentage of the Public Realm where cleanliness is assessed as being below an acceptable level | | | | | | | | | | | | | | | | | |
| Format | Decimal Places | Measurement Period | | | | | | | | | | | | | | | |
| Percentage | None | Annually with quarterly reporting (April – June, July – September – October December, January – March) | | | | | | | | | | | | | | | |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | | | | | | | | | | | | | | | | |
| Definition | <p>This indicator is a weighted average performance from a basket of cleanliness measures shown in the following table:</p> <table border="1"> <tr> <td>A</td> <td>25%</td> <td>The percentage of relevant land and highways that is assessed as having deposits of litter that fall below an acceptable level</td> </tr> <tr> <td>B</td> <td>25%</td> <td>The percentage of relevant land and highways that is assessed as having deposits of detritus that fall below an acceptable level</td> </tr> <tr> <td>C</td> <td>25%</td> <td>The total number of priority 1, 2a and 2b work instructions which were the subject of a revisit in the measurement period within 12 months of the time of closure as a percentage of the total number of priority 1, 2a, and 2b work instructions whose estimated time of closure falls within the measurement period</td> </tr> <tr> <td>D</td> <td>25%</td> <td>The percentage of relevant land and highways that is assessed as having deposits of flyposting that fall below an acceptable level</td> </tr> <tr> <td>E</td> <td></td> <td> <p>End to end timescales for completing individual reports by type. The reports that will be monitored include:</p> <p>litter</p> <p>detritus</p> <p>graffiti</p> <p>flyposting</p> </td> </tr> </table> | | A | 25% | The percentage of relevant land and highways that is assessed as having deposits of litter that fall below an acceptable level | B | 25% | The percentage of relevant land and highways that is assessed as having deposits of detritus that fall below an acceptable level | C | 25% | The total number of priority 1, 2a and 2b work instructions which were the subject of a revisit in the measurement period within 12 months of the time of closure as a percentage of the total number of priority 1, 2a, and 2b work instructions whose estimated time of closure falls within the measurement period | D | 25% | The percentage of relevant land and highways that is assessed as having deposits of flyposting that fall below an acceptable level | E | | <p>End to end timescales for completing individual reports by type. The reports that will be monitored include:</p> <p>litter</p> <p>detritus</p> <p>graffiti</p> <p>flyposting</p> |
| A | 25% | The percentage of relevant land and highways that is assessed as having deposits of litter that fall below an acceptable level | | | | | | | | | | | | | | | |
| B | 25% | The percentage of relevant land and highways that is assessed as having deposits of detritus that fall below an acceptable level | | | | | | | | | | | | | | | |
| C | 25% | The total number of priority 1, 2a and 2b work instructions which were the subject of a revisit in the measurement period within 12 months of the time of closure as a percentage of the total number of priority 1, 2a, and 2b work instructions whose estimated time of closure falls within the measurement period | | | | | | | | | | | | | | | |
| D | 25% | The percentage of relevant land and highways that is assessed as having deposits of flyposting that fall below an acceptable level | | | | | | | | | | | | | | | |
| E | | <p>End to end timescales for completing individual reports by type. The reports that will be monitored include:</p> <p>litter</p> <p>detritus</p> <p>graffiti</p> <p>flyposting</p> | | | | | | | | | | | | | | | |

These measures are based on former NI 195.

A - The percentage of relevant land and highways that is assessed as having deposits of litter that fall below an acceptable level.

There is no statutory definition of litter. The Environmental Protection Act 1990 (s.87) states that litter is 'anything that is dropped, thrown, left or deposited that causes defacement, in a public place'. This accords with the popular interpretation that 'litter is waste in the wrong place'.

Litter includes mainly synthetic materials, often associated with smoking, eating and drinking, that are improperly discarded and left by members of the public; or are spilt during waste management operations.

B - The percentage of relevant land and highways that is assessed as having deposits of detritus that fall below an acceptable level.

There is no statutory definition of detritus, however, local authority cleansing officers and their contractors have developed a common understanding of the term and the definition used for the NI 195 (and for the LEQSE) is based on this industry norm.

Detritus comprises dust, mud, soil, grit, gravel, stones, rotted leaf and vegetable residues, and fragments of twigs, glass, plastic and other finely divided materials. Detritus includes leaf and blossom falls when they have substantially lost their structure and have become mushy or fragmented.

C - The percentage of relevant land and highways that is assessed as having deposits of graffiti that fall below an acceptable level.

Graffiti is defined as any informal or illegal marks, drawings or paintings that have been deliberately made by a person or persons on any physical element comprising the outdoor environment, with a view to communicating some message or symbol etc. to others.

Graffiti should be recorded if it is visible from relevant land and highways (in other words, from the survey transect), on the surface of any building, wall, fence or other structure or erection, where that surface is readily visible from a place on that land or highway to which the public have access.

D - The percentage of relevant land and highways that is assessed as having deposits of flyposting that fall below an acceptable level.

Fly-posting is defined as any printed material and associated remains informally or illegally fixed to any structure.

Fly-posting includes any size of material from small stickers up to large posters – often advertising popular music recordings, concerts and other events.

Fly-posting *excludes* formally managed and approved advertising

| | |
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| | <p>hoardings and valid, legally placed signs and notices. It also <i>excludes</i>:</p> <ul style="list-style-type: none"> • business cards and handbills placed under vehicle windscreen wipers and vehicle door handles; • illegal displays on movable objects such as advertising A boards, billboards on movable bases on farmland and other open land, and on 'barrage balloons' etc... <p>Fly-posting should be recorded if it is visible from relevant land and highways (in other words, from the survey transect), on the surface of any building, wall, fence or other structure or erection, where that surface is readily visible from a place on that land or highway to which the public have access.</p> |
| <p>Formula</p> | <p>For A, B, C, and D - Once all sites have been surveyed, the formula to be used is:</p> $\left(\frac{T + \left(\frac{Tb}{2} \right)}{Ts} \right) * 100$ <p>where:</p> <p>T = number of sites graded C, C -, or D</p> <p>Tb = number of sites graded at B- (this grade counts as half);</p> <p>Ts = total number of sites surveyed</p> <p><u>(A x performance for the period) + (B x performance for the period) + (C x performance for the period) + (D x performance for the period)/100</u></p> |
| <p>Method</p> | <p>For A: Grade A is given where there is no litter or refuse; grade B is given where a transect is predominantly free of litter and refuse except for some small items; grade C is given where there is a widespread distribution of litter and refuse, with minor accumulations; and grade D where a transect is heavily littered, with significant accumulations.</p> <p>Three Intermediate Grades will also be used. These are:</p> <p>B +, between Grade A and Grade B;</p> <p>B -, between Grade B and Grade C; and</p> <p>C -, between Grade C and Grade D</p> <p>For B: Grade A is given where there is no detritus present on a transect; grade B is given where a transect is predominantly free of detritus except for some light scattering; grade C is given where there is a widespread distribution of detritus with minor accumulations; and grade D where a transect is extensively covered with detritus with significant accumulations.</p> <p>Three Intermediate Grades will also be used. These are:</p> <p>B +, between Grade A and Grade B;</p> |

B – , between Grade B and Grade C; and

C – , between Grade C and Grade D

For C: Grade A is given when the local environment is completely free of graffiti; grade B is given when some graffiti is present, but it is minor in extent, and many people passing through the local environment would not notice it; grade C is given when graffiti is present to the extent that it would be clearly visible to people passing through the local environment, and visible at a distance from at least one end of the 50m transect; and grade D is given when graffiti is extensive over a large part of the 50m transect and is likely to be clearly visible and obtrusive to people passing through the local environment, and visible from any point on the transect.

Three Intermediate Grades will also be used. These are:

B +, between Grade A and Grade B;

B – , between Grade B and Grade C; and

C – , between Grade C and Grade D

For D: Grade A is given when the local environment is completely free from fly-posting; grade B is given when some fly-posting is present, but it is minor in nature and it is likely that many people would not notice its presence. This can include tie-bands or other forms of fastening which remain after a notice has been removed; grade C is given when fly-posting is present on the local environment to the extent that it is likely to be clearly visible to people using the area, and visible at a distance from at least one end of a 50m transect; and grade D is given when fly-posting is extensive throughout much of the local environment and is clearly visible and obtrusive to people passing through the local environment, and visible from any point on a the transect.

Three Intermediate Grades will also be used. These are:

B +, between Grade A and Grade B;

B – , between Grade B and Grade C; and

C – , between Grade C and Grade D

Further advice on survey planning, illustrative photographs and a spreadsheet for reporting are available at www.NI195.com

For example, where 30 sites have been graded either C, C – , or D and 90 sites have been graded B-, the calculation would give:

$$\left(\frac{30 + \left(\frac{90}{2} \right)}{900} \right) * 100 = 8\%$$

NB – This calculation will automatically be given using the standard spreadsheet available to download from www.ni195.com

(A x performance for the period) + (B x performance for the period) + (C x

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|---|---|--|
| | <u>performance for the period) + (d x performance for the period)/100</u> The survey will be led by the Provider, but will look to carry out a joint survey with the Employer. Data to be supplied through the Provider's system | |
| Further reference | NI 195 spreadsheet completed by provider | |
| Notes | | |
| Upper Threshold | Lower Threshold | |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. | |
| Version | Date | |
| Issue 1 Revision 01 | | |

| Indicator Ref | Title | |
|--|---|--------------------|
| S11 | Flooding incidents | |
| Full Description | | |
| The number of flooding incidents resulting from blocked or inadequately maintained highway drainage systems. | | |
| Format | Decimal Places | Measurement Period |
| number | None | Annually |
| Objective | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services are efficient and responsive to local needs</p> <p>Maintaining/delivering essential services</p> | |
| Definition | <p>The indicator is the total number of flooding incidents resulting in significant disruption during the Financial Year.</p> <p>A Flooding Incident: causes Significant Disruption to the normal flow of traffic through the Area Network.</p> <p>Significant Disruption: is defined as:-</p> <ul style="list-style-type: none"> ▪ increasing journey times through the incident site by 15 minutes or more; and/or ▪ requiring diversions; and/or, ▪ requiring traffic management; and/or, ▪ directly impacting on public transport journey times. <p>To be counted as a failure under this measure, floods must be as a result of blocked or inadequately maintained highway drainage systems, as defined in the Service Information. The Provider puts in place an automated (or similar) process for gully vehicle attendance and works logging system reporting (e.g. GPS) and records whether it considers flooding incidents to be as a result of blocked or inadequately maintained gully pots or connecting highway drainage pipes.</p> <p>These records and the rationale for deciding whether or not Incidents represent a failure under this measure must be retained by the Provider and provided to the Employer for inspection as requested by the Service Manager.</p> | |
| Formula | | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | | |

| Upper Threshold | Threshold |
|---|---|
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

| Indicator Ref | Title | | | | | | | | | | | | | | | | | | | | | | |
|---|--|---|-----------|--|---------------------|------------------------|-----------|----|--------|---|-----|----|--------|---|----|----|--------|--|----|----|--------|---|-----|
| S12 | Customer Satisfaction | | | | | | | | | | | | | | | | | | | | | | |
| Full Description | | | | | | | | | | | | | | | | | | | | | | | |
| Percentage of customers satisfied based on the annual national highways and public transport satisfaction (IPSOS MORI) Survey | | | | | | | | | | | | | | | | | | | | | | | |
| Format | Decimal Places | Measurement Period | | | | | | | | | | | | | | | | | | | | | |
| Percentage | None | Annually | | | | | | | | | | | | | | | | | | | | | |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services are efficient and responsive to local needs</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire</p> <p>Maintaining/delivering essential services</p> | | | | | | | | | | | | | | | | | | | | | | |
| Definition | <p>This indicator is a weighted average performance from a basket of customer satisfaction measures taken from the national highways and public transport satisfaction (MORI) survey, based on the questions used in the 2013 survey.</p> <p>The table below shows the benchmarking indicators to be included in the basket of measures and their weighting. The scores used to calculate these weightings are IPSOS MORI's published 'score (out of 100)' for each benchmarking indicator.</p> <p>If the benchmarking indicators are amended by MORI (or alternative provider) or the benchmarking Club during the Contract Period, the Service Manager will review and revise the benchmarking indicators which form the basket of indicators used to calculate this indicator.</p> <p>Table 1</p> <table border="1"> <thead> <tr> <th></th> <th>Indicator Reference</th> <th>Benchmarking Indicator</th> <th>Weighting</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td>KBI 11</td> <td>Overall satisfaction with pavements and footpaths</td> <td>10%</td> </tr> <tr> <td>b.</td> <td>KBI 15</td> <td>Overall satisfaction with the local rights of way network</td> <td>7%</td> </tr> <tr> <td>c.</td> <td>KBI 18</td> <td>Satisfaction with management of road works</td> <td>7%</td> </tr> <tr> <td>d.</td> <td>KBI 23</td> <td>Overall satisfaction with the condition of highways</td> <td>12%</td> </tr> </tbody> </table> | | | | Indicator Reference | Benchmarking Indicator | Weighting | a. | KBI 11 | Overall satisfaction with pavements and footpaths | 10% | b. | KBI 15 | Overall satisfaction with the local rights of way network | 7% | c. | KBI 18 | Satisfaction with management of road works | 7% | d. | KBI 23 | Overall satisfaction with the condition of highways | 12% |
| | Indicator Reference | Benchmarking Indicator | Weighting | | | | | | | | | | | | | | | | | | | | |
| a. | KBI 11 | Overall satisfaction with pavements and footpaths | 10% | | | | | | | | | | | | | | | | | | | | |
| b. | KBI 15 | Overall satisfaction with the local rights of way network | 7% | | | | | | | | | | | | | | | | | | | | |
| c. | KBI 18 | Satisfaction with management of road works | 7% | | | | | | | | | | | | | | | | | | | | |
| d. | KBI 23 | Overall satisfaction with the condition of highways | 12% | | | | | | | | | | | | | | | | | | | | |

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|----------------|--|---------|---|-----|--|
| | e. | KBI 25 | Overall satisfaction with street lighting | 7% | |
| | f. | HMBI 02 | Satisfaction with the cleanliness of roads | 7% | |
| | g. | HMBI 03 | Satisfaction with the condition of road markings | 7% | |
| | h. | HMBI 01 | Satisfaction with the condition of road surfaces | 10% | |
| | i. | HMBI 06 | Satisfaction with the speed of repair to damaged roads and pavements | 10% | |
| | j. | HMBI 07 | Satisfaction with the quality of repair to damaged roads and pavements | 10% | |
| | k. | HMBI 10 | Satisfaction with keeping drains clear and working | 7% | |
| | l. | HMBI 15 | Satisfaction with how the Council undertakes cold weather gritting (salting) and snow clearance | 7% | |
| Formula | $a + b + c + d + e + f + g + h + i + j + k + l$ <p>where</p> <p>a = KBI 11 x weighting as defined in Table 1 of this indicator; b = KBI 15 x weighting as defined in Table 1 of this indicator; c = KBI 18 x weighting as defined in Table 1 of this indicator; d = KBI 23 x weighting as defined in Table 1 of this indicator; e = KBI 25 x weighting as defined in Table 1 of this indicator; f = HMBI 02 x weighting as defined in Table 1 of this indicator g = HMBI 03 x weighting as defined in Table 1 of this indicator; h = HMBI 01 x weighting as defined in Table 1 of this indicator; i = HMBI 06 x weighting as defined in Table 1 of this indicator j = HMBI 07 x weighting as defined in Table 1 of this indicator k = HMBI 10 x weighting as defined in Table 1 of this indicator l = HMBI 15 x weighting as defined in Table 1 of this indicator</p> | | | | |
| Method | The Employer will provide data to substantiate performance. This will be the published IPSOS MORI data which will not be amended other than to apply the weighting. | | | | |

