



Agreement Reference Number: tfl_scp_000254

**Framework Agreement
for the London Highways Alliance
(South Area)**

between

Transport for London

and

EnterpriseMouchel Limited

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THIS FRAMEWORK AGREEMENT is made the day of 201

BETWEEN:

- (1) **TRANSPORT FOR LONDON** a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL (“the Framework Employer”); and
- (2) **ENTERPRISEMOUCHEL LIMITED**, a company registered in England and Wales (Company Registration Number 5606089) whose registered office is at Export House, Cawsey Way, Woking, Surrey, GU21 6QX (“the Contractor”).

BACKGROUND:

- (A) The Framework Parties wish to enter into a framework agreement which enables any Employer to enter into a Call-Off Contract with the Contractor for highway maintenance services, other scheme works and related services of the type described in the Framework Scope.
- (B) A Call-Off Contract issued in accordance with this Framework Agreement incorporates the Call-Off Conditions of Contract. The Call-Off Conditions of Contract are an amended version of the NEC3 Term Service Contract (1st Edition June 2005).
- (C) This Framework Agreement can be utilised by the Framework Employer and any other Employer.

THE FRAMEWORK PARTIES AGREE THAT:

In consideration of payment of £5.00 by each Framework Party to the other (receipt and sufficiency of which is acknowledged by the Framework Parties) and the mutual promises and covenants set out in this Framework Agreement, the Framework Parties agree as follows:

1. Definitions and Interpretation

- 1.1 In this Framework Agreement the following expressions have the following meanings:

“Adjudicator” an independent person appointed to act as an adjudicator in accordance with clause 46;

“Aggregated Annual Spend”	the total of all sums paid by each Employer to the Contractor (exclusive of VAT) in a Financial Year pursuant to the terms of this Framework Agreement and any Call-Off Contract, including the amount of any credit given to each Employer under a Call-Off Contract in respect of a Volume Rebate;
“Approved Driver Training”	the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training the details of which can be found at: www.fors-online.org.uk ;
“Area Board”	means the board established to monitor and manage the Contractor’s performance under this Framework Agreement and all Call-Off Contracts;
“Borough”	any 1 of the following London Boroughs: Richmond upon Thames, Kingston upon Thames, Merton, Sutton, Croydon, Bromley, Lewisham, Greenwich and Bexley;
“Bronze Membership”	the minimum level of FORS membership, the requirements of which are more particularly described at: www.fors-online.org.uk ;
“Business Day”	any day other than a Saturday or Sunday or a public bank holiday in England;
“Call-Off Conditions of Contract”	the terms and conditions set out at Schedule 7;
“Call-Off Contract”	a call-off contract incorporating the Call-Off Form of Agreement issued by an Employer in accordance with clause 6 and including any attachments and any documents expressly referred to in that Call-Off Form of Agreement;
“Call-Off Form of Agreement”	the form of agreement issued in respect of a Call-Off Contract in each case in the form set out in Schedule 5;

“Call-Off Proposal”	the Contractor’s offer to provide Services in response to a Call-Off Request Form;
“Call-Off Request Form”	a document produced by an Employer pursuant to clause 6, setting out its request for a Call-Off Proposal, in the appropriate form set out in Schedule 4 or in such other form as may be notified to the Contractor by the Framework Employer;
“Car-derived Vans”	a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
“Class VI Mirror”	a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;
“Close Proximity Sensor”	a device consisting of either a camera and/or a sensor system that detects objects in a vehicle’s blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle’s indicators are engaged;
“Collision Report”	a report detailing all collisions during the previous 12 months involving injuries to persons or fatalities;
“Connected Persons”	all and any of the Contractor’s employees, directors, contractors, agents, subcontractors, suppliers, shareholders, professional advisers (including lawyers, auditors, financial advisers, accountants and technical consultants) or underwriters;
“Contract Information”	means (i) this Framework Agreement in its entirety (including agreed changes to this Framework Agreement) and (ii) data extracted from invoices submitted pursuant to each Call-Off Contract which consists of the Contractor’s name, the expenditure account code, the expenditure account code description, purchase order number, the clearing date and the invoice amount;