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| Further reference | | |
| Notes | | |
| Target | | Threshold |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. |
| Version | | Date |
| Issue 1 Revision 01 | | |

| | | | |
|---|---|---|---------------------------|
| Indicator Ref | | Title | |
| S13 | | Community Projects | |
| Full Description | | | |
| The value of community projects led by the Provider | | | |
| Format | | Decimal Places | Measurement Period |
| £ | | None | Annually |
| Objectives | <p>The Services are efficient and responsive to local needs</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | | |
| Definition | <p>Led: means that the Provider initiates and is the substantial provider involved with the project.</p> <p>Value: includes labour, fuel, hired large plant and materials (including 'muck away') but excludes hand tools such as disc cutters and plate compactors.</p> | | |
| Formula | The total value of projects which comply with the definition of this indicator undertaken by the Provider during the Measurement Period. | | |
| Method | <p>The Provider provides the Service Manager with reasonable advance notification of the projects it intends to include within the measurement of this indicator. Detail provided will include a synopsis of the scope of the project and an estimated value.</p> <p>The Service Manager shall confirm whether the proposed project shall be included in the measurement of this indicator.</p> <p>Upon completion of the project, the Provider submits accounts and details of the project to the Service Manager.</p> | | |
| Further reference | | | |
| Notes | | | |
| Target | | Threshold | |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. | |
| Version | | Date | |
| Issue 1 Revision 01 | | | |

| Indicator Ref | Title | |
|---|--|--------------------|
| S14 | Reuse and recycling | |
| Full Description | | |
| The percentage of waste arisings reused and recycled. | | |
| Format | Decimal Places | Measurement Period |
| Percentage | One | Monthly |
| Rationale/Objective | <p>The Services are efficient and responsive to local needs</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire</p> | |
| Definition | <p>Construction & Demolition waste: Own waste generated from the construction, repair, maintenance & demolition of highways, highway structures & related infrastructure.</p> <p>Excavated Materials: Any material that has been sourced by removal from the ground, e.g. road planings, aggregate, hard core (paving slabs/blocks, kerbs, concrete, cement, ceramics, bricks, glass, sand, soil), gully arisings and other highway construction materials.</p> <p>Recycle: Involves using waste to manufacture other products. Initiating material entering into a process where some or all of its properties can be reclaimed, reused, reconditioned, refurbished and/or manufactured.</p> <p>Reuse: Involves multiple use of a product in its original form, with or without reconditioning, for its original or alternative purpose e.g. reusing paving slabs</p> <p>Soft estate: includes parks, open spaces, trees, highway verges and ditches.</p> <p>Street Cleaning Waste - Own waste generated from street sweeping, litter bins, dog waste</p> | |
| Formula | <p>$N = ((A+B+C)/D) \times 100$</p> <p>A = Tonnage of construction & demolition excavated waste material + street cleaning waste material + soft estate waste material recycled</p> <p>B = Tonnage of construction & demolition excavated waste material + street cleaning waste material + soft estate waste material reused</p> <p>C = Tonnage of construction & demolition excavated waste material + street cleaning waste material + soft estate waste material sent to "Energy from Waste" facilities</p> <p>D = Tonnage of construction & demolition excavated waste material + street cleaning waste material + soft estate waste material generated</p> | |

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|---|--|--|
| | <p>Example</p> <p>If A = 75</p> <p>B = 100</p> <p>C = 200</p> <p>D = 400</p> <p>$N = ((75+100)+200/400) \times 100 = 93.7\%$ re-used and recycled</p> | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | | |
| Upper Threshold | Lower Threshold | |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. | |
| Version | Date | |
| Issue 1 Revision 01 | | |

| Indicator Ref | Title | | | | | | | |
|--|---|---------------------------|-------------|-------------|--|--|--|--|
| S15 | CO2 Emissions | | | | | | | |
| Full Description | | | | | | | | |
| Percentage reduction in CO2(e) emissions | | | | | | | | |
| Format | Decimal Places | Measurement Period | | | | | | |
| Percentage | Two | Annually | | | | | | |
| Objectives | <p>The Services are efficient and responsive to local needs</p> <p>The Services contribute to the regeneration of the economy and social capital in Herefordshire.</p> | | | | | | | |
| Definition | <p>% Reduction in total Co2(e) emissions.</p> <p>Co2(e) emissions to be included are:</p> <table border="1"> <thead> <tr> <th>GHG Scope 1</th> <th>GHG Scope 2</th> </tr> </thead> <tbody> <tr> <td>Fuels for combustion (Natural Gas Boilers, Propane, Hot Works)</td> <td rowspan="3">Consumption of purchased electricity, heat, steam and cooling</td> </tr> <tr> <td>Owned Transport (Trucks, Cars, Plant)</td> </tr> <tr> <td>Fugitive Emissions (Air-Con and refrigeration leaks)</td> </tr> </tbody> </table> <p>The emissions baseline for reduction will be established by monitoring and measurement during the contracts first year.</p> | | GHG Scope 1 | GHG Scope 2 | Fuels for combustion (Natural Gas Boilers, Propane, Hot Works) | Consumption of purchased electricity, heat, steam and cooling | Owned Transport (Trucks, Cars, Plant) | Fugitive Emissions (Air-Con and refrigeration leaks) |
| GHG Scope 1 | GHG Scope 2 | | | | | | | |
| Fuels for combustion (Natural Gas Boilers, Propane, Hot Works) | Consumption of purchased electricity, heat, steam and cooling | | | | | | | |
| Owned Transport (Trucks, Cars, Plant) | | | | | | | | |
| Fugitive Emissions (Air-Con and refrigeration leaks) | | | | | | | | |
| Formula | <p><u>Total Co2(e) emissions</u></p> <p>Million £ of Sales = Normalised Co2(e) emissions</p> | | | | | | | |
| Method | <p><u>Emissions data will be gathered from a mix of:</u></p> <p>Data obtained directly from financial systems</p> <p>This will then be used to measure BBLPs contracts total (GHG1&2) emissions using the Defra methodology guidelines as standard.</p> <p>The full method for measuring each element in the contracts carbon footprint can be found in SUS003 Emissions Measuring and Management</p> | | | | | | | |

| | | |
|---|---|--|
| | <p>Procedure</p> <p>Data to be supplied through the Provider's system</p> | |
| Further reference | | |
| Notes | <p>This Performance Indicator is subject to a number of the Provider's own internal measures to encompass the Provider's Service delivery (e.g. fleet emissions, energy emissions).</p> <p>The measure will be formulated to reflect any Carbon Reduction Commitment/Trading measure guidance or central government guidance. If new guidance is issued during the initial Contract Period the measure will be amended to reflect this.</p> | |
| Upper Threshold | Lower Threshold | |
| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. | |
| Version | Date | |
| Issue 1 Revision 01 | | |

| | | |
|---|---|---------------------------|
| Indicator Ref | Title | |
| S16 | Apprenticeships | |
| Full Description | | |
| Percentage of apprentice employees as a proportion of the total workforce | | |
| Format | Decimal Places | Measurement Period |
| Percentage | One | Annually |
| Objective | The Services contribute to the regeneration of the economy and social capital in Herefordshire. | |
| Definition | <p>Apprentice: means an individual (or Full Time Equivalent) employed by the Provider under a recognised apprenticeship, who has spent 100% of their employment working on the contract during the Measurement Period.</p> <p>An Apprenticeship: is a job with an accompanying skills development programme designed by employers in the sector. It allows the apprentice to gain technical knowledge and real practical experience, along with functional and personal skills, required for their immediate job and future career. These are acquired through a mix of learning in the workplace, formal off the job training and the opportunity to practice and embed new skills in a real work context. This broader mix differentiates the Apprenticeship experience from training delivered to meet narrowly focused job needs</p> <p>To be included in this measurement the Apprentice must have been employed by the Provider for a minimum 6 months. This may include multiple employees (i.e. two Apprentices consecutively employed for 3 months each to undertake one Apprentice role).</p> | |
| Formula | $x/y * 100$ <p>where</p> <p>x = the number of Apprentices employed during the Measurement Period</p> <p>y = the number of full-time equivalent employees employed by the Provider making up the entire workforce during the Measurement Period</p> | |
| Method | <p>The Provider is to report performance annually as part of its workforce indicators.</p> <p>Data to be supplied through the Provider's system</p> | |
| Further reference | | |
| Notes | | |
| Upper Threshold | Lower Threshold | |

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| To be agreed by both parties after previous years data has been analysed. | To be agreed by both parties after previous years data has been analysed. |
| Version | Date |
| Issue 1 Revision 01 | |

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|---|--|---|
| Indicator Ref | Title | |
| S17 | Care2Work | |
| Full Description | | |
| Participation in the Council's Care2Work programme | | |
| Format | Decimal Places | Measurement Period |
| | | Annually |
| Objective | The Services contribute to the regeneration of the economy and social capital in Herefordshire. | |
| Definition | | |
| Formula | | |
| Method | | |
| Further reference | | |
| Notes | <p>The definition will be developed by the Employer and Provider to include measures of support for children in and leaving care such as:</p> <ul style="list-style-type: none"> Introduction to work Work experience Work opportunities Apprenticeship scheme Preparation for work (interview and work skills) | |
| Upper Threshold | | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. |
| Version | | Date |
| Issue 1 Revision 01 | | |

| | | |
|--|---|---|
| Indicator Ref | Title | |
| S18 | Local Labour | |
| Full Description | | |
| Percentage of local labour from Herefordshire as a proportion of the total workforce | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Annually |
| Objective | The Services contribute to the regeneration of the economy and social capital in Herefordshire. | |
| Definition | The number of full time equivalent employees from within an HR postcode as a percentage of the total workforce. | |
| Formula | $\frac{\textit{Herefordshire}}{\textit{Workforce}} \times 100 = x.x\%$ | |
| Method | <p>From Service Commencement, a list of all current staff will be collated to measure how many staff live within Herefordshire. The provider will report and update this annually.</p> <p>Data to be supplied through the Provider's system</p> | |
| Further reference | | |
| Notes | | |
| Upper Threshold | | Lower Threshold |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. |
| Version | | Date |
| Issue 1 Revision 01 | | |

| Indicator Ref | | Title | |
|---|--|---|--------------------|
| S19 | | Local SME Supply Chain | |
| Full Description | | | |
| Percentage of non-surfacing work by value delivered by suppliers who have a base in Herefordshire | | | |
| Format | | Decimal Places | Measurement Period |
| Percentage | | None | Annually |
| Objective | The Services contribute to the regeneration of the economy and social capital in Herefordshire. | | |
| Definition | The value of non-surfacing work delivered by suppliers based in Herefordshire as a percentage of total suppliers. | | |
| Formula | $\frac{Local.Supplier}{Total.Suppliers} \times 100 = x.x\%$ | | |
| Method | A list of all supply chain will be provided by the Provider and updated annually. Data to be supplied through the Provider's system | | |
| Further reference | | | |
| Notes | | | |
| Upper Threshold | | Lower Threshold | |
| To be agreed by both parties after previous years data has been analysed. | | To be agreed by both parties after previous years data has been analysed. | |
| Version | | Date | |
| Issue 1 Revision 01 | | | |

Operational Performance Indicators

| Indicator Ref | Title | |
|--|--|--------------------|
| 01 | Category 1 Defects | |
| Full Description | | |
| The percentage of Category 1 Defects made safe within 24 hours from the Time of Notification | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Monthly |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>The indicator is the number of Category 1 Defects of dangerous damage to roads and pavements in the period recorded in the Provider's systems with a Time of Closure within 24 hours of the Time of Notification as a percentage of the total number of Category 1 Defects of dangerous damage to roads and pavements.</p> <p>Time of Notification: is the time and date at which Category 1 Defects are reported to and/or recorded by, the Provider. by customers, members of the Employer's or Provider's staff (including through Safety Inspections), stakeholders, etc</p> <p>Time of Closure: is the time and date at which all of the following have been fully completed: works to make safe or repair the Defect, the site cleared, all equipment removed and the site vacated by the Provider.</p> | |
| Formula | $\left[\frac{x}{y} \right] * 100$ <p>where</p> <p>x = the number of Category 1 Defects in the Measurement Period recorded in the Provider's systems with a Time of Closure within 24 hours of the Time of Notification; and</p> <p>y = total number of Category 1 Defects in the Measurement Period recorded in the Provider's systems.</p> | |
| Method | <p>The Provider's systems automatically records the Time of Notification.</p> <p>The Provider's systems allows Incidents to be categorised as Category 1 Defects of dangerous damage to roads and pavements.</p> <p>The Provider's systems records the 'Time of Closure'.</p> <p>The Provider's systems produces a report within date parameters equivalent to the Measurement Period which should allow drill-down to Defect level.</p> | |

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| | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | If access is not permitted to the Area Network for a reason beyond the Provider's reasonable control (e.g. upon direction of the Employer), the repair of Defect directly affected by this should be excluded from this performance measure. | |
| Threshold | | |
| | 100% | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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|--|---|---|---|-----|--|---|-----|--|---|-----|---|---|--|---|
| Indicator Ref | Title | | | | | | | | | | | | | |
| O2 | Defect completion | | | | | | | | | | | | | |
| Full Description | | | | | | | | | | | | | | |
| Percentage of defects rectified within agreed timescales | | | | | | | | | | | | | | |
| Format | Decimal Places | Measurement Period | | | | | | | | | | | | |
| Percentage | None | Monthly | | | | | | | | | | | | |
| Objectives | <p>The Public Realm is accessible, safe, clean and well-maintained</p> <p>The Services are efficient and responsive to local needs</p> | | | | | | | | | | | | | |
| Definition | <p>This indicator is a weighted average performance from a basket of highway defect measures shown in the following table:</p> <table border="1"> <tr> <td>A</td> <td>40%</td> <td>The total number of Category1 reactive work instructions which were closed in the measurement period as a percentage of the total number of Category 1 work instructions whose estimated time of closure falls within the measurement period</td> </tr> <tr> <td>B</td> <td>40%</td> <td>The total number of Category 2a routine work instructions which were closed in the measurement period as a percentage of the total number of Category 2a work instructions whose estimated time of closure falls within the measurement period</td> </tr> <tr> <td>C</td> <td>20%</td> <td>The total number of Category 1, 2a and 2b work instructions which were the subject of a revisit in the measurement period within 12 months of the time of closure as a percentage of the total number of Category 1, 2a, and 2b work instructions whose estimated time of closure falls within the measurement period</td> </tr> <tr> <td>D</td> <td></td> <td>End to end timescales for completing individual defects by type. The defects that will be monitored include: Potholes Blocked gullies</td> </tr> </table> <p>Time of Closure: is the time and date at which all of the following have been fully completed: works to make safe or repair the Defect, the site cleared, all equipment removed and the site vacated by the Provider.</p> | | A | 40% | The total number of Category1 reactive work instructions which were closed in the measurement period as a percentage of the total number of Category 1 work instructions whose estimated time of closure falls within the measurement period | B | 40% | The total number of Category 2a routine work instructions which were closed in the measurement period as a percentage of the total number of Category 2a work instructions whose estimated time of closure falls within the measurement period | C | 20% | The total number of Category 1, 2a and 2b work instructions which were the subject of a revisit in the measurement period within 12 months of the time of closure as a percentage of the total number of Category 1, 2a, and 2b work instructions whose estimated time of closure falls within the measurement period | D | | End to end timescales for completing individual defects by type. The defects that will be monitored include: Potholes Blocked gullies |
| A | 40% | The total number of Category1 reactive work instructions which were closed in the measurement period as a percentage of the total number of Category 1 work instructions whose estimated time of closure falls within the measurement period | | | | | | | | | | | | |
| B | 40% | The total number of Category 2a routine work instructions which were closed in the measurement period as a percentage of the total number of Category 2a work instructions whose estimated time of closure falls within the measurement period | | | | | | | | | | | | |
| C | 20% | The total number of Category 1, 2a and 2b work instructions which were the subject of a revisit in the measurement period within 12 months of the time of closure as a percentage of the total number of Category 1, 2a, and 2b work instructions whose estimated time of closure falls within the measurement period | | | | | | | | | | | | |
| D | | End to end timescales for completing individual defects by type. The defects that will be monitored include: Potholes Blocked gullies | | | | | | | | | | | | |
| Formula | $\frac{(A \times \text{performance for the period}) + (B \times \text{performance for the period}) + (C \times \text{performance for the period})}{100}$ | | | | | | | | | | | | | |