“Contractor Manager”	is as stated in Schedule 1;
“Contractor’s Personnel”	all such employees, officers, suppliers, sub-contractors, sub-consultants and agents of the Contractor as are engaged in providing any works or services under a Call-Off Contract;
“Default Performance Indicators”	are each Performance Indicator for which the Contractor has failed in any previous assessment to achieve the requirements of clauses 11.2 and/or 11.4 resulting in a reduction of the Framework Term pursuant to the mechanism in clause 11;
“Dispute”	any dispute, controversy or claim arising out of or in connection with this Framework Agreement;
“Driver”	any employee of the Contractor (including an agency driver), who operates Freight Vehicles on behalf of the Contractor while delivering the Services;
“DVLA”	Driver and Vehicle Licensing Agency;
“e-GIF”	the UK Government’s “e-government inter-operability framework” standard, as may be updated from time to time, details of which are available on the Cabinet Office website, www.govtalk.gov.uk ;
“Employer”	the Framework Employer, any TfL Group member or members, any Borough or combination of Boroughs, the GLA, any of the Functional Bodies, any contractor nominated by the aforementioned parties, associations or companies formed by the aforementioned parties, or any combination of such parties utilising this Framework Agreement;
“Euro Compliant”	means that the software, electronic or magnetic media, hardware or computer system (whichever is applicable) is capable of, and will not require any replacement or changes in order to be capable of, supporting the introduction of, changeover to and operation of the Euro

as a currency and in dual currency (Sterling and Euro) and will not manifest any material error nor suffer a diminution in performance or loss of functionality as a result of such introduction, changeover or operation and it is (if applicable) capable of processing transactions calculated in Euros separately from or in conjunction with other currencies and is capable of complying with any legislative changes relating to the Euro;

“Fee”	is the direct fee percentage as stated in Schedule 1;
“Financial Year”	a calendar year ending 31 March;
“FORS”	the Freight Operator Recognition Scheme, which is an accredited membership scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate members to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Membership Terms”	the terms of the membership agreement of the Freight Operator Recognition Scheme, a copy of which can be found at: www.fors-online.org.uk ;
“Framework”	the framework of agreements entered into between the Framework Employer and various contractors (including the Contractor) referred to as the “London Highways Alliance Framework”;
“Framework Agreement”	this Framework Agreement, including the Schedules and all other documents referred to in this Framework Agreement;
“Framework Agreement Service Commencement Date”	is as stated in Schedule 1;
“Framework Area”	is as stated in Schedule 1;

“Framework Data”	is set out at Schedule 1;
“Framework Manager”	is as stated in Schedule 1;
“Framework Parties”	means the Framework Employer (including its successors in title and permitted assigns) and the Contractor and “Framework Party” means either of them as the case may be;
“Framework Scope”	the document at Schedule 2;
“Framework Term”	is the period from and including the Framework Agreement Service Commencement Date until and including 31 March 2021, subject to adjustment pursuant to clause 11;
“Framework Year”	means each period of 12 months following and starting from 1 April 2013;
“Freight Vehicle”	a Lorry, a Van or a Car-derived Van;
“Functional Bodies”	the functional bodies of the GLA (other than any member of the TfL Group) which are the London Development Agency, Metropolitan Police Authority, Greater London Authority, London Fire and Emergency Planning Authority in their current and future form;
“GLA”	means the Greater London Authority;
“Holding Company”	any company which directly or indirectly controls the Contractor where “control” is as defined by Section 1124 of the Corporation Tax Act 2010;
“Indirect Subcontractor”	means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the Services;
“Insolvency”	(in the case of a company or partnership) the making of a winding-up order against it, the appointment of a

provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver or administrative receiver over the whole or a substantial part of its undertaking or assets, the making of a composition or an arrangement with its creditors, the making of a bankruptcy order against any of its partners, or it ceases to carry on business or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets, the making of a composition or an arrangement with his creditors or he ceases to carry on business;

“Insurance Table”	the table set out at Schedule 8;
“Key Personnel”	the personnel of the Contractor identified in Schedule 1 including the Contractor Manager;
“London Living Wage”	the basic hourly wage of £8.55 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Contractor;
“Lorry”	a vehicle with an MAM exceeding 3,500 kilograms;
“Losses”	all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Maximum Rates”	the rates and prices contained in the Schedule of Rates and the other percentages and allowances set out at Schedule 1;
“Nominating Authority”	means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