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| Method | Data to be supplied through the Provider's system |
| Further reference | |
| Notes | <p>If access is not permitted to the Area Network for a reason beyond the Provider's reasonable control (e.g. upon direction of the Employer), the repair of Defect directly affected by this should be excluded from this performance measure.</p> <p>Measure D is for monitoring purposes only and will not be included in the final calculation.</p> |
| Threshold | |
| To be agreed by both parties after the previous three month's data has been analysed | |
| Version | Date |
| Issue 1 Revision 01 | |

| Indicator Ref | Title | |
|--|---|--------------------|
| O3 | PROW hazards | |
| Full Description | | |
| Percentage of PROW hazards made safe within 48 hours | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Monthly |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>Hazard: Any defect to</p> <ul style="list-style-type: none"> - a bridge or other water course crossing on a public right of way; - the surface of the public right of way or structure on it; - land adjoining a right of way <p>which in the view of the PROW Officer is likely to cause serious injury or death to any person using the public right of way.</p> <p>Reported: A request for service resulting in a defect or identified by any employee.</p> <p>48 hours: measurement commences at time and date when an inspector has formed a view that it is a hazard.</p> <p>Made safe: The defect is either no longer likely to cause serious injury or death or has been removed.</p> | |
| Formula | $\frac{\text{No. of Hazards cleared or made safe within 48 hours}}{\text{Total no. of Hazards reported}} \times 100$ | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | | |
| Threshold | | |
| 100% | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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| Indicator Ref | Title | | | | | | | | | | | | | |
| O4 | Street lighting faults | | | | | | | | | | | | | |
| Full Description | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |
| Format | Decimal Places | Measurement Period | | | | | | | | | | | | |
| Percentage | None | Monthly | | | | | | | | | | | | |
| Objectives | The Public Realm is accessible, safe, clean and well-maintained Maintaining/delivering essential services | | | | | | | | | | | | | |
| Definition | <p>This indicator is a weighted average performance from a basket of street lighting measures shown in the following table:</p> <table border="1"> <tr> <td>A</td> <td>30%</td> <td>% street lighting faults repaired within 5 Working Days of initial report</td> </tr> <tr> <td>B</td> <td>30%</td> <td>% street lighting emergencies made safe within 2 hours of initial report</td> </tr> <tr> <td>C</td> <td>40%</td> <td>% of lights working as planned</td> </tr> <tr> <td>D</td> <td></td> <td>End to end timescales for completing individual faults by type</td> </tr> </table> <p>Report: The date the fault is reported</p> <p>Defect: Excludes those in the control of a Distribution Network Operator</p> <p>Resolved: Back in light</p> <p>Emergencies: situations where there is real and imminent danger of electrocution, fire, road traffic accident or obstruction of the highway if left unattended for any length of time. Any defect that will put a member of public at risk of serious injury or death.</p> <p>Made safe: attend site within 2 hours of notification to investigate and make safe. It should be noted that when on-site further work may be identified and will be raised as a new defect.</p> <p>Initial report: The date and time notification of the defects is received from members of the public, police, other emergency services or an employee.</p> | | A | 30% | % street lighting faults repaired within 5 Working Days of initial report | B | 30% | % street lighting emergencies made safe within 2 hours of initial report | C | 40% | % of lights working as planned | D | | End to end timescales for completing individual faults by type |
| A | 30% | % street lighting faults repaired within 5 Working Days of initial report | | | | | | | | | | | | |
| B | 30% | % street lighting emergencies made safe within 2 hours of initial report | | | | | | | | | | | | |
| C | 40% | % of lights working as planned | | | | | | | | | | | | |
| D | | End to end timescales for completing individual faults by type | | | | | | | | | | | | |
| Formula | $\frac{\text{A street lighting faults resolved within 5 Working Days}}{\text{Total No. of street lighting faults}} \times 100$ $\frac{\text{street lighting emergencies made safe within 2 hours}}{\text{Total No. of street lighting emergencies}} \times 100$ | | | | | | | | | | | | | |

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| | <p>B Total No. of street lighting emergencies x 100</p> <p>C $\frac{\text{street lights not in light}}{\text{Total No. of street lights x 100}}$</p> <p>$(A \times \text{performance for the period}) + (B \times \text{performance for the period}) + (C \times \text{performance for the period})/100$</p> |
| Method | Data to be supplied through the Provider's system |
| Further reference | |
| Notes | |
| Threshold | |
| To be agreed by both parties after the previous three month's data has been analysed | |
| Version | Date |
| Issue 1 Revision 01 | |

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| Indicator Ref | Title | |
| 05 | Traffic signal maintenance | |
| Full Description | | |
| Percentage of Priority 1 Faults repaired | | |
| Format | Decimal Places | Measurement Period |
| Percentage | one | Monthly |
| Objectives | The Public Realm is accessible, safe, clean and well-maintained Maintaining/delivering essential services | |
| Definition | The time from when Priority 1 Faults are first reported to when they are repaired The repair time excludes weekends, public and Bank Holidays. Priority 1 faults are: <ul style="list-style-type: none"> • All out • Dangerous – electrically or otherwise • Signals stuck on any phase or sign face • Push button stuck or failed • Lamp monitoring or green conflict monitoring preventing signals switching on • Audible monitor, lamp fault or lamp monitor fault inhibiting Red pedestrian stage • Fault causing delays • Repeat fault previously cleared less than 14 days previously | |
| Formula | $\left(\frac{x}{y} \right) * 100$ <p>where x = total number of Priority 1 Faults repaired on time y = total number of Priority 1 Faults in the reporting period</p> | |
| Method | All faults will be logged on to Provider's system. Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | | |
| Threshold | | |

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| To be agreed by both parties after the previous three month's data has been analysed | |
| Version | Date |
| Issue 1 Revision 01 | |

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| Indicator Ref | Title | |
| 06 | Winter gritting | |
| Full Description | | |
| The percentage of priority gritting routes completed on time | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Monthly |
| Objectives | The Public Realm is accessible, safe, clean and well-maintained Maintaining/delivering essential services | |
| Definition | <p>The indicator is the total number of Treatment Events completed On Time during the Measurement Period as a percentage of the total number of Treatment Events required during the Measurement Period.</p> <p>A Treatment Event: is every occasion on which each route is either treated, or should be treated in accordance with the Employer's Winter Maintenance Policy, as amended from time to time, the Provider records this as a Treatment Event.</p> <p>On Time: means that Priority Routes treatments are completed in accordance with the Employer's Winter Maintenance Plan, as amended from time to time.</p> <p>The Provider is to demonstrate achievement of the Threshold and provide this information for the end of the Financial Year.</p> <p>Completion will be deemed not to have been achieved if the correct standard of gritting is not achieved and / or the gritting route(s) were not gritted On Time according to ice alert or similar warning notification.</p> | |
| Formula | $\left[\frac{x}{y} \right] * 100$ <p>where</p> <p>x = total number of Treatment Events completed On Time during the measurement period; and</p> <p>y = total number of Treatment Events required during the measurement period.</p> | |
| Method | <p>The Provider puts in place systems and records to demonstrate the date, time, treatment type used and number of Treatment Events.</p> <p>The Provider has systems and processes to measure and demonstrate compliance with this indicator and makes these available for inspection by the Employer prior to the Access Date and immediately if these systems and processes are amended.</p> | |

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| | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | If access is not permitted to the Area Network for whatever reason (e.g. direction of the Employer), the affected part of the Area Network may be excluded from measurement for the period during which the Provider is prevented from gaining access. | |
| Threshold | | |
| | 99% | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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|---|---|---------------------------|
| Indicator Ref | Title | |
| 07 | Complaints handling | |
| Full Description | | |
| The percentage of complaints dealt with in accordance with timescales agreed with the Customer Insight Unit | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Monthly |
| Objective | The Services are efficient and responsive to local needs | |
| Definition | <p>The number of complaints dealt with in accordance with the Council complaints policy as a proportion of the overall number of complaints.</p> <p>On receipt of a complaint the Council's Customer Insight Unit (CIU) will agree with the Provider the timescale for responding to the complaint. If the response is complex the CIU may agree a further date for responding. The later date is to be used for this indicator</p> | |
| Formula | | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | Employer's corporate complaints policy | |
| Notes | | |
| Threshold | | |
| To be agreed by both parties after the previous three month's data has been analysed | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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| Indicator Ref | Title | |
| O8 | Delivery of monthly reports | |
| Full Description | | |
| Receipt by the Service Manager of the Cost of Services to Date report and supporting documents in the agreed format by the Assessment Date | | |
| Format | Decimal Places | Measurement Period |
| Yes/no | N/A | monthly |
| Objective | The Services are efficient and responsive to local needs | |
| Definition | Was the Cost of Services to Date report and supporting documents in the agreed format? Yes/no Was the Cost of Services to Date report and supporting documents received by the Assessment Date? Yes/no | |
| Formula | Yes + yes = Yes Yes + no = No No + no = no | |
| Method | | |
| Further reference | | |
| Notes | | |
| Threshold | | |
| Yes | | |
| Version | | Date |
| Issue 1 Revision 01 | | |

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|-------------------------------|--|---------------------------|
| Indicator Ref | Title | |
| O9 | Accidents | |
| Full Description | | |
| AFR (accident frequency rate) | | |
| Format | Decimal Places | Measurement Period |
| AFR | Two | Annually |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>The number of RIDDOR accidents divided by the total number of hours worked multiplied by 100,000.</p> <p>This measure includes all RIDDOR accidents occurring in the process of the Provider delivering Services to the Employer including Services provided through sub-contractors.</p> | |
| Formula | $\frac{\text{No. of RIDDOR Accidents}}{\text{Total hours worked}} \times 100,000 = x.x\%$ <p>Where total hours worked are the sum total of all FTE hours worked.</p> | |
| Method | Data to be supplied through the Provider's system. | |
| Further reference | | |
| Notes | The formula used for this indicator is an industry standard calculation and will allow direct comparison across authorities and contracts. | |
| Threshold | | |
| 0.1 | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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| Indicator Ref | Title | |
| O10 | Play equipment | |
| Full Description | | |
| % of play equipment assessed in the annual ROSPA inspection as having a high risk rating | | |
| Format | Decimal Places | Measurement Period |
| Percentage | None | Annual |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>Play equipment: Individual pieces of play equipment that are within the responsibility of the Council</p> <p>ROSPA inspection: A survey is commissioned each year covering each play area and is carried out by an independent inspector from ROSPA. This is reported in the form of a written assessment of the various aspects of each piece of equipment. A single piece of equipment will therefore have a number of different risk ratings High, Medium or Low or No risk - for different aspects.</p> <p>High risk: Any equipment with overall category as high risk</p> | |
| Formula | $\frac{\text{No. of play equipment assessed as having a high risk rating}}{\text{Total no. of play equipment}} \times 100$ | |
| Method | <p>A spreadsheet or similar will be created each year based on the ROSPA report listing each item of play equipment and the highest risk rating associated with it. This will be used to calculate the indicator result.</p> <p>Data to be supplied through the Provider's system</p> | |
| Further reference | | |
| Notes | | |
| Threshold | | |
| 6% | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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|---|---|---------------------------|
| Indicator Ref | Title | |
| O11 | Tree condition | |
| Full Description | | |
| % of trees identified in the cyclical tree survey as category 5 | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annual |
| Objective | The Public Realm is accessible, safe, clean and well-maintained | |
| Definition | <p>An independent survey is commissioned each year covering all trees in a third of the county; i.e. every tree is surveyed once every three year period. Each tree surveyed is rated from 1 (good condition no works required) to 5 (poor condition - urgent works required). Work programmes are informed by the rating from this assessment.</p> <p>Identified: Number of trees as categorised as priority 5 during each annual tree survey.</p> <p>Definition based on risk methodology of "Future Arbour independent tree consultants"</p> | |
| Formula | $\frac{\text{No. of trees identified as priority 5}}{\text{total no. of trees surveyed}} \times 100$ | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | | |
| Threshold | | |
| To be agreed by both parties after previous years data has been analysed. | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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| Indicator Ref | Title | |
| O12 | Accuracy of Target Costs | |
| Full Description | | |
| Percentage of Service Orders completed in accordance with clause 13 of the Service Agreement within a tolerance of + or – 2.5% of the Scheme's target cost stated in the relevant Service Order | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annually |
| Objective | The Services are efficient and responsive to local needs. | |
| Definition | Percentage of target costs that are accurate to within ± 2.5% of the agreed target. | |
| Formula | $\left(\frac{x}{y}\right) \times 100$ <p>Where:</p> <p>x = Number of schemes completed in accordance with Clause 13 of the Service Agreement within a tolerance of ± 2.5% of the Scheme's Target Cost.</p> <p>y = Total Number of schemes delivered during measurement period.</p> | |
| Method | Provider to supply final cost figures (via its ERP system) at the completion of each scheme. | |
| Further reference | | |
| Notes | Individual Scheme target cost as set out in each Annual Plan | |
| Threshold | | |
| To be agreed by both parties after the first three month's data has been analysed | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

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|---|--|---------------------------|
| Indicator Ref | Title | |
| O13 | Accuracy of timescales | |
| Full Description | | |
| Percentage of Service Orders completed within a tolerance of + or – 2.5% of the Scheme's planned timescale stated in the relevant Service Order | | |
| Format | Decimal Places | Measurement Period |
| Percentage | Two | Annually |
| Objective | The Services are efficient and responsive to local needs. | |
| Definition | Percentage of target costs that are accurate to within ± 2.5% of the agreed target. | |
| Formula | $\left(\frac{x}{y}\right) \times 100$ <p>Where:</p> <p>x = Number of Service Orders completed within a tolerance of ± 2.5% of the Scheme's planned completion date.</p> <p>y = Total Number of Service Orders delivered during measurement period.</p> | |
| Method | Provider to supply final completion figures via its systems at the completion of each scheme. | |
| Further reference | | |
| Notes | Individual Service Order target completion as set out in each Service Order | |
| Threshold | | |
| To be agreed by both parties after the first three month's data has been analysed | | |
| Version | Date | |
| Issue 1 Revision 01 | | |

| Indicator Ref | Title | |
|---|--|-------------------------|
| O14 | Delivery of the Annual Plan | |
| Full Description | | |
| % of Services included in the Annual Plan that are not delivered within the relevant Financial Year in which they are scheduled | | |
| Format | Decimal Places | Measurement Period |
| Percentage | none | Annual (financial year) |
| Objective | The Services are efficient and responsive to local needs | |
| Definition | The total value of Services completed in relevant Financial Year divided by the total value of Services included in Service Orders to be completed in relevant Financial Year | |
| Formula | $\left(\frac{x}{y}\right) \times 100$ <p>Where: x = total value of Services completed in relevant Financial Year y = total value of Services included in Service Orders to be completed in relevant Financial Year</p> | |
| Method | Data to be supplied through the Provider's system | |
| Further reference | | |
| Notes | Services included in the Annual Plan but not the subject of subsequent Service Orders are excluded from this calculation. | |
| Threshold | | |
| 1% | | |
| Version | | Date |
| Issue 1 Revision 01 | | |

SCHEDULE 3 – THE SERVICES

The following is a summary of the Core and Non-Core Services. Greater detail regarding these services is set out in the Service Information

Part I – Core Services

1. Support during civil emergencies.
2. Community development.
3. Customer interface and stakeholder management.
4. Development control in relation to the Public Realm.
5. Fleet management services.
6. Parks and open spaces, landscaping, verges and trees.
7. Highways Drainage.
8. Transport asset management planning.
9. Land drainage.
10. Flood risk management.
11. Highways - Network improvement
12. Area Network management and traffic regulation
13. Area Network rehabilitation and maintenance.
14. Public rights of way.
15. Street cleansing.
16. Street lighting.
17. Structures.
18. Traffic control systems.
19. Winter service.
20. Design services.
21. Public Realm related services.

Part II – Non-Core Services

1. Customer support services.
2. Regulatory services related to the Public Realm.

3. Community services.
4. Countryside services.
5. Transformation services.
6. Planning services.
7. Housing services.
8. Asset management and property services.
9. Other related services within the scope of the SPV codes set out in the OJEU Notice numbered 2012/S 207 – 340690 dated 26 October 2012 as supplemented by the Additional Information Notice numbered 2012/S 210 - 344758 dated 31 October 2012.