“Notice of Adjudication”	<p>any notice given by a party to the Dispute to the other party requiring reference of a Dispute to the Adjudicator in accordance with clause 46. The Notice of Adjudication includes</p> <ul style="list-style-type: none"> • the nature and a brief description of the Dispute; • details of where and when the Dispute arose; and • the nature of the redress which is sought;
“Original Framework Term”	is the Framework Term at the Framework Agreement Service Commencement Date;
“Parent Company”	is as stated in Schedule 1;
“Parent Company Guarantee”	a guarantee by the Parent Company in the form at Schedule 10 of the Contractor’s obligations pursuant to this Framework Agreement and each Call-Off Contract;
“Parties”	an Employer (including successors and permitted assigns) and the Contractor and “Party” means either of them as the case may be;
“Period Review”	an annual review to be undertaken by the Area Board before 1 June in each year in accordance with Schedule 13;
“Price List”	the proposed <i>price list</i> for a Call-Off Contract;
“Primary Performance Indicators”	<p>are the following Primary Performance Indicators:</p> <ul style="list-style-type: none"> • PPI1 - Percentage of Category 1 defects repaired on time • PPI5 - Percentage of emergency call outs responded to on time • PPI8 - Percentage of cyclic maintenance activities completed according to the Agreed Programme • PPI16 - Percentage of schemes completed on time • PPI20 - Percentage of payment applications

submitted on time

or any replacement Primary Performance Indicator that may be substituted for one of the above by the Strategic Board before the date of the assessment pursuant to clause 11 (provided that the Strategic Board may not substitute more than 2 such Primary Performance Indicators in any Framework Year);

“Quality Submission” the quality submission provided by the Contractor with his tender and included in Schedule 20;

“Responsible Procurement Policy” the GLA’s Responsible Procurement Policy and any amendment to or replacement of such policy a copy of the current version of which is on the Framework Employer’s website at http://www.tfl.gov.uk/assets/downloads/businessandpartners/GLA_Responsible_Procurement_Policy.pdf;

“Schedule of Rates” the schedule of rates and other prices tendered by the Contractor and set out at Schedule 1;

“Secondary Performance Indicators” are as described in Schedule 13;

“Senior Representative” a representative of a Framework Party at senior executive level;

“Services” the works and/or services to be provided by the Contractor pursuant to a Call-Off Contract;

“Service Information” is the service information set out at Schedule 3 and any additional service information provided by an Employer;

“Shorter Schedule of Cost Components” is attached at Schedule 16;

“Side Guards” guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC

	and the Road Vehicles (Construction and Use) Regulations 1986;
“Strategic Board”	means the board established to monitor and manage the Framework;
“Subcontractor”	is a person or organisation who has a contract with the Contractor to <ul style="list-style-type: none"> • provide a part of the Services or • construct or install or design part of the Services or • supply plant and materials which the person or organisation has wholly or partly designed specifically for the Services;
“TfL Group”	means Transport for London, a statutory body set up by the Greater London Authority Act 1999, and any of its subsidiaries (as defined in Section 1159 of the Companies Act 2006) and their subsidiaries;
“Transparency Commitment”	means the transparency commitment stipulated by the UK government in May 2010 (including any subsequent legislation) in accordance with which contracts, tender documents and data from invoices received are to be published;
“Van”	a vehicle with a MAM not exceeding 3,500 kilograms;
“Volume Rebate”	the figure calculated for each Financial Year in accordance with clause 7.4;
“Volume Rebate Percentage”	is the applicable volume rebate percentage set out in Schedule 1;
1.2	a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
1.3	a reference to any statute, enactment, order, regulation or other similar instrument is construed as a reference to the statute, enactment, order,

regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and includes all statutory instruments or orders made pursuant to it whether replaced before or after the Framework Agreement Service Commencement Date;

- 1.4 a reference to any document other than as specified in clause 1.3 and save as expressed otherwise is construed as a reference to the document as at the Framework Agreement Service Commencement Date;
- 1.5 headings are included in the Framework Agreement for ease of reference only and do not affect the interpretation or construction of the Framework Agreement;
- 1.6 except as otherwise expressly provided in any Call-Off Contract, if there is any inconsistency between any of these clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Framework Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
 - 1.6.1 the relevant Call-Off Contract;
 - 1.6.2 these clauses in this Framework Agreement;
 - 1.6.3 the Schedules;
 - 1.6.4 any other document referred to in or incorporated by reference into this Framework Agreement or any Call-Off Contract;
- 1.7 the Schedules form part of the Framework Agreement and have the same force and effect as if expressly set out in the body of the Framework Agreement;
- 1.8 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.9 the words “including”, “includes” and “included” are construed without limitation unless inconsistent with the context.