SCHEDULE 4 – SERVICE INFORMATION

- Hereford Service Information - final - 14 May 2013 V1.00
- Annex 0.1 - Herefordshire Model - MAC Model Contract Service Information HW Baseline Spec part1 V1.00
- Annex 0.2 - Herefordshire Model - MAC Model Contract Service Information HW Baseline Spec part2 V1.00
- Annex 0.3 - Herefordshire Model - MAC Model Contract Service Information HW Baseline Spec part3 V1.00
- Annex 0.4 - Herefordshire Model - MAC Model Contract Service Information HW Baseline Spec part4 V1.00
- Annex 01 - Service Information Support During Civil Emergencies v1.2
- Annex 02 - Service Information Community Development V1.3
- Annex 03 - Service Information Customer Interface and Stakeholder Management V1.4
- Annex 04 - Service Information Design Services v1.3
- Annex 05 - Service Information Development Control V1.4
- Annex 06 - Service Information Fleet Management V1.4
- Annex 07 - Service Information Parks and Open Spaces, Landscaping, Verges and Trees V1.4
- Annex 08 - Service Information Highway Drainage V1.1
- Annex 09 - Service Information Transport Asset Management Planning v1.5
- Annex 10 - Service Information Land Drainage V1.1
- Annex 11 - Service Information Flood Risk Management v1.3
- Annex 12 - Service Information Highway Network Improvements V1.5
- Annex 13 - Service Information Network Management and Traffic Regulation V1.4
- Annex 14 - Service Information Network Rehabilitation Maintenance V1.2
- Annex 15 - Service Information Public Rights of Way V1.2
- Annex 16 - Service Information Street Cleaning V1.1
- Annex 17 - Service Information Streetlighting V1.4
- Annex 18 - Service Information Structures V1.4
- Annex 19 - Service Information Traffic Control Systems V1.6
- Annex 20 - Service Information Winter Service V1.2
- Annex 21 - Direct Cost Report Template
- Annex 22 - Budget Report Template
- Annex 23 - Cost of Services to Date Report Template V1.20
- Index of Standard Detail Drawings taken from Specification Appendix No 0/4 (including notes on the drawings)

SCHEDULE 5 – PUBLIC REALM ASSET INFORMATION

ASSET CONDITION

Data Library Asset Condition (Doc1) MSIG SCANNER Amber 2011-12
Data Library Asset Condition (Doc2) FNS Headline Report
Data Library Asset Condition (Doc3) Condition Reports 11 12
Data Library Asset Condition (Doc4) Street Lighting Structural Data 2013.03.27
Data Library Asset Condition (Doc 5) Reported Defect Trends 2013.03.27

ASSET INVENTORY

Data Library Asset Inventory (Doc1) Public Realm Inventory V4.0 2103.03.26
Data Library Asset Inventory (Doc2) Street Lighting Inventory V1.0
Data Library Asset Inventory (Doc3) Map of Life Buoy Locations V1.0 2013.03.26
Data Library Asset Inventory (Doc4) Map Bundle Green Flag Aspiring Parks V1.0 2013.03.26
Data Library Asset Inventory (Doc5) Street Lighting EAC Report 2013.03.27
Data Library Asset Inventory (Doc6) Traffic Signal EAC Report 2013.03.27
Data Library Asset Inventory (Doc7) Herefordshire Road Lengths 2013.03.27

ASSET VALUATION

Data Library Asset Valuation (Doc1) 2011-2012 GRC Herefordshire Council 25 07 12 V1.01

COUNCIL POLICIES AND PLANS

Data Library Council Policies (Doc1) Advertising Policy 2010
Data Library Council Policies (Doc2) Classification Policy
Data Library Council Policies (Doc3) Communications Protocols 2010
Data Library Council Policies (Doc4) Corporate Information Policy
Data Library Council Policies (Doc5) Corporate Information Security Policy
Data Library Council Policies (Doc6) Data Protection Policy HCv1
Data Library Council Policies (Doc7) Email Usage Policy
Data Library Council Policies (Doc8) HPS data quality policy
Data Library Council Policies (Doc9) Internet Usage Policy

EMPLOYERS FLEET

Data Library Employers Fleet (Doc1) Winter Fleet
Data Library Employer's Fleet (Doc2) Winter Fleet Replacement Strategy
Data Library Employer's Fleet (Doc3) Council Fleet List (Mar-13)

ECONOMIC REGENERATION

Data Library Eco Regen (Doc1) Local Client guidance England May 2012

PUBLIC REALM POLICIES AND PLANS

Data Library Public Realm Policies (Doc1) TAMP Final 61211 SDCT V0.00
Data Library Public Realm Policies (Doc2) TAMP LCP Appendix E
Data Library Public Realm Policies (Doc3) TAMP Public Consultation Appendix 2 V5 180408
Data Library Public Realm Policies (Doc4) TAMP Public Consultation Appendix2 Public Questionnaire
Data Library Public Realm Policies (Doc5) TAMP Public Consultation Appendix2 Parish Questionnaire

Data Library Public Realm Policies (Doc6) (BCP Strategic highways lead) 25-06-12
Data Library Public Realm Policies (Doc7) Annexes BCP strategic highways lead 25-06-12
Data Library Public Realm Policies (Doc8) Highway Maintenance Plan 2007-2008
Data Library Public Realm Policies (Doc9) Winter Maintenance Plan 2012-13[1]
Data Library Public Realm Policies (Doc10) ROWIP 2 2nd Draft (V2.0) 2103.02.27
Data Library Public Realm Policies (Doc11) Draft Fleet Management Policy (V1.0) 2013.02.27

SCHEDULE 6 – TEMPLATE FOR SERVICE ORDERS

Service Orders will be issued by the *Employer* to the *Provider* in the following format, or such other format as may be agreed from time to time between the *Provider* and the *Service Manager*.

SERVICE ORDER

issued under the Public Realm Contract between Herefordshire Council
and [Provider] Limited dated [] 20 (the "Contract")

Order number:

| | |
|---|------------------------------|
| To: [Provider] [Provider's address] | For the attention of: |
|---|------------------------------|

Financial

| | | | |
|--|------------------------------|----------------------------|---------------|
| Budget Head: | Revenue/Capital/Other | If 'Other' please specify: | |
| Employer's Project Code (as required): | | Financial Year: | 20 /20 |
| Employer's Cost Code: | | Employer's Account Code: | |
| Employer's Analysis Code (as required) | | | |

Work/services comprised in this Service Order

Pursuant to the Contract you are instructed to carry out the works and/or services set out below.

Further details of the above works and/or services are:

[set out in a separate document entitled [] and dated []]

The date or dates for commencement and completion of this Service Order

The date for commencement of this Service Order is:

The date for completion of this Service Order is:

Where the works/services comprised in this Service Order are divided into stages/sections, the dates for completion for individual stages/sections are¹:

| Stage/section no. | Details of stage/section | Date for completion |
|-------------------|--------------------------|---------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

Service Order Plan (if required)

¹ Note: where the Services will be completed in the next or a subsequent Financial Year, the extent of the Services to be completed in the Financial Year in which the Service Order is issued must be clearly specified.

| |
|--|
| A Service Order Plan is/is not ² required |
| The Service Plan is: [attached in a separate document entitled []] [to be produced by []] |
| Payment terms |
| The works and/or services comprised in this Service Order will be carried out on the following basis: cost reimbursable/lump sum/target cost ³ |
| Activities (within the ambit of the above works and/or services) which will be treated as compensation events are: |
| 1. 2. 3. 4. 5. |
| Date: Signed: Name: |

² Delete as appropriate.

³ Delete the options that do not apply.

SCHEDULE 7 – TUPE AND PENSION PROVISIONS

Part 1 – TUPE AND PENSIONS

Defined terms

In this Schedule, the following terms have the following meanings:

"Administering Authority"

Worcestershire County Council of Pensions Service, HR Service Centre, Resources Directorate County Hall, Spetchley Road, Worcester, WR5 2NP acting in its capacity as the administering authority of the Worcestershire County Council Pension Fund for the purposes of the LGPS Regulations;

"Admission Body"

is a transferee admission body for the purposes of regulation 6 of the Administration Regulations;

"Administration Regulations"

means the Local Government Pension Scheme (Administration) Regulations 2008 (SI 2008/239);

"Assigned Employees"

has the meaning set out in paragraph 2.8.1.1;

"Benefit Regulations"

means the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007;

"Direct Losses"

all damages, losses, liabilities, claims, actions, costs, expenses (including legal or professional services, legal costs being on an agent/employer paying basis) proceedings, demands and charges whether arising under statute, contract or at common law, but to avoid doubt, excluding Indirect Losses;

"Directive"

the EC Acquired Rights Directive 77/187 as amended;

"Eligible Employees"

- (a) the Transferring Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date; and
- (b) the Transferring Original Employees who are active members of or have the right to acquire benefits under either the LGPS under Regulation 4 of the Administration Regulations or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date,⁴

⁴ The protection of the pension rights of Transferring Original Employees (and Transferring Employees) is covered by The Best Value Authorities Staff Transfers (Pensions) Direction 2007 irrespective of whether the original transfer from the Authority was protected under the Direction or under the Fair Deal Guidance. However, neither the Direction nor the Fair Deal Guidance protects the pension rights of staff recruited by an existing contractor after the transfer of the Transferring Original Employees. However, the Authority would not be prohibited by the Fair Deal Guidance from providing some pension protection for such staff where appropriate on value for money grounds. The Authority should also consider the protection which will apply under TUPE and/or Sections 257-258 of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005 as appropriate.

for so long as they are employed in connection with the provision of the Services or part of the Services;

"Employee Liability Information"

has the meaning given to it in Regulation 11 of TUPE;

"Exit Contribution"

has the meaning set out in paragraph 3.14.2;

"Fund"

means the Worcestershire County Council Pension Fund within the LGPS;

"Government Actuary's Department"

means the Government Actuary's Department of Finlaison House, 15-17 Furnival Street, London, EC4A 1AB;

"Incoming Provider"

the organisation appointed by the Employer to Provide the Services after the expiry or earlier termination of the contract;

"Indirect Losses"

loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relates to loss of revenue under the contract;

"Intervening Contract"

a contract with the Employer for the provision of services which are similar to the Services, at times after they were provided under a contract with the *Outgoing Provider* and before they are to be provided by the *Provider*;

"Initial Employer Contribution Rate"

shall mean 22.5% of Pensionable Pay;

"LGPS Regulations"

means, collectively, the Local Government Pension Scheme Regulations 1997 (SI 1997/1612), Administration Regulations, the Local Government Pensions Scheme (Benefits, Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;

"Local Government Pension Scheme" and "LGPS"

the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

"New Employees"

those new employees employed by the *Provider* to Provide the Services who will be working alongside the Transferring Employees;

"New Employer"

has the meaning set out in paragraph 3.5.2;

"Original Employee"

those employees of the *Employer*, who as a result of the application of TUPE, in relation to what was done for the purposes of carrying out the contract between the *Employer* and the *Outgoing Provider*, became employees of someone other than the *Employer*;

"Outgoing Provider"

any agent or contractor or subcontractor appointed by the Employer to carry out works and services similar to the Services in relation to the Public Realm immediately prior to the Relevant Transfer Date;

"Past Service Reserve"

the actuarial value, calculated on the basis that the provisions of Section 62 of the Pensions Act 1995 applies directly to the Local Government Pension Scheme or *Provider* Scheme (the "**Transferring Scheme**"), of the aggregate of the benefits, whether immediate, prospective or contingent, payable under the Transferring Scheme to and in respect of each transferring member, his spouse and dependants, by reference to pensionable service in the Transferring Scheme, but making proper allowance for projected increases in the rate of pensionable salary of each transferring member from the cessation of pensionable service to the expected date of withdrawal, retirement or death and increases (whether or not pursuant to a legal obligation) in pensions in payment using demographic and actuarial assumptions which are overall no less conservative than those adopted for the most recent funding valuation of the Transferring Scheme;

"Pensionable Pay"

has the meaning contained in the Benefit Regulations;

"Provider Admission Agreement"

means an admission agreement in the form set out in Annex 2 to this Schedule to be entered into in accordance with paragraph 3.1 of Part 1 of this Schedule;

"Provider Scheme"

the retirement benefits scheme or schemes established or to be established under paragraph 3.1;

"Relevant Employees"

the employees who are the subject of a Relevant Transfer;

"Relevant Transfer"

a relevant transfer for the purposes of TUPE;

"Relevant Transfer Date"

the date on which a Transferring Employee transfers to the *Provider* and/or one or more Subcontractors by virtue of a Relevant Transfer;

"Retendering Information"

has the meaning set out in paragraph 2.8.1.1;

"Return Date"

has the meaning set out in paragraph 2.9.2;

"Returning Employees"

has the meaning set out in paragraph 2.9.2;

"Transfer Amount"

the aggregate of the Transfer Values as at the Relevant Transfer Date of, respectively, those Eligible Employees who elect to transfer their benefits;

"Transfer Date"

the date the Transferring Employees are transferred to the employment of the *Provider* and the date that the Transferring Original Employees are transferred to the employment of a subsequent contractor;

"Transfer Value"

the actuarial value of the benefits of each member of the Local Government Pension Scheme or *Provider* Scheme (on a secondary transfer of employees), as the case may be, who elects to transfer their benefits pursuant to the terms of the contract calculated on a Past Service Reserve basis and without any reduction having been applied to reflect any deficiencies in the assets relative to the liabilities of the Local Government Pension Scheme or *Provider* Scheme;

"Transferring Employee"

an employee of the Employer whose contract of employment becomes, by virtue of the application of TUPE in relation to the provision of works and services pursuant to the contract between the *Employer* and the *Provider*, a contract of employment with someone other than the *Employer*;

"Transferring Original Employee"

an Original Employee is an employee:

- (a) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out the contract between the Employer and the *Provider*, a contract of employment with someone other than his existing employer, and
- (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his or her existing employer;

"TUPE"

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law;

"TUPE Redundancy Costs"

the amount of any statutory redundancy payments payable by the *Provider* to any Transferring Employees and/or any other Relevant Employees employed by the Outgoing Provider who are dismissed by reason of redundancy, as calculated in accordance with Section 162 of the Employment Rights Act 1996.

2 TUPE

2.1 Relevant Transfers

2.1.1 The *Employer* and the *Provider* agree that the following events:

2.1.1.1 the Relevant Transfer Date; and

2.1.1.2 where the identity of a provider (including the Employer) of any works or services which constitutes or which will constitute part of the Services is changed whether in anticipation of changes pursuant to the contract or not;

constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the *Provider* and/or his Subcontractor except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of the

contract) the *Provider* will procure that the former and the new Subcontractor will both comply with their obligations under TUPE.

2.1.2 The Employer will comply with his obligations under TUPE in respect of each Relevant Transfer pursuant to the contract and the Provider will comply and will procure that each Subcontractor will comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to the contract and each of the Employer and the Provider will indemnify the other against any Direct Losses sustained as a result of any breach of this paragraph 2.1.2 by the party in default.

2.2 Offer of Employment

2.2.1 If TUPE does not apply to any person who is named as a Transferring Employee, the Provider will offer to or will procure the offer by his relevant Subcontractor to each and every such employee a new contract of employment commencing on the Relevant Transfer Date under which the terms and conditions including full continuity of employment will not differ from those enjoyed immediately prior to the Relevant Transfer Date (except insofar as such terms and conditions relate to old age, invalidity and survivors' benefits under an occupational pension scheme) and the offer will be in writing, will be open to acceptance for a period of not less than 10 Working Days and will be made:

2.2.1.1 if it is believed that TUPE will not apply to a person named as a Transferring Employee, not less than 10 Working Days before the Relevant Transfer Date; or

2.2.1.2 if it is believed that TUPE applies to a person named as a Transferring Employee but it is subsequently decided that TUPE does not so apply, as soon as is practicable and in any event no later than 10 Working Days after that decision is known to the *Provider*.

2.2.2 Where any such offer as referred to in paragraph 2.2.1 is accepted, the Employer will indemnify and keep indemnified in full the Provider on the same terms and conditions as those set out in paragraphs 2.6.1, 2.6.2 and 2.6.3 of the contract as if there had been a Relevant Transfer in respect of each and every Transferring Employee who has accepted any such offer.

2.2.3 Where any such offer as referred to in paragraph 2.2.1 is accepted, the Provider will act and will procure that each of his relevant Subcontractor will act in all respects as if TUPE had applied to each and every Transferring Employee who has accepted any such offer and will comply with paragraph 3 (Pensions) of this Schedule in respect of each and every such employee who was immediately before the Relevant Transfer Date a Transferring Employee.

2.2.4 For the avoidance of doubt, where any such offer as referred to in paragraph 2.2.1 is not accepted and TUPE does not apply, the Transferring Employee will remain an employee of the Employer.

2.3 Emoluments and outgoings

- 2.3.1 The Employer will be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.
- 2.3.2 The Provider will be responsible or will procure that any relevant Subcontractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Provider or any Subcontractor in connection with the provision of the service, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Transfer Date.

2.4 Employment costs

- 2.4.1 The Employer has supplied to the Provider information, as at the date of the contract, which is contained in Annex 1 to this Schedule in relation to each of those employees of the Employer and of the Outgoing Provider who it is expected, if they remain in the employment of the Employer or of the Outgoing Provider (as the case may be) until immediately before the Relevant Transfer Date, would be Relevant Employees but the Employer gives no warranty as to the accuracy or completeness of this information.
- 2.4.2 Without prejudice to paragraph 2.4.1, the Employer will, or will procure if it has the contractual or legal powers to do so, and will otherwise use all reasonable endeavours to procure that the Outgoing Provider will:
- 2.4.2.1 provide the Employee Liability Information to the Provider at such time or times as are required by TUPE; and
 - 2.4.2.2 update the Employee Liability Information to take account of any changes as required by TUPE. The Employer gives no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Employer or the Outgoing Provider.
- 2.4.3 The Employer and the Provider will, (and the Provider will procure that each and every Subcontractor will) take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to the contract takes place smoothly with the least possible disruption to the Services being provided to the Employer under the contract and to the employees who transfer.

2.5 Union recognition

2.5.1 The Employer will and will procure if it has the contractual or legal powers to do so and will otherwise use all reasonable endeavours to procure that the Outgoing Provider will supply to the *Provider* no later than 20 Working Days prior to the Relevant Transfer Date true copies of his union recognition agreement(s) and the *Provider* will and will procure that each and every Subcontractor will in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Subcontractor) after the transfer to the same extent as they were recognised by the *Employer* or the Outgoing Provider before the Relevant Transfer Date.