2. Framework Agreement

- 2.1 The purpose of this Framework Agreement is to:

- 2.1.1 provide a mechanism whereby an Employer and the Contractor may enter into a Call-Off Contract;
 - 2.1.2 provide the framework to administer each Call-Off Contract; and
 - 2.1.3 allow for common monitoring of Call-Off Contracts.
- 2.2 The Services that may be requested by an Employer and provided by the Contractor are of the type described in the Framework Scope and more particularly described in each Call-Off Contract. The Employers' requirements may vary and this Framework Agreement does not place any Employer under any obligation to procure any works or services from the Contractor at a particular time or at all. This Framework Agreement is not an exclusive arrangement and nothing in this Framework Agreement operates to prevent any Employer from engaging any other company, organisation or person to provide works or services similar to or the same as the Framework Scope.
- 2.3 Clause 6 sets out the procedure by which the Parties may enter into a Call-Off Contract. Each Call-Off Contract is a binding agreement on the relevant Parties to the Call-Off Contract.
- 2.4 The Contractor commences provision of the Services in accordance with the Call-Off Contract. The Contractor does not commence any Services without an agreed Call-Off Contract.
- 3. **Behaviour**
 - 3.1 In order to work together in the spirit of mutual trust and co-operation the Framework Employer and the Contractor encourage joint training and integrated team working, and give to each other, and welcome from the other, feedback which will enable the Framework Parties to improve the Services. The Framework Parties work to proactively avoid Disputes.
 - 3.2 Each Employer and the Contractor share information openly and highlight any difficulties at the earliest practicable time.
 - 3.3 Each Employer and the Contractor support collaborative behaviour and confront behaviour that does not comply with the provisions of this Framework Agreement. The Contractor does not enter into any contractual agreements or arrangements that conflict with the principles of this Framework Agreement.

- 3.4 The Contractor works with other contractors appointed to the Framework by the Framework Employer in a co-operative and collaborative manner.
- 3.5 The Framework Employer seeks to develop non-contractual performance indicators to monitor collaboration between the Framework Parties. The Contractor works with the Framework Employer to develop and implement any such performance indicators.
- 3.6 The Contractor complies with the requirements of Schedule 9 regarding reporting, meetings and governance of the Framework Agreement and Call-Off Contracts. No Employer is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 9.
- 3.7 The Contractor complies with the requirements of Schedule 19 regarding continual improvement in the performance of its obligations under this Framework Agreement and each Call-Off Contract. No Employer is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 19.
- 3.8 The Framework Employer may move to an electronic contract management system and following receipt of notice from the Framework Employer outlining the details of the proposed system the Contractor works with the Framework Employer to implement such a system. The Framework Parties each bear their own costs associated with the implementation and use of such a system.
- 3.9 The Framework Employer is currently involved in the development of a publicly available specification for ground investigations relating to utility location and protection. The Contractor supports the Framework Employer in the development of this specification and implements its requirements once published.

4. Term of Framework Agreement and Call-Off Contracts

- 4.1 This Framework Agreement (but not a Call-Off Contract) commences on the Framework Agreement Service Commencement Date and continues in force for the Framework Term unless terminated earlier, either in whole or in part, in accordance with this Framework Agreement.
- 4.2 The provisions of this Framework Agreement survive expiry or termination to the extent that such provisions are relevant to any Call-Off Contract.

- 4.3 The Framework Term is adjusted pursuant to clause 11.
- 4.4 Expiry or termination of a Call-Off Contract in accordance with its terms does not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Framework Agreement.
- 4.5 The *service period* specified in a Call-Off Contract does not extend beyond the end of the Framework Term.

5. **Parent Company Guarantee, Warranties and Obligations**

- 5.1 The Contractor delivers to the Framework Employer within 20 Business Days of the Framework Agreement Service Commencement Date a duly executed Parent Company Guarantee from the Parent Company (or such other person as the Framework Employer approves in writing) and, if requested by the Framework Employer, a legal opinion (in the form set out in Schedule 10) as to its enforceability.

- 5.2 Without prejudice to any other warranties expressed elsewhere in this Framework Agreement or implied by law, the Contractor warrants, represents and undertakes that:

- 5.2.1 the Contractor:

- 5.2.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Framework Agreement and any relevant Call-Off Contract; and

- 5.2.1.2 is entering into this Framework Agreement and any relevant Call-Off Contract as principal and not as agent for any person and that it acts as an independent contractor in carrying out its obligations under this Framework Agreement; and

- 5.2.2 the Framework Agreement is and each Call-Off Contract will be duly executed by the Contractor.

- 5.3 Each warranty and obligation in clause 5.2 is construed as a separate warranty or obligation (as the case may be) and is not limited or restricted by

reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Framework Agreement.

5.4 The Contractor gives notice to the Framework Employer within 7 Business Days where:

5.4.1 there is any change in ownership of the Contractor where such change relates to 50% or more of the issued share capital of the Contractor; or

5.4.2 there is any change in ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company; or

5.4.3 (in the case of an unincorporated Contractor) there is any change in the management personnel of the Contractor, which alone or taken with any other change in management personnel not previously notified to the Framework Employer, equates to a change in the identity of 50% or more of the management personnel of the Contractor.

5.5 Where the Contractor is a partnership the rights, obligations and liabilities of the partners in the partnership under this Framework Agreement and each Call-Off Contract are joint and several. This Framework Agreement and each Call-Off Contract and the liabilities of the partners under this Framework Agreement and each Call-Off Contract do not automatically terminate upon the death, retirement or resignation of any 1 or more members of such partnership or upon the admission of an additional partner or partners. The partners in the partnership use their reasonable endeavours to procure that any additional partner or partners enter into an agreement with the Framework Employer and each other relevant Employer confirming his/her acceptance of the rights, obligations and liabilities of the Contractor under this Framework Agreement and each Call-Off Contract.

5.6 Where the Contractor comprises 2 or more parties in joint venture the rights, obligations and liabilities of each such party under this Framework Agreement and each Call-Off Contract are joint and several.

6. Call-Off Procedure

- 6.1 From the Framework Agreement Service Commencement Date until expiry of the Framework Term, an Employer may identify the Services which at its sole discretion it wishes to let under the terms of this Framework Agreement in which event the Parties follow the procurement process set out below which the Framework Employer reserves the right, at its discretion, to amend to reflect best practice and applicable law.
- 6.2 An Employer may issue to the Contractor a Call-Off Request Form specifying the Services required.
- 6.3 In the event that the Contractor receives a Call-Off Request Form:
 - 6.3.1 the Contractor within 2 Business Days confirms receipt of the Call-Off Request Form; and
 - 6.3.2 the Contractor issues to the relevant Employer a Call-Off Proposal incorporating the completed contract data part 2. The Contractor responds to the relevant Employer by the date specified in the Call-Off Request Form or, if no such date is specified, within 20 Business Days of receiving the Call-Off Request Form, or by such other date as may be agreed with the relevant Employer. A Call-Off Proposal is an offer capable of acceptance and remains valid for at least 3 months (or such longer period as may be specified in the Call-Off Request Form) from the date it is submitted to the relevant Employer.
- 6.4 The Contractor submits with each Call-Off Proposal a completed Price List.
- 6.5 In preparing the Price List to accompany a Call-Off Proposal:
 - 6.5.1 the Contractor acknowledges that the Price List is the Schedule of Rates adjusted in accordance with clause 8 (adjustment for inflation);
 - 6.5.2 the Contractor may use rates, prices or percentages that are less than those stated in the Schedule of Rates but does not use any rates, prices or percentages which exceed those stated in the Schedule of Rates adjusted in accordance with clause 8 (adjustment for inflation);

- 6.5.3 where a Call-Off Request Form requires the Contractor to submit a rate or lump sum price for work, services or any other activity for which there is no rate in the Schedule of Rates the relevant rate or lump sum prices are calculated by reference to rates in the Schedule of Rates for work, services or activities of a similar character and executed under similar conditions;
- 6.5.4 where a Call-Off Request Form requires the Contractor to submit a rate or lump sum price for work, services or any other activity for which there is no rate in the Schedule of Rates and there are no rates in the Schedule of Rates for work, services or activities of a similar character and executed under similar conditions, the relevant rates or lump sum prices are calculated by reference to the Shorter Schedule of Cost Components plus the Fee;
- 6.5.5 the Contractor submits details of any rates and lump sums specific to the relevant Employer; and
- 6.5.6 the Contractor provides full supporting information, in accordance with the Schedule of Rates, to demonstrate how the Price List has been prepared.
- 6.6 If the relevant Employer accepts a Call-Off Proposal issued in response to a Call-Off Request Form it notifies the Contractor that the Call-Off Contract is awarded.
- 6.7 After the relevant Employer awards a Call-Off Contract pursuant to clause 6.6 the relevant Employer forwards to the Contractor 2 copies of the Call-Off Contract. The Contractor executes both copies and returns them to the relevant Employer within 7 Business Days of receipt. The relevant Employer executes both copies of the Call-Off Contract and sends a completed executed Call-Off Contract to the Contractor.
- 6.8 Each Call-Off Contract is a binding agreement on the relevant Parties to the Call-Off Contract and incorporates the terms and conditions in the completed Call-Off Form of Agreement and such documentation together forms a separate agreement between the relevant Parties to the Call-Off Contract.
- 6.9 A Call-Off Request Form and anything prepared or discussed by an Employer constitutes an invitation to treat and does not constitute an offer

capable of acceptance by the Contractor. No Employer is obliged to consider or accept any Call-Off Proposal submitted by the Contractor.