The Provider will procure that, on each occasion on which the identity of a Subcontractor changes pursuant to the contract, in the event that there is a Relevant Transfer, the new Subcontractor will in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Subcontractor to the same extent as they were recognised before the change of identity of the Subcontractor in respect of the provision of any works or services in connection with the contract.

2.6 Indemnities

2.6.1 The Employer will indemnify and keep indemnified in full the Provider (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the Provider or any relevant Subcontractor in connection with or as a result of:

2.6.1.1 a breach by the *Employer* of his obligations under paragraph 2.3.1 above;

2.6.1.2 subject to paragraph 2.6.4 any claim or demand by or on behalf of any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the *Employer* in relation to any Transferring Employee prior to the Relevant Transfer Date (save where such act, fault or omission arises as a result of the *Provider's* or any relevant Subcontractor's failure to comply with Regulation 13 of TUPE).

2.6.2 Where any liability in relation to any Transferring Employee, in respect of his or her employment by the Employer or his termination which transfers in whole or part in accordance with TUPE and/or the Directive, arises partly as a result of any act or omission occurring on or before the Relevant Transfer Date and partly as a result of any act or omission occurring after the Relevant Transfer Date, the Employer will indemnify and keep indemnified in full the Provider or the relevant Subcontractor against only such part of the Direct Losses sustained by the Provider or any subcontractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Relevant Transfer Date.

- 2.6.3 The Employer will indemnify, and keep indemnified, in full the Provider (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the Provider or any relevant Subcontractor in connection with, or as a result of, any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Employer or Outgoing Provider prior to the Relevant Transfer Date and to the extent that the Employer recovers any sum in respect of the subject matter of this indemnity from such Outgoing Provider under any indemnity or other legal entitlement it has against such Outgoing Provider. The Employer will use all reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this paragraph 2.6.3.
- 2.6.4 The Provider will indemnify and keep indemnified in full the Employer, and at the Employer's request each and every Incoming Provider against:
- 2.6.4.1 all Direct Losses incurred by the Employer or any Incoming Provider in connection with or as a result of any claim or demand against the Employer or any Incoming Provider by (i) any person who is or has been employed or engaged by the *Provider* or any Subcontractor in connection with the provision of any works or services under the contract or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the *Provider* and/or any Subcontractor after the Relevant Transfer Date;
 - 2.6.4.2 all Direct Losses incurred by the *Employer* or any Incoming Provider in connection with or as a result of a breach by the *Provider* of his obligations under paragraph 2.3.2 above; and
 - 2.6.4.3 all Direct Losses incurred by the *Employer* or any Incoming Provider in connection with or as a result of any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the *Provider* and/or the relevant Subcontractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the *Provider* and/or any Subcontractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.
- 2.6.5 The Provider will indemnify and keep indemnified in full the Employer, against all Direct Losses incurred by the Employer in connection with or as a result of:
- 2.6.5.1 the change of identity of employer occurring by virtue of TUPE to the *Provider* or the relevant Subcontractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee

but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of the change in employer and whether such claim arises before or after the Relevant Transfer Date;

2.6.5.2 any proposed or actual change by the *Provider* or any Subcontractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the *Provider* or the relevant Subcontractor which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Relevant Transfer Date; and

2.6.5.3 any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the *Provider* or Subcontractor to the Relevant Employees or their representatives whether before on or after the Relevant Transfer Date and whether liability for any such claim arises before on or after the Relevant Transfer Date.

2.6.6 For the avoidance of doubt, the indemnities in paragraphs 2.6.4 and 2.6.5 will not apply in respect of any sum for which the Employer is to indemnify the *Provider* or a relevant Subcontractor pursuant to paragraph 1.6.1 or to the extent that the claim arises from a wrongful act or omission of the Employer.

2.7 Provision of details and indemnity

The *Provider* will immediately upon request by the *Employer* provide to the *Employer* details of any measures (as referred to in Regulation 13 of TUPE) which the *Provider* or any Subcontractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and will indemnify the *Employer* against all Direct Losses resulting from any failure by the *Provider* to comply with this obligation.

2.8 Retendering

2.8.1 The *Provider* will (and will procure that any Subcontractor will) within the period of 12 months immediately preceding the expiry of this contract or following the service of a notice under clause 94 (Termination) or as a consequence of the *Employer* notifying the *Provider* of his intention to re-tender this contract:

2.8.1.1 on receiving a request from the *Employer* provide in respect of any person engaged or employed by the *Provider* or any Subcontractor in the provision of any service which is part of the Services (the "**Assigned Employees**") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of

employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the *Provider* or of any Subcontractor as the case may be until immediately before the termination date, would be Returning Employees (the “Retendering Information”);

- 2.8.1.2 provide the Retendering Information promptly and at no cost to the *Employer*;
 - 2.8.1.3 notify the *Employer* forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 2.8.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the *Employer's* prior written consent (not to be unreasonably withheld or delayed);
 - 2.8.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the *Employer's* prior written consent; and
 - 2.8.1.6 be precluded from transferring any of the Assigned Employees to another part of his business or moving other employees from elsewhere in his or their business who have not previously been employed or engaged in providing any part of the Services to provide any such works and services save with the *Employer's* prior written consent (not to be unreasonably withheld or delayed).
- 2.8.2 Without prejudice to paragraphs 2.8.1 and 2.8.3, the Provider will provide and will procure that any Subcontractor will provide the Employee Liability Information to the Employer at such time or times as are required by TUPE, and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.
- 2.8.3 The Provider will and will keep indemnified in full the Employer and at the Employer's request any Incoming Provider against all Direct Losses arising from any claim by any party as a result of the Provider or Subcontractor failing to provide or promptly to provide the Employer and/or any Incoming Provider where requested by the Employer with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity will not apply in respect of the Retendering Information to the extent that such information was originally provided to the Provider by the Employer and was materially inaccurate or incomplete when originally provided.

2.9 Termination of agreement

- 2.9.1 On the expiry or earlier termination of this contract, the Employer and the Provider agree that it is their intention that TUPE will apply in respect of the provision thereafter of any works and services equivalent to one or more of the works and services which are part of the Services but the position will be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.
- 2.9.2 For the purposes of this paragraph 2.9, "Returning Employees" will mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this contract whose employment transfers to the Employer or an Incoming Provider pursuant to TUPE. Upon expiry or termination of the contract for whatever reason (such date being termed the "Return Date"), the provisions of this paragraph 2.9 will apply:
- 2.9.2.1 The *Provider* will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the *Provider* or the Subcontractor (who had been engaged in the provision of the service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the *Provider* or Subcontractors up to the Return Date are satisfied;
- 2.9.2.2 Without prejudice to paragraph 2.9.2.1, the *Provider* will:
- 2.9.2.2.1 remain (and procure that Subcontractors will remain) (as relevant) responsible for all the *Provider's* or Subcontractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this contract and will indemnify the *Employer* and any Incoming Provider against all Direct Losses incurred by the *Employer* or any Incoming Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the *Employer's* or Subcontractor's employees who do not constitute the Returning Employees;
- 2.9.2.2.2 in respect of those employees who constitute Returning Employees the *Provider* will indemnify the *Employer* and any Incoming Provider against all Direct Losses incurred by the *Employer* or any Incoming Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the *Provider* or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result

of an act or omission of the Employer or any Incoming Provider.

2.9.2.3 The *Employer* will be entitled to assign the benefit of this indemnity to any Incoming *Provider*.

2.9.2.4 The *Employer* will indemnify the *Provider* (for itself and for the benefit of each relevant Subcontractor) in respect of those employees who constitute Returning Employees against all Direct Losses incurred by the *Provider* or any relevant Subcontractor in connection with or as a result of any failure by the *Employer* or any Incoming Provider to comply with his or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the *Provider* or any relevant Subcontractor.

2.10 Subcontractors

In the event that the *Provider* enters into any subcontract in connection with this contract, it will impose obligations on such Subcontractor in the same terms as those imposed on it pursuant to this paragraph 2 and paragraph 3 (Pensions) and will procure that the Subcontractor complies with such terms. The *Provider* will indemnify and keep the *Employer* indemnified in full against all Direct Losses, incurred by the *Employer* or any Incoming Provider as a result of or in connection with any failure on the part of the *Provider* to comply with this paragraph and/or the Subcontractor's failure to comply with such terms.

2.11 Data protection

Where the *Employer* holds information in respect of any of the *Provider's* employees, the *Employer* will comply with (and ensure that all his employees comply with) any notification requirements under the DPA and will observe his obligations under the DPA which arise in connection with the contract.

3 PENSIONS

3.1 Provider to become an Admission Body

Where the *Provider* or a Subcontractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the *Provider* will procure that it and/or each relevant Subcontractor will become an Admission Body in accordance with the Worcestershire County Council Pension Fund Admissions Policy a copy of which is attached at Annex 3 of this Schedule. The *Provider* will as soon as reasonably practicable following the access date execute and procure that each relevant Subcontractor executes a Provider Admission Agreement in the form set out in Annex 2 to this Schedule (with such amendments only as the Administering Authority may accept) which will have effect from and including the Relevant Transfer Date.

3.2 Provider Admission Agreement

The *Employer* will as soon as reasonably practicable following the access date execute any Provider Admission Agreement as referred to in paragraph 3.1 and will

use his reasonable endeavours to procure that the Administering Authority executes each such Provider Admission Agreement as soon as reasonably practicable following the access date.

3.3 Indemnity for a breach of the Provider Admission Agreement

Without prejudice to the generality of this paragraph 3, the *Provider* hereby indemnifies the *Employer* from and against all Direct Losses suffered or incurred by him or them which arise from any breach by the *Provider* or any subcontractor of the terms of the Provider Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this contract (howsoever caused) except in respect of any losses which are caused by or result from an act or omission of the *Employer*.

3.4 Indemnity or bond

Without prejudice to the generality of the requirements of this paragraph 3, the *Provider* will use all reasonable endeavours to procure that it and each relevant Subcontractor will as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Provider Admission Agreements and which is in the form provided by the Fund and acceptable to the parties (acting reasonably).

3.5 Right of set-off

The *Employer* will have a right to set off against any payments due to the *Provider* under the contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the *Provider* or from any relevant Subcontractor (as applicable) under the Provider Admission Agreement.

3.6 Provider ceases to be an Admission Body

If the *Provider* or any Subcontractor employs any Eligible Employees from an access date and:

- (i) the *Provider* or any relevant Subcontractor does not wish to offer those Eligible Employees membership of the LGPS; or
- (ii) the *Employer*, the *Provider* or any relevant Subcontractor are of the opinion that it is not possible to operate the provisions of paragraphs 3.1 to 3.4 inclusive; or
- (iii) if for any reason after the Relevant Transfer Date the *Provider* or any relevant Subcontractor ceases to be an Admission Body other than on the date of termination or expiry of the contract or because it ceases to employ any Eligible Employees;

the provisions of paragraphs 3.1 to 3.4 inclusive will not apply (without prejudice to any rights of the *Employer* under those paragraphs) and the provisions of paragraph 3.7 will apply.

3.7 Provider Scheme

- 3.7.1 The Provider will or will procure that any relevant Subcontractor will as soon as reasonably practicable following the access date nominate to the Employer in writing the occupational pension scheme or schemes which it proposes will be the “Provider Scheme” for the purposes of this paragraph 3.7. Such pension scheme or schemes must be:
- 3.7.1.1 established as soon as reasonably practicable following the access date and maintained until any payment to be made under Part 2 of this Schedule (Bulk Transfer Terms) is made;
 - 3.7.1.2 reasonably acceptable to the *Employer* (such acceptance not to be unreasonably withheld or delayed);
 - 3.7.1.3 registered within the meaning of the Finance Act 2004; and
 - 3.7.1.4 certified by the Government Actuary's Department or an actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are the same as, broadly comparable to, or better than those benefits provided by the LGPS.
- 3.7.2 The Provider undertakes to the Employer (for the benefit of the Employer itself and for the Employer as agent and trustee for the benefit of the Eligible Employees) that it will and will procure that any relevant Subcontractor will procure that:
- 3.7.2.1 the Eligible Employees will as soon as reasonably practicable after the access date be offered membership of the Provider Scheme with effect from and including the Relevant Transfer Date;
 - 3.7.2.2 the Provider Scheme will provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date which the Government Actuary's Department or an actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department will certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees were entitled to under the LGPS at the Relevant Transfer Date. In the case of Eligible Employees who are Transferring Original Employees, the benefits provided from the Relevant Transfer Date must be the same as, broadly comparable to or better than the benefits provided by their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS);
 - 3.7.2.3 on and from the Relevant Transfer Date until the earlier of:
 - 3.7.2.3.1 3 months after the date on which the Eligible Employees are first able to join the Provider Scheme; and

- 3.7.2.3.2 the date on which the Eligible Employee joins the Provider Scheme, the *Provider* will provide death benefits for and in respect of the Eligible Employees which are certified by the Government Actuary's Department or an actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS;
 - 3.7.2.4 if the Provider Scheme is terminated, a replacement pension scheme will be provided with immediate effect for those Eligible Employees who are still employed by the *Provider* or relevant Subcontractor. The replacement scheme must comply with this paragraph 3.7 as if it were the Provider Scheme; and
 - 3.7.2.5 as soon as reasonably practicable following the access date the *Provider* will use best endeavours to procure that the trustees of the Provider Scheme will undertake by deed to the *Employer* and to the Administering Authority that they will comply with the provisions of paragraphs 3.7.1.1 to 3.7.1.4, 3.7.2.1, 3.7.2.2 and 3.7.2.4 and Part 2 of this Schedule (Bulk Transfer Terms) as are relevant to them.
- 3.7.3 Part 2 of this Schedule (Bulk Transfer Terms) will form the basis for discussion of the terms for bulk transfers from the LGPS to the Provider Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this contract, and will be subject to finalisation.

3.8 Undertaking from the Provider

- 3.8.1 The Provider undertakes to the Employer (for the benefit of the Employer itself and for the Employer as agent and trustee for the benefit of the Eligible Employees) that:
 - 3.8.1.1 all information which the *Employer* or the Administering Authority or their respective professional advisers may reasonably request from the *Provider* or any relevant Subcontractor for the administration of the LGPS or concerning any other matters raised in paragraphs 3.7 or 3.8 or Part 2 of this Schedule (Bulk Transfer Terms) will be supplied to them as expeditiously as possible;
 - 3.8.1.2 it will not and will procure that any relevant Subcontractor will not, without the consent in writing of the *Employer* (which will not be unreasonably withheld but will be subject to the payment by the *Provider* or the relevant Subcontractor of such reasonable costs as the *Employer* or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the *Employer* a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- 3.8.1.3 until the Relevant Transfer Date, it will not and will procure that any relevant Subcontractor will not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 3.1 to 3.6 inclusive without the consent in writing of the *Employer* and the Administering Authority (not to be unreasonably withheld or delayed);
- 3.8.1.4 it will not and will procure that any relevant Subcontractor will not take or omit to take any action which would materially affect the benefits under the LGPS or under the *Provider* Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the provision of the Services without the prior written agreement of the *Employer* (not to be unreasonably withheld or delayed) provided that the *Provider* and/or such Subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

3.9 Claims from Eligible Employees or Trade Unions

The *Provider* hereby indemnifies the *Employer* from and against all Direct Losses suffered or incurred by it which arise from claims by Eligible Employees of the *Provider* and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

- 3.9.1 Relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the contract; or
- 3.9.2 arise out of the failure of the *Provider* and/or any relevant Subcontractor to comply with the provisions of this paragraph 3 before the date of termination or expiry of the contract;

except in respect of any losses which are caused by or result from an act or omission of the *Employer*.

3.10 Liability for costs

The costs of the *Employer* necessarily and reasonably incurred in connection with obtaining the necessary certification of comparability in accordance with paragraph 3.1.1.4 will be borne by the *Provider*.

3.11 Transfer to another employer

Save on expiry or termination of this contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the *Provider* will and will procure that any relevant Subcontractor will:

- 3.11.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

- 3.11.2 procure that the employer to which the Eligible Employees are transferred (the “New Employer”) complies with the provisions of this paragraph 3 provided that references to the “Subcontractor” will become references to the New Employer, references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.

3.12 Pension issues on expiry or termination of this contract

The *Provider* will (and will procure that each relevant Subcontractor will):

- 3.12.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Subcontractor in the provision of any service which is part of the provision of the Services on the expiry or termination of this contract (including without limitation identification of the Eligible Employees);
- 3.12.2 promptly provide to the Employer such documents and information mentioned in paragraph 3.6.1 which the Employer may reasonably request in advance of the expiry or termination of this contract; and
- 3.12.3 fully co-operate (and use best endeavours to procure that the trustees of the Provider Scheme will fully co-operate) with the reasonable requests of the Employer relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Provider or any Subcontractor in the provision of any service which is part of the provision of the Services on the expiry or termination of the contract.

3.13 Third Party Rights

The *Provider* and any Subcontractor agree that the pension provision contained in paragraphs 3.1, 3.2, 3.6 and 3.7 will be directly enforceable by the Eligible Employees against the *Provider* or any Subcontractor (as the case may be) under the Contracts (Rights of Third Parties) Act 1999.

3.14 Funding of initial valuation short falls and exit valuation short falls in respect of Eligible Employees

- 3.14.1 At the Transfer Date, the Fund will be deemed to be fully funded in respect of the Eligible Employees and the Employer will be responsible for any underfunding at this date. Any underfunding will be established by the actuarial valuation of the Fund at the date the Provider or a relevant Subcontractor enters into an Admission Agreement in respect of the Eligible Employees. The amount of any underfunding will be payable by the Employer to the Provider within 20 Working Days of the relevant actuarial valuation.
- 3.14.2 At the date of the expiry or earlier termination of the Contract Period, the Provider will obtain, or procure that the Administering Authority obtains, an actuarial valuation of the Fund (or revision thereto). If the

- 3.14.3.4.6 bringing the deferred benefit of an Eligible Employee inter payment in accordance with Regulations 20(ii) and/or 20(iii) of the Benefits Regulations; or
- 3.14.3.4.7 bringing the deferred or active benefit of an Eligible Employee inter payment through consent to retiring voluntarily on or after the age of 55;
- 3.14.3.4.8 exercising any discretion to extend the statutory time frames under Regulation 16 of the Benefits Regulations; or
- 3.14.3.4.9 waiving any reduction to benefits under Regulation 18 of the Benefits Regulations.

3.15 Other Pensions Matters

- 3.15.1 The parties shall use reasonable endeavours to enter into the Provider Admission Agreement as soon as reasonably practicable after the *access date*.
- 3.15.2 In respect of contributions to be paid to the Fund by the Provider or any relevant Subcontractor between the *access date* and the date of entering into the Provider Admission Agreement, the Provider or any relevant Subcontractor (as applicable) shall apply the Initial Employer Contribution Rate in respect of the relevant payments and shall maintain such payments in a separate identifiable account.
- 3.15.3 Upon entering into the Provider Admission agreement, the parties shall review the contributions paid under paragraph 3.15.2 and where such actual contribution exceeds or is less than the Initial Employer Contribution Rate, then the amount which exceeds or is less than the Initial Employer Contribution Rate shall be factored into the Lump Sum Services, Target Cost Service and Cost Reimbursable Services by the Provider.

Part 2 - Bulk Transfer Terms

1 Interpretation and definitions

In this Part of this Schedule, unless the context otherwise requires, the following terms will have the meanings given to them below:

"Actuary's Letter"

means the letter to be issued at the appropriate time from the Administering Authority's Actuary;

"Administering Authority's Actuary"

means [.....]⁵ of Mercer Human Resource Consulting, Mercury Court, Tithebarn Street, Liverpool, L2 2QH;

"Additional Voluntary Contributions" or "AVCs"

means Additional Voluntary Contributions (AVCs) or Shared Cost Additional Voluntary Contributions (SCAVCs) as defined in the LGPS Regulations;

"Due Date"

means the date 28 days after the last of the conditions in paragraph 3.6 of this Schedule has been satisfied;

"Investment Roll-up"

means as defined in the Actuary's Letter;

"Provider Scheme"

means the pension scheme or schemes nominated by the *Provider* and/or relevant Subcontractor in accordance with paragraph 3.7 of Part I of this Schedule;

"Provider Scheme Actuary's Letter"

means the letter (together with its attachments) prepared by Provider's Actuary stating the methods and assumptions to be used for the purpose of Part 2 of this Schedule and provided as soon as reasonably practicable following the Relevant Transfer Date;

"Provider Scheme Required Amount"

means the Provider Scheme Required Liabilities adjusted by the Investment Roll-up in respect of the period from the date immediately preceding the Relevant Transfer Date to the date immediately preceding the Pension Payment Date (or such earlier date as the transfer is made);

"Provider Scheme Required Liabilities"

means the value of the liabilities relating to the Transferring Members, as at the Relevant Transfer Date, calculated in accordance with the Provider Scheme Actuary's Letter;

"Provider's Actuary"

means an actuary to be appointed by the *Provider* and/or relevant Subcontractor for the purposes of this Schedule;

"Transfer Amount"

means the amount or amounts referred to in paragraph 7.1 of this Schedule;

⁵ Name of actuary to be confirmed.

"Transferring Member"

means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Provider Scheme under paragraph 3 of Part 1 of this Schedule;

2 The Provider Scheme

The *Provider* will (and will procure that each relevant Subcontractor will) invite each Eligible Employee who joins the Provider Scheme in accordance with paragraph 3.1 of Part 1 of this Schedule to consent to a transfer of benefits being made for him from the Fund to the Provider Scheme. The *Provider* and/or relevant Subcontractor must issue this invitation no later than one month after the Relevant Transfer Date. The invitation must be in a form acceptable to the *Employer* and the Administering Authority (such acceptance not to be unreasonably withheld or delayed by the Employer) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the *Provider* and/or relevant Subcontractor of this consent in writing no later than three months after the date of the invitation. The *Provider* will (and will procure that each relevant Subcontractor will) provide the Employer and the Administering Authority with the names of the Transferring Members no later than four months after the Relevant Transfer Date.

3 Transfer Amount from the Fund

- 3.1 The Employer will use reasonable endeavours to ensure that the Administering Authority transfers from the Fund to the Provider Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Fund before the Relevant Transfer Date calculated in accordance with the Actuary's Letter and the LGPS Regulations.
- 3.2 As soon as reasonably practicable following the Relevant Transfer Date, the Provider will (and will procure that each relevant Subcontractor will) promptly provide all data within his possession or under his control which the Administering Authority and the Administering Authority's Actuary may require for the calculation of the Transfer Amount and will warrant that this data is in all material respects true, complete and accurate.
- 3.3 As soon as reasonably practicable following the Relevant Transfer Date, the Employer will promptly provide all data within his possession or under his control which the Administering Authority and the Administering Authority's Actuary may require for the calculation of the Transfer Amount and will warrant that this data is in all material respects true, complete and accurate.
- 3.4 The Employer will use his reasonable endeavours to procure that:
 - 3.4.1 as soon as reasonably practicable after the Administering Authority's Actuary has been provided with the necessary data and information, the Administering Authority's Actuary will calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and
 - 3.4.2 within one week of completing this calculation, the Administering Authority's Actuary will notify the Provider's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

The Provider's Actuary will then have one month (or such longer period as the parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary's Letter. The calculation will be final and binding on the parties if the *Provider's Actuary* raises no objection within this stated period.

- 3.5 If the Provider's Actuary objects in writing under paragraph 3.4 and the Administering Authority's Actuary and the Provider's Actuary cannot subsequently agree the Transfer Amount within one month (or such longer period as will be agreed between the parties) of the objection, then the amount will be determined by an independent actuary to be nominated by the Administering Authority and the Provider and/or relevant Subcontractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party. The independent actuary will act as an expert and not as an arbitrator, and his decision will be final and binding on the parties. The independent actuary's costs will be payable equally by the Administering Authority and the Provider and/or relevant Subcontractor.
- 3.6 Payment to the Provider Scheme of the Transfer Amount will only be made on the following conditions:
- 3.6.1 the Transfer Amount has been agreed or determined under paragraphs 3.4 or 3.5 of this Schedule and in accordance with the LGPS Regulations;
 - 3.6.2 the Provider and/or relevant Subcontractor has complied with all his obligations under this Schedule; and
 - 3.6.3 the trustees of the Provider Scheme have confirmed in writing that:
 - 3.6.3.1 a payment should be made in accordance with the LGPS Regulations and that they will accept payment on the terms set out in paragraph 3 of Part 2 of this Schedule;
 - 3.6.3.2 they will accept liability for each Transferring Member's accrued contracted out rights under the Fund; and
 - 3.6.3.3 they will accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.

4 Past Service Benefits

The *Provider* will (and will procure that each relevant Subcontractor will) ensure that the Provider Scheme provides in respect of each Transferring Member such benefits as the Administering Authority's Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer Date if he had remained a member of the LGPS.

5 Additional Voluntary Contributions

Nothing in this Schedule will apply to AVCs or to benefits secured by them. However, the *Employer* must ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) will be transferred to the *Provider* Scheme. The *Provider* will (and will

procure that each relevant Subcontractor will) ensure that the Provider Scheme provides benefits for each relevant Transferring Member which is equivalent to the assets transferred.

6 No assistance

The *Provider* will not (and will procure that each relevant Subcontractor will not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the *Provider* Scheme in respect of the Transferring Members.

7 Exit Provisions

7.1 The *Provider* undertakes to the Employer (for the benefit of the Employer itself and for the Employer as agent and trustee for the benefit of the Eligible Employees) that on:

- 7.1.1 the expiry or termination of this contract; or
- 7.1.2 the expiry or termination of any sub-contract in the case of a relevant Subcontractor; or
- 7.1.3 the employment of any Eligible Employee transferring to a New Employer in accordance with paragraph 3.12 of Part 1 of this Schedule (or otherwise);

the *Provider* will (and will procure that each relevant Subcontractor will) procure that the trustees of the *Provider* Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the *Provider* Scheme to the pension scheme of the *Employer*, any Future *Provider* (or their Subcontractors), any new Subcontractor or any New Employer (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the *Employer*) than the bulk transfer terms set out in the Actuary's Letter. In addition to this, the *Provider* will procure that the New Employer complies with the requirements of paragraph 7.1 of this Schedule.

7.2 If the transfer payment paid by the trustees of the Provider Scheme is less (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Employer) than the transfer payment which would have been paid had paragraph 7.1 of this Schedule been complied with, the Provider will (and/or will procure that each relevant Subcontractor will) pay to the Employer, any Future Provider (or their Subcontractor), any new Subcontractor or any New Employer (as appropriate) (or as such person will direct) the amount of the difference.

8 Employer's Costs

Any costs of the *Employer* necessarily and reasonably incurred in connection with this Part II of Schedule 7 will be borne by the *Provider*.

Part 3 - Redundancy costs

1 The *Employer* and the *Provider* acknowledge and agree that where any Transferring Employees and/or any other Relevant Employees employed by any Outgoing Provider whose employment transfers to the *Provider* on the Relevant Transfer Date are dismissed

by the *Provider* by reason of redundancy during the Contract Period, the provisions of this Part 3 of Schedule 7 shall apply.

- 2 Subject to the conditions set out below in paragraph 3 below being satisfied, the amount of any TUPE Redundancy Costs incurred by the *Provider* shall be reimbursed by the *Employer* to the *Provider* in accordance with paragraph 4 below. Where the *Provider* has not satisfied the requirements of paragraph 3 below in relation to any Transferring Employee and/or any other Relevant Employees employed by any Outgoing Provider who the *Provider* dismisses by reason of redundancy, the *Provider* agrees that any redundancy payments made by the *Provider* to that Transferring Employee and/or any other Relevant Employees employed by any Outgoing Provider will not be reimbursed by the *Employer* and shall instead remain the responsibility of the *Provider*.
- 3 The following conditions shall apply in relation to any TUPE Redundancy Costs:
 - 3.1 the reimbursement of any TUPE Redundancy Costs by the *Employer* shall only apply to any redundancy situation arising in relation to the provision of the Services;
 - 3.2 the *Employer* shall have no responsibility or liability to the *Provider* for any redundancy costs incurred arising from any other situation other than that described in paragraph 3.1 above (including, for the avoidance of doubt, any redundancy situations arising from the corporate business needs of the *Provider*;
 - 3.3 the *Provider* shall comply with all statutory and/or contractual procedures in carrying out all and any dismissal(s) of any Transferring Employee and/or any other Relevant Employees employed by any Outgoing Provider by reason of redundancy and shall carry out in the required manner any obligation to consult with the Transferring Employees and/or any other Relevant Employees employed by any Outgoing Provider or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of the costs payable including by seeking to redeploy such employees to other parts of their respective organisations where practicable;
 - 3.4 the *Employer's* liability for reimbursement shall be limited to the TUPE Redundancy Costs only. For the avoidance of doubt, the *Provider* shall remain liable for:
 - 3.4.1 any contractual enhancements of any redundancy payments paid to any Transferring Employee and/or any other Relevant Employees employed by any Outgoing Provider dismissed by reason of redundancy;
 - 3.4.2 any notice pay or payments in lieu of notice paid to any Transferring Employee and/or any other Relevant Employees employed by any Outgoing Provider dismissed by reason of redundancy;
 - 3.4.3 all other costs and expenses incurred by the *Provider* associated with any such redundancy process (including any legal costs and any other costs arising or damages paid in connection with any claims by any Transferring Employee and/or any other Relevant Employees employed by any Outgoing Provider dismissed by reason of redundancy in connection with any such redundancy process);
 - 3.4.4 the *Provider* shall provide to the *Employer* written evidence of any such redundancy situation and the associated TUPE Redundancy Costs and the *Employer* reserves the right to carry out such due diligence as may be required by the *Employer* in connection with such documentary

evidence provided and the *Provider* provide the *Employer* with all such assistance as shall be required by the *Employer* in connection with such due diligence process.

- 4 Subject to the provisions of paragraphs 2 and 3 above, the *Employer* shall reimburse the *Provider* for any TUPE Redundancy Costs incurred by the *Provider* prior to 1 April 2015.

ANNEX 1 – TUPE INFORMATION

ANNEX 2 – PROVIDER ADMISSION AGREEMENT

SCHEDULE 8 – PARENT COMPANY GUARANTEE

DATED

20

(1) [EMPLOYER]

AND

(2) [PARENT COMPANY GUARANTOR]

PARENT COMPANY GUARANTEE

In relation to

a Public Realm Services Contract

between

[Employer] and [Provider]

dated [.....]

THIS PARENT COMPANY GUARANTEE is dated [20/....]

BETWEEN:

(1) HEREFORDSHIRE COUNCIL of Brockington 35 Hafod Road Hereford Herefordshire HR1 1SH (the "Employer"); and

(2) [GUARANTOR] (registered in England and Wales under company number [.....]) whose registered office is at [.....] (the "Guarantor")

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

In this guarantee where the context so admits:

1.1 The following expression shall have the following meanings:

"Contract"

means a Public Realm Services Contract dated on or about the date of this guarantee between the *Employer* and the *Provider* for the provision of services by the *Provider*;

"Provider"

means [insert name of *Provider*];

"Expiry"

means an expiry of the Contract Period (as defined in the Contract);

"Service"

means the works and services to be provided by the *Provider* in accordance with the Contract.

1.2 Successors in Title

The Employer and the Guarantor shall include both parties' successors in title and assigns.

1.3 Headings

The headings in this guarantee are inserted for convenience only and shall be ignored in construing the terms and provisions hereof.

1.4 Joint Tenants

Where there are two or more persons included in the expressions "Guarantor" or "Employer" then such expressions shall include the plural number and any obligations expressed to be made by or with such party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.

2 GUARANTEE AND INDEMNITY

- (a) The Guarantor guarantees to the *Employer* that in the event of a breach of the Contract by the *Provider* (which for the purposes of this guarantee shall include any default, occurrence or omission by the *Provider* which results in the termination of the Contract or the determination of the *Provider's* employment under the Contract and shall not be limited to a breach per se of any term of the Contract) the Guarantor shall, subject to the provisions of this guarantee, satisfy and discharge the loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer* as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract. For the avoidance of doubt the decision of a court or tribunal of competent jurisdiction or agreement reached between the *Provider* and the *Employer* shall be binding on the Guarantor.
- (b) If the *Provider* fails to observe or perform any of his duties or obligations to the *Employer* under the Contract (which for the purposes of this guarantee shall include any default, occurrence or omission by the *Provider* which results in the termination of the Contract or the determination of the *Provider's* employment under the Contract and shall not be limited to a breach per se of any term of the Contract), or if the *Provider* fails to pay any sum, loss, debt, damage, interest, cost or expense due from the *Provider* to the *Employer* under or in connection with the Contract, the Guarantor (as a separate and independent obligation and liability from his obligations and liabilities under clause 2.1) shall indemnify the *Employer* from and against all loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer* by reason of any such failure or non-payment.

3 AMENDMENTS TO THE CONTRACT

- (a) The Contract may be modified, amended or supplemented in any way (including, but not limited to, the scope of the Service) without the Guarantor's consent and references to the Contract in this guarantee shall include all such modifications, amendments or supplements whether made before or after the date hereof. The Guarantor's liability under this guarantee (which includes the *Provider's* duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be affected by:
 - (i) any such modification, amendment or supplement; or
 - (ii) any invalidity, avoidance or unenforceability for any reason whatsoever or termination of the Contract; or
 - (iii) any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the *Provider*. The terms of this guarantee shall apply to the terms of any such compromise as they apply to the Contract.

4 LIMITATION ON GUARANTOR'S LIABILITY

The *Employer* hereby agrees that the Guarantor's liability under this guarantee shall be limited to and shall not exceed the obligations or liabilities assumed by the *Provider* under the Contract.

5 ASSIGNMENT

The *Employer* shall be entitled to assign the benefit of this guarantee to any party to whom it assigns his interest under the Contract but not otherwise without the Guarantor's prior written consent provided the Guarantor and *Provider* shall be entitled to receive notice of such assignment in writing within a reasonable period of the assignment taking place.

6 DURATION

The obligations of the Guarantor under this guarantee shall be released and discharged absolutely upon Expiry save in respect of a demand made in writing by the *Employer* prior to such date. For the avoidance of doubt the establishment and ascertainment pursuant to clause 2 above of the loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer* may occur subsequent to such demand which may be validly given notwithstanding any lack of particulars of breach of the Contract or of the loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer*.

7 JURISDICTION

- (a) This guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- (b) The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this guarantee or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this guarantee has been duly executed and delivered as a deed on the date stated above.

EXECUTED as a **DEED** by
THE EMPLOYER by the signatures of:

Authorised Signatory

Authorised Signatory

EXECUTED as a **DEED** by
THE GUARANTOR by the signatures of:

Director

Director/Company Secretary

SCHEDULE 9 – PROPERTY PROVISIONS

Part I - The Depots

The *Provider* enters into leases of the following premises/areas on the terms of the leases contained in Part II of this Schedule:

- Ashburton Depot, Ashburton Trading Estate, Ross-on-Wye, Herefordshire HR9 7BW
- Kingsland Depot, Street, Kingsland, Herefordshire HR6 9SG
- Ashfield Highways Depot, Hereford Road, Bromyard, Herefordshire HR7 4ET
- Thorn Depot, Thorn Business Park, Rotherwas, Hereford HR2 6JT
- Pontrilas Depot, Pontrilas Business Park, Pontrilas, Herefordshire HR2 0BA

Part II – Leases

Part III – Property provisions

1 Definitions

The following terms shall have the following meanings:

"Adverse Property Matter"

means any interest, easement, wayleave, restrictive covenant, title defect or other matter affecting the *Employer's* title to any of the Premises which shall include the lack of any planning consent for the use of any of the Premises for the purposes permitted in the Leases or Sub-Leases which in any case would materially adversely affect the *Provider's* ability to comply with its obligations to provide the Services in accordance with the terms of this contract;

"Environment"

means air (including air within buildings and air within other natural or man-made structures above or below ground), water (including territorial and coastal and inland waters, groundwater and water in drains and sewers) and land (including soil and sub-soil and land under any water) and any organisms or eco-systems supported by the air, water or land;

"Environmental Audit"

means the environmental audit report to be procured by the Employer to evidence the presence of Hazardous Material at the relevant Premises;

"Harm"

means as defined in Section 78A of the Environmental Protection Act 1990 and the DEFRA Circular 01/2006 Contaminated Land;

"Hazardous Material"

means all and any materials and/or substances which are (alone or in combination) capable of causing Harm to the Environment or to human health;

"Inventory"

the inventory of landlord's fittings to be provided by the *Employer* at the Premises;

"Leases"

all the Leases of the Premises the drafts of which are attached at Part II of this Schedule 9;

"Licence to Sub-Let"

the formal licence to be agreed and entered into between the Superior Landlord, the *Employer* and the *Provider* to permit the grant of the Thorn Depot Sub-Leases by the *Employer* to the *Provider*;

"Premises"

are:

(a) the Ashburton Depot at Ashburton Trading Estate, Ross-on-Wye, Herefordshire HR9 7BW; and/or

(b) the Kingsland Depot at Kingsland, Herefordshire HR6 9SG; and/or

(c) the Ashfield Highways Depot at Hereford Road, Bromyard, Herefordshire HR7 4ET; and / or

(d) the Pontrilas Depot, Pontrilas Business Park, Pontrilas, Herefordshire HR2 0BA; and/or

(e) the Thorn Depot at Thorn Business Park, Rotherwas, Hereford HR2 6JT.

(as the case may be) to be demised by the Employer to the Provider in the relevant Lease;

"Schedule of Condition"

means the photographic schedule of condition of the Premises;

"Superior Landlord"

Pontrilas Developments Limited of Westwood Industrial Estate, Pontrilas, Herefordshire, HR2 0EL (Company Number 02076102);

"Thorn Depot Sub-Leases"

is the draft sub-leases for the Thorn Depot attached at Part II of this Schedule 9;

"1954 Act"

the Landlord and Tenant Act 1954; and

"2003 Order"

the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

2 Access Prior to Grant of Leases

At the request of the *Provider*, the *Employer* shall afford access to the *Provider* to the Premises during the mobilisation period provided that:

- 2.1 such access shall be by prior appointment with the *Employer* on not less than 48 hours' written notice from the *Provider*;
- 2.2 such access shall only be for the purpose of surveying the Premises in preparation for the occupation of the Premises by the *Provider* on the access date; and
- 2.3 in exercising such access the *Provider* shall ensure that minimal disturbance and inconvenience is caused to the *Employer* and / or the occupiers of the Premises.

3 Schedule of Condition, Inventory and Environmental Audit

Schedule of Condition

- 3.1 As soon as possible after the date of this contract the *Employer* will procure a Schedule of Condition in respect of the Premises and will forward a copy of the Schedules of Condition to the *Provider* as soon as possible after receipt of the same by the *Employer*.
- 3.2 The *Provider* will notify the *Employer* within 10 Working Days of receipt of the Schedule of Condition either:
 - 3.2.1 that the Schedule of Condition is accepted by the *Provider* in which case it shall be annexed to the relevant Lease or Sub-Lease; or
 - 3.2.2 that the Schedule of Condition is not accepted and shall provide written reasons for the *Provider's* rejection of the Schedule of Condition.
- 3.3 In the event that the *Provider* fails to comply with its obligations at paragraph 3.2 then the *Provider* shall be deemed to have accepted the Schedule of Condition.

- 3.4 The *Employer* will submit a revised Schedule of Condition to the *Provider* within 10 Working Days of receipt of any notice from the *Provider* pursuant to paragraph 3.2.2 and paragraphs 3.2 and 3.3 will then apply to the revised Schedule of Condition.
- 3.5 If the Parties are unable to agree on the contents of the Schedule of Condition within 10 Working Days of the access date, either Party may refer the matter to dispute resolution in accordance with clause 90 of this contract.

Inventory

- 3.6 As soon as possible after the date of this contract the *Employer* will procure an Inventory in respect of the Premises and will forward a copy of the Inventory to the *Provider* as soon as possible after receipt of the same by the *Employer*.
- 3.7 The *Provider* will notify the *Employer* within 10 Working Days of receipt of the Inventory either:
- 3.7.1 that the Inventory is accepted by the *Provider* in which case it shall be annexed to the relevant Lease or Sub-Lease; or
- 3.7.2 that the Inventory is not accepted and shall provide written reasons for the *Provider's* rejection of the Inventory.
- 3.8 In the event that the *Provider* fails to comply with its obligations at paragraph 3.7 then the *Provider* shall be deemed to have accepted the Inventory.
- 3.9 The *Employer* will submit a revised Inventory to the *Provider* within 10 Working Days of receipt of any notice from the *Provider* pursuant to paragraph 3.7.2 and paragraphs 3.7 and 3.8 will then apply to the revised Inventory.
- 3.10 If the Parties are unable to agree on the contents of the Inventory within 10 Working Days of the access date, either Party may refer the matter to dispute resolution in accordance with clause 90 of this contract.

Environmental Audit

- 3.11 As soon as possible after the date of this contract the *Employer* will procure an Environmental Audit in respect of the Premises and will forward a copy of the Environmental Audit to the *Provider* as soon as possible after receipt of the same by the *Employer*.
- 3.12 The *Provider* will notify the *Employer* within 10 Working Days of receipt of the Environmental Audit either:
- 3.12.1 that the Environmental Audit is accepted by the *Provider* in which case it shall be annexed to the relevant Lease or Sub-Lease; or
- 3.12.2 that the Environmental Audit is not accepted and shall provide written reasons for the *Provider's* rejection of the Environmental Audit.
- 3.13 In the event that the *Provider* fails to comply with its obligations at paragraph 3.12 then the *Provider* shall be deemed to have accepted the Environmental Audit.

- 3.14 The *Employer* will submit a revised Environmental Audit to the *Provider* within 10 Working Days of receipt of any notice from the *Provider* pursuant to paragraph 3.12.2 and paragraphs 3.12 and 3.13 will then apply to the revised Environmental Audit.
- 3.15 If the Parties are unable to agree on the contents of the Environmental Audit within 10 Working Days of the access date, either Party may refer the matter to dispute resolution in accordance with clause 90 of this contract.

4 Agreement of Leases

- 4.1 The *Employer* and the *Provider* shall each use all reasonable endeavours to agree the Leases as soon as reasonably practicable and in any event within 3 months of the *access date*.
- 4.2 In the event that the Leases are, as a result of delay by the *Provider*, not in an agreed form within 3 months of the *access date*, the *Employer* shall be entitled to withhold 10% of the Fee due under any ongoing Service Order until such time as the Leases are entered into in accordance with paragraph 5 of this Schedule 9 Part III.
- 4.3 If the Parties are unable to agree on the contents of the Leases within 3 months of the *access date* either Party may refer the matter to dispute resolution in accordance with clause 90 of this contract.

5 Grant of the Leases

- 5.1 Once the Leases have been agreed or determined in accordance with paragraph 4 of this Schedule 9 Part III:
- 5.1.1 the *Employer* shall grant to the *Provider* and the *Provider* shall accept the Leases; and
- 5.1.2 subject to paragraph 5 the *Employer* shall grant to the *Provider* and the *Provider* shall accept the Thorn Depot Sub-Leases.
- 5.2 The *Employer* and the *Provider* shall each comply with their respective obligations contained in the Leases and the Sub-Leases.
- 5.3 The grant of the Leases and the Thorn Depot Sub-Leases shall take place at the offices of the *Employer's* solicitors.
- 5.4 The term of the Leases shall commence on the *access date*.
- 5.5 Not less than 20 Working Days prior to the access date, the *Employer's* solicitors shall deliver engrossments of the counterpart Leases and the Thorn Depot Sub-Leases to the solicitors for the *Provider*. The *Provider* shall execute and deliver the Leases and the Thorn Depot Sub-Leases as deeds to the *Employer's* solicitors within 10 Working Days of receipt. The *Employer* shall then execute the original Leases and the Thorn Depot Sub-Leases as deeds.
- 5.6 Subject to paragraph 6 and the terms and conditions of the Licence to Sub-Let, the term of the Thorn Depot Sub-Leases shall commence on the access date.

5.7 The *Employer* may in its discretion permit the *Provider* to access the Premises as the *Employer's* licensee to enable the *Provider* to comply with its obligations in this contract subject to the *Provider* complying at all times with the obligations of the tenant contained in the Leases as if the same had been granted.

6 Consent to Grant of Thorn Depot Sub-Leases

6.1 The *Employer* and the *Provider* shall each use all reasonable endeavours to procure that the Licence to Sub-Let is completed on or before the access date and in so doing:

6.1.1 each party shall be responsible for its own legal and other professional costs incurred in procuring the Licence to Sub-Let;

6.1.2 the *Employer* shall meet the legal and other professional costs of the Superior Landlord in procuring the Licence to Sub-Let;

6.1.3 the Parties shall each instruct solicitors to act diligently and to advise on the terms of the Licence to Sub-Let.

6.2 In the event that the Licence to Sub-Let has not been completed on the access date:

6.2.1 the *Employer* may in its discretion permit the *Provider* to access the Thorn Depot as the *Employer's* licensee to enable the *Provider* to comply with its obligations in this contract subject to the *Provider* complying at all times with the obligations of the tenant contained in the Thorn Depot Sub-Leases as if the same had been granted;

6.2.2 the Parties agree that the Thorn Depot Sub-Leases shall be completed as soon as possible and in any event within 5 Working Days after the completion of the Licence to Sub-Let.

7 Exclusion of the 1954 Act

The *Employer* and the *Provider* agree to exclude the provisions of sections 24 to 28 of the 1954 Act in relation to the tenancies created by the Leases and the Thorn Depot Sub-Leases. The *Provider* confirms that before it became contractually bound to enter into the tenancies created by the Leases and the Thorn Depot Sub-Leases:

7.1 the *Employer* served on the *Provider* notices ("the Notices") dated [] 2013 in relation to each of the tenancies created by the Leases and the Thorn Depot Sub-Leases in a form complying with the requirements of Schedule 1 to the 2003 Order;

7.2 the *Provider* or a person duly authorised by the *Provider* in relation to each of the Notices made a statutory declaration ("the Declaration") dated [] 2013 in a form complying with the requirements of Schedule 2 to the 2003 Order;

7.3 where the Declaration was made by a person other than the *Provider* the declarant was duly authorised by the *Provider* to make the Declaration on the *Provider's* behalf.

8 Termination of the Leases or Thorn Depot Sub-Leases for non-reinstatement

- 8.1 Where under clause 38 of any of the Leases or under clause 40 of any of the Thorn Depot Sub-Leases the *Employer* elects to terminate the relevant Lease or Sub-Lease the *Employer* acknowledges that the *Provider* will have to vacate the relevant Premises and as a result may be unable to continue to provide the Services in accordance with the contract and any such election by the *Employer* shall be an *Employer's* risk pursuant to Clause 80 of this contract.
- 8.2 Where the *Provider* (acting reasonably) considers it is unable to provide the Services in accordance with the contract, the Parties shall work together to agree any interim arrangements in relation to the provision of the Services (including but not limited to any interim revisions to service standards, performance measures, deductions and/or payments) and shall record such agreement in writing as a temporary variation to this contract.
- 8.3 The Parties shall from time to time review any interim arrangements agreed pursuant to paragraph 7.2 in order to ensure such arrangements represent the best possible use of the *Employer's* budget and the *Provider's* resources and skills.
- 8.4 The *Employer* agrees that it shall use reasonable endeavours to procure alternative accommodation as a replacement for the Premises in relation to which it has elected pursuant to paragraph 7.1 to terminate the relevant Lease or Sub-Lease and the *Provider* agrees to work with the *Employer* in order to assist the *Employer* to procure such alternative accommodation.
- 8.5 Once the *Employer* has procured alternative replacement accommodation the Parties will as soon as reasonably practicable and acting reasonably work together to agree the process for moving from the interim arrangements agreed pursuant to paragraph 7.2 back to full service provision in accordance with this contract.

9 Early termination

- 9.1 If this contract is terminated for any reason prior to the date of expiry of the Contract Period, the Leases, Sub-Leases and any licences granted pursuant to paragraph 5.7 shall automatically cease and determine with effect from the date of termination of this contract (or, if not granted at the time, the obligation to grant the Leases and/or the Sub-Leases as the case may be shall automatically cease to apply).
- 9.2 On termination of this contract, the *Provider* shall forthwith deliver to the *Employer* the Leases and Sub-Leases together with any title information documents or other deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the Leases and the Sub-Leases and the *Provider* shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry in relation to the Leases and the Sub-Leases.
- 9.3 The *Provider* shall not be entitled to any compensation in respect of any variation of the terms of any of the Leases or Sub-Leases or the unexpired part of its interest as tenant under any of the Leases or Sub-Leases on assignment or surrender or automatic determination in accordance with this paragraph 8.

10 Stamp Duty Land Tax

- 10.1 The *Provider* will, as soon as reasonably practicable after the *access date*, arrange for the submission of the relevant SDLT forms in respect of the Leases and Sub-

Leases to HM Revenue and Customs and will deal with all requisitions raised by HM Revenue & Customs.

- 10.2 The *Employer* shall reimburse to the *Provider* within 10 Working Days of receipt of a written demand any Stamp Duty Land Tax which is properly incurred by the *Provider* as a result of the grant of the Leases and Sub-Leases pursuant to this Schedule 9 and the *Provider* shall provide the *Employer* with such evidence as the *Employer* reasonably requires of any Stamp Duty Land Tax payments made by the *Provider* including (without limitation) copies of all land transaction returns submitted to HM Revenue and Customs by the *Provider* in respect of the grant of the Leases and Sub-Leases.

11 Revenue share

- 11.1 Should the *Provider* wish to use any of the Premises to provide services for Others it shall provide written notice to the *Employer* setting out its proposal detailing:
- 11.1.1 the nature of the services it wishes to provide;
 - 11.1.2 the identity of the Others to whom the services would be provided;
 - 11.1.3 the proposed payment it would make to the *Employer* in consideration for the *Employer* permitting the *Provider* to use its Premises for the supply of such services; and
 - 11.1.4 any other information reasonably requested by the *Employer* in relation to the *Provider's* proposal.
- 11.2 Following its receipt of the *Employer's* proposal (and the provision of any additional information it has requested) the *Employer* shall meet with the *Provider* in order to discuss the *Provider's* proposal.
- 11.3 The *Provider* acknowledges and agrees that:
- 11.3.1 the *Employer* shall be under no obligation to make any additional space available to the *Provider* in order to enable the *Provider* to provide any such services to Others (save that the *Employer* may elect at its own discretion to make additional space available to the *Provider* should the *Employer* have and be able to make available to the *Provider* any such additional space following a request to use the same by the *Provider*);
 - 11.3.2 the *Employer's* decision to accept or reject any proposal made by the *Provider* shall be entirely at the *Employer's* discretion;
 - 11.3.3 where the *Employer* approves any proposal to provide any such services to Others this shall not impact in any way on the cost of supply of the Services to the *Employer* and there shall be no increase to the Fee as a result of such approval; and
 - 11.3.4 where the *Employer* approves any proposal to provide any such services to Others the *Provider* shall not be relieved from any of its obligations under this contract to supply the Services on the terms set out in this contract.

11.3.5 Should the *Employer* decide to accept any proposal made by the *Provider* this shall be documented in accordance with this contract.

12 Adverse Property Matters

Claims, proceedings, compensation and costs payable to Others which are due to Adverse Property Matters shall be deemed to be an *Employer's* risk pursuant to Clause 80 of this contract.

SCHEDULE 10 – METHOD STATEMENTS, QUALITY PLAN AND MOBILISATION PROGRAMME

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- B3 – Locality Working
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SCHEDULE 11 - TABLE OF AUTHORISED FUNCTIONS

| Statute and section number | Relevant function | Delegation of function authorised subject to <i>Provider</i> working within <i>Employer's</i> policy | <i>Employer's</i> authorisation required in relation to specific exercise of function | <i>Employer</i> retains responsibility for exercise of the function subject to advice from the <i>Provider</i> on that exercise |
|----------------------------|--|--|---|---|
| Highways Act 1980 | | | | |
| 25 | Creation Agreement | Yes < £100,000 cost | Yes > £100,000 costs | |
| 26 | Creation Order | Yes < £100,000 cost | Yes > £100,000 costs | |
| 31 | Dedication of Highway | Yes | | |
| 36(6) | Duty to keep list of streets up to date | | Yes | |
| 37 | Highway created by dedication | | | Yes |
| 38 | Power to adopt by agreement | | | Yes |
| 41 | Duty to maintain | Yes | | |
| 47 | Power of magistrate to declare unnecessary highway | | | Yes |
| 48 | Power of magistrate to declare highway again | | | Yes |
| 56 | Order to repair | | Yes | |
| 58 | Defence for non-repair | Yes | | |
| 59 | Recovery of expenses due to extraordinary traffic | | Yes | |
| 62 | Power to improve highways | Yes | | |
| 64 | Dual carriageways and roundabouts | Yes | | |
| 65 | Cycle tracks | Yes | | |
| 66 | Footways and guard-rails | Yes | | |
| 68 | Refuges | Yes | | |
| 69 | Subways | | Yes | |
| 70 | Footbridges | | Yes | |
| 71 | Margins for horses | Yes | | |
| 72 | Widening of highway | Yes | | |
| 75 | Varying of widths | Yes | | |
| 76 | Levelling of highways | Yes | | |
| 77 | Alteration of levels | Yes | | |
| 78 | Cutting off of corners | | Yes | |
| 79 | Prevention of obstruction to view at corners | Yes | | |
| 80 | Power to fence | | Yes | |
| 81 | Provision of boundary posts | Yes | | |
| 82 | Provision of cattle grids | | Yes | |
| 83 | Removal of cattle grids | | Yes | |
| 84 | Maintenance of cattle grids | Yes | | |
| 91 | Construction of bridges | | Yes | |

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| 92 | Reconstruction of bridges | | Yes | |
| 93 | Powers to make orders for private bridges | | Yes | |
| 94 | Powers to enter into agreements with bridge owners | | | Yes |
| 95 | Supplementary provisions as to orders for bridges | | Yes | |
| 96 | Powers to plant trees, grass etc. | Yes | | |
| 97 | Lighting of highways | Yes | | |
| 98 | Delegation of lighting functions | | Yes | |
| 99 | Metalling of highways | | Yes | |
| 100 | Drainage of highways | Yes | | |
| 101 | Power to fill in roadside ditches etc. | Yes | | |
| 102 | Provision of works for protecting highways | Yes | | |
| 103 | Provision of posts to indicate flood water | Yes | | |
| 104 | Mitigating nuisance of dust | Yes | | |
| 115 | Provision of amenities on certain highways | | Yes | |
| 116 | Stopping up of highway | Yes | | |
| 118, 118ZA, 118A, 118B, 118C | Extinguishments | Yes | | |
| 119, 119ZA, 119A, 119B, 119C, 119D | Diversions | Yes | | |
| 122 | Power to make temporary diversions | Yes | | |
| 124 | Stopping up of private access | | Yes | |
| 125 | Further powers to stop up private access | | Yes | |
| 126 | Provisions supplementary to SI24 and S125 | | Yes | |
| 127 | Stopping up access by agreement | | Yes | |
| 128 | Penalty for using access | | Yes | |
| 129 | Further provisions with respect to accesses | Yes | | |
| 129(A) | Gating orders | | Yes | |
| 130 | Protection of public rights | Yes | | |
| 131 | Penalty for damaging highway | Yes | | |
| 131(A) | Damaging surface | Yes | | |
| 132(1) | Unauthorised marks on | Yes | | |

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| | highways | | | |
| 132 | Removal of unauthorised signs | Yes | | |
| 133 | Damage to footways of streets by excavations | Yes | | |
| 134 | Ploughing etc. of footpaths or bridleways | Yes | | |
| 135 | Temporary diversion for works | Yes | | |
| 137 | Penalty for obstruction | Yes | | |
| 137ZA | Power to order offender to remove obstruction | Yes | | |
| 137A | Interference by crops | Yes | | |
| 138 | Penalty for erecting building in highway | | Yes | |
| 139 | Placing of builder's skips | Yes | | |
| 140 | Power to require owner of skip to remove or reposition it | Yes | | |
| 141 | Restriction on planting of trees etc. in or near carriageway | | Yes | |
| 142 | Licence to plant trees, shrubs etc. in a highway | | Yes | |
| 143 | Power to give notice requiring removal of structures from highways | Yes | | |
| 144 | Power to erect flagpoles etc. on highways | | Yes | |
| 145 | Powers as to gates across highway | | Yes | |
| 146 | Maintenance of stiles and gates | | Yes | |
| 147 | Authorisation of stiles and gates | | Yes | |
| 148 | Penalty for depositing things on the highway | | Yes | |
| 149 | Removal of things so deposited on highways as to be a nuisance etc. | Yes | | |
| 150 | Duty to remove snow, soil etc. from highway | Yes | | |
| 151 | Prevention of soil etc. washing on to highway | Yes | | |
| 152 | Powers as to removal of projections from buildings | | Yes | |
| 153 | Doors etc., not to open outwards | | Yes | |
| 154 | Cutting or felling of trees that overhang the highway | Yes | | |
| 161 and 161A | Penalties for causing danger or annoyance | Yes | | |
| 162 | Penalties for placing rope across the highway | | Yes | |
| 163 | Prevention of water flowing onto highway | Yes | | |

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| 164 | Power to require removal of barbed wire | Yes | | |
| 165 | Dangerous land adjoining the highway | Yes | | |
| 166 | Forecourt abutting highway | | Yes | |
| 167 | Powers relating to retaining walls | | Yes | |
| 168 | Building operations affecting public safety | Yes | | |
| 169 | Control of scaffolding on the highway | Yes | | |
| 170 | Control of mixing mortar etc. on the highway | Yes | | |
| 171 | Control of deposit of building materials and making of excavations in streets | Yes | | |
| 172 | Hoardings to be set up | Yes | | |
| 173 | Hoardings to be securely erected | Yes | | |
| 176 | Restriction on construction of bridges over highways | | Yes | |
| 177 | Restriction on construction of buildings over the highway | | Yes | |
| 178 | Prohibition on placing rails, beams etc. over highways without consent of the Highway Authority | | Yes | |
| 184 | Vehicle crossings over footways and verges | Yes | | |
| 185 | Power to install etc. refuse or storage bins in streets | Yes | | |
| 205 | Street works in private streets | Yes | | |
| 210 | Power to amend specification, apportionment etc. | | | Yes |
| 211 | Final apportionment and objections to it | | | Yes |
| 220 | Determination of liability for, and amount of, payments | | | Yes |
| 221 | Refunds etc. where work done otherwise than at expense of street works authority | | Yes | |
| 222 | Sums paid or secured to be in discharge of further liability for street works | | Yes | |
| 228 | Adoption of private street after execution of street works | | | Yes |
| 229 | Power of majority of frontagers to require adoption where advance | | | Yes |

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| | payment made | | | |
| 230 | Urgent repairs to private streets | | Yes | |
| 278 | Contributions towards highway works by persons deriving special benefit from them | | | Yes |
| 287 | Power to erect barriers in streets in cases of emergency etc. | Yes | | |
| 289 | Powers of entry of highway authority for the purpose of survey | Yes | | |
| 291 | Powers of entry of highway authority for purpose of maintaining etc. certain structures and works | Yes | | |
| 293 | Powers of entry | | Yes | |
| 297 | Request for information | Yes | | |
| Schedule 12A | Making good surface and removal of crops | Yes | | |
| | | | | |
| Road Traffic Regulation Act 1984 | | | | |
| 1 | Traffic regulation orders outside Greater London | | Yes | |
| 2 | What a traffic regulation order may provide | Yes | | |
| 3 | Restrictions on traffic regulation orders | | Yes | |
| 4 | Provisions supplementary to ss. 2 and 3 | | Yes | |
| 9 | Experimental traffic orders | | Yes | |
| 10 | Supplementary provisions as to experimental traffic orders | | Yes | |
| 14 | Temporary prohibition or restriction of traffic on roads | Yes | | |
| 15 | Duration of orders and notices under S14 | | Yes | |
| 16 | Supplementary provisions as to orders and notices under S14 | | Yes | |
| 16A | Prohibition or restriction on roads in connection with certain events | Yes | | |
| 23 | Powers of Local Authorities with respect to pedestrian crossings on roads other than trunk roads | | Yes | |
| 32 | Power of Local Authorities to provide parking spaces | | Yes | |
| 36 | Provisions as to authorising use of roads for parking | | | |
| 37 | Extension of powers of general scheme of traffic control | | Yes | |

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| 39 | Supplementary provisions as to exercise of powers under s32-35 in England or Wales | | Yes | |
| 58 | Consents for purposes of s57(l)(a) | | Yes | |
| 59 | Consents for, and provisions as to use of, parking places under s.57(l)(b) | | Yes | |
| 65 | Powers and duties of Highway Authority as to placing of traffic signs | | | Yes |
| 68 | Placing of traffic signs in connection with exercise of other powers | Yes | | |
| 69 | General provisions as to removal of signs | Yes | | |
| 71 | Power to enter land in connection with traffic signs | Yes | | |
| 72 | Provision of traffic and signs on or near a road with the permission of the highway authority | | Yes | |
| 83 | Provisions as to directions under s.82(2) | | Yes | |
| 84 | Speed limits on roads other than restricted roads | | Yes | |
| 85 | Traffic signs for indicating speed restrictions | Yes | | |
| 92 | Bollards and other obstructions outside Greater London | Yes | | |
| | | | | |
| New Roads and Street Works Act 1991 | | | | |
| 54 | Advance notice of certain works and compliance with requirements imposed by the street authority | Yes | | |
| 55 | Notice of starting date of works and prohibition on starting works without notice except with the consent of the street authority | Yes | | |
| 57 | Notice of emergency works | Yes | | |
| 60 | General duty of undertakers to cooperate with respect to the execution of street works | Yes | | |
| 61 | Protected Streets | | | |
| 65 | Safety Measures | Yes | | |
| 66 | Avoidance of unnecessary delay | Yes | | |
| 67 | Qualifications of supervisors and operatives | Yes | | |
| 68(1) | Undertaker to afford | Yes | | |

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| | reasonable facilities to the street authority | | | |
| 79 | Records of apparatus | Yes | | |
| 80 | Duty to inform undertakers of location of apparatus | Yes | | |
| 81 | Duty to maintain apparatus | Yes | | |
| 83 | Works for road purposes likely to affect apparatus in the street | Yes | | |
| 84 | Undertaker and bridge or highway authority to take steps where apparatus is affected by major works | Yes | | |
| 85 | Sharing of costs of necessary measures | | Yes | |
| 86 | Related matters | | Yes | |
| Cycle Tracks Act 1984 | | | | |
| 3 | Footpath designated as a cycle track | Yes | | |
| Traffic Calming Act 1992 | | | | |
| 90G | Powers to carry out traffic calming works | | Yes | |
| Town Police Clauses Act 1847 | | | | |
| 21 | Obstruction during public processions etc. | Yes | | |
| Wildlife and Countryside Act 1981 | | | | |
| 53 | Definitive map review and changes (modifications) | Yes | | |
| 57 | Public inspection of definitive map and statement | Yes | | |
| 53B | Register of modification order applications | Yes | | |
| 57 | Consolidation of definitive map | Yes | | |
| 59 | Bulls | Yes | | |
| National Parks and Access to the Countryside Act 1948 | | | | |
| 57 | Deterrent notices | Yes | | |
| Town and Country Planning Act 1990 | | | | |
| 257 | Diversion of paths (where planning permission has been granted) | Yes | | |
| 257 | Stopping up of paths (where planning permission has been granted) | Yes | | |

SCHEDULE 12 – TENDERED COST INFORMATION

- DA01 - Local Management Overhead
- DA02 - Winter Maintenance Scheme Data
 - DA02 Winter Service Worksheets
 - Lump Sum DA02 – Risk Register
- DB01 - Highways Routine Maintenance Scheme Data
 - DB1 Highways Routine Maintenance worksheets
 - Target Cost DB01 Risk Register
- DB02 - Emergency Response Out of Hours Scheme Data
 - DB2 Emergency Response out of hours worksheets
 - Target Cost D.B.2 Risk Register
- DB03 Street Lighting Maintenance Scheme Data
 - DB3 Street Lighting Maintenance worksheets
 - Target Cost D.B.3 Risk Register
- DB04 Traffic Signals Maintenance Scheme Data
 - DB4 Traffic Signal Maintenance worksheets
 - Target Cost D.B.4 Risk Register
- DB05 Highways Drainage Scheme Data
 - DB5 Highways Drainage worksheets
 - Target Cost D.B.5 Risk Register
- DB06 Street Cleansing Scheme Data
 - DB6 Street Cleansing worksheets
 - Target Cost D.B.6 Risk Register
- DB07 Highways Verges Scheme Data
 - DB7 Highway Verges worksheets
 - Target Cost D.B.7 Risk Register
- DB08 PROW Services Scheme Data
 - DB8 PROW Services worksheets
 - Target Cost D.B.8 Risk Register
- DB09.1 Carriageway Resurfacing Scheme Data
 - Highways Scheme 1 worksheets
 - Scheme D.B.9.1 Risk Register
- DB09.2 Carriageway Overlay Scheme Data
 - Highways Scheme 2 worksheets
 - Scheme D.B.9.2 Risk Register
- DB09.3 Carriageway Overlay Scheme Data
 - Highways Scheme 3 worksheets
 - Scheme D.B.9.3 Risk Register
- DB09.4 Carriageway Patching Kerbing Scheme Data
 - Highway Scheme 4 worksheets

- Scheme D.B.9.4 Risk Register
- DB09.5 Rekerbing Footway Reconstruction Scheme Data
 - Highways Scheme 5 worksheets
 - Scheme D.B.9.5 Risk Register
- DB09.6 Footway Kerbing and Resurfacing Scheme Data
 - Highways Scheme 6 worksheets
 - Scheme D.B.9.6 Risk Register
- DB09.7 Footway kerbing and carriageway improvement scheme data
 - Highways Scheme 7 worksheets
 - Scheme D.B.9.7 Risk Register

~~Highways Scheme 5 worksheets~~
~~Highways Scheme 6 worksheets~~
~~Highways Scheme 7 worksheets~~
~~Scheme D.B.9.4 Risk Register~~
~~Scheme D.B.9.5 Risk Register~~
~~Scheme D.B.9.6 Risk Register~~
~~Scheme D.B.9.7 Risk Register~~

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s Package Activity Schedule

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- DB Resource
- Descriptive_
- Financial Or
- Part D Work
- Response_D

SCHEDULE 13 – FEE SCHEDULE