- 6.10 This Framework Agreement does not oblige any Employer to enter into any Call-Off Contract with the Contractor.
- 6.11 Each Call-Off Contract is specifically between the Contractor and the relevant Employer. The other Employers are not liable for the obligations arising out of such Call-Off Contract. For the avoidance of doubt the Framework Employer is not liable for any obligations arising out of or in connection with a Call-Off Contract entered into between the Contractor and any Employer (other than where the Employer is the Framework Employer).
- 6.12 The Contractor is responsible for all and any costs, charges and expenses incurred by the Contractor arising from or associated with the procurement process in this clause 6 and no Employer is liable for any costs, charges or expenses borne by or on behalf of the Contractor whether or not the Contractor is awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

7. Volume Rebate

- 7.1 An Employer who has entered into a Call-Off Contract is entitled to volume rebates in accordance with this clause 7.
- 7.2 Within 4 weeks of the end of:
 - 7.2.1 each Financial Year; and
 - 7.2.2 the end of the Framework Term

the Contractor submits to the Framework Manager details of the Aggregated Annual Spend. The details are broken down by capital and revenue expenditure and identify the payments made, or credit given, by each individual Employer to the Contractor in the relevant period.

- 7.3 Should the Contractor not provide the details required by clause 7.2 the Framework Manager may make his own assessment of the Aggregated Annual Spend. Where relevant the Framework Manager notifies the Contractor of his assessment of the Aggregated Annual Spend. Unless the Contractor provides a written objection (including a detailed justification for

the objection and the Contractor's assessment of the Aggregated Annual Spend) within 5 Business Days of such notification the Framework Manager's assessment of the Aggregated Annual Spend is deemed accepted by the Contractor.

- 7.4 The Contractor submits with the details pursuant to clause 7.2 or, within 10 Business Days of notification of the Framework Manager's assessment of the Aggregated Annual Spend under clause 7.3, the Contractor's assessment of the Volume Rebate for the relevant Financial Year by applying the relevant Volume Rebate Percentage to each band of the Aggregated Annual Spend. In calculating the Volume Rebate for any part Financial Year the volume rebate thresholds set out in Schedule 1 are pro-rated to allow the volume rebate calculation to be applied on a pro rata basis to the applicable proportion of the Financial Year. The Contractor provides all relevant supporting information to show how the calculation has been made.
- 7.5 Within 10 Business Days of receipt of the Contractor's assessment of the Volume Rebate (or in the absence of such assessment within 20 Business Days of the date on which it was due) the Framework Manager confirms the Volume Rebate or requires the Contractor to reassess it, giving reasons where necessary. If required to reassess the Contractor resubmits the assessment of the Volume Rebate within 10 Business Days.
- 7.6 Within 10 Business Days of the Framework Manager's confirmation of the Volume Rebate, the Contractor calculates the amount of the Volume Rebate payable or allowable to each Employer in accordance with the following formula: $(A/B) \times C$. Where A is the total amount paid by the relevant Employer to the Contractor in the relevant Financial Year, B is the Aggregated Annual Spend, and C is the Volume Rebate (or if he fails to do so the Framework Manager may carry out the calculation and notify the Contractor).
- 7.7 The Contractor notifies the Framework Manager of the amount of the Volume Rebate payable or allowable to each Employer and the Contractor pays or allows the relevant amount to each Employer in accordance with clause 113 of the Call-Off Contract.

8. Adjustment for Inflation

The rates set out in the Schedule of Rates and any other rates, values or sums set out in this Framework Agreement which are expressly stated to be

adjusted for inflation are adjusted in accordance with Schedule 17 (Adjustment for Inflation).

9. Contract Management

- 9.1 The Framework Employer authorises the Framework Manager to act as the Framework Employer's representative for all purposes of this Framework Agreement and the Contractor deals with the Framework Manager in respect of all matters arising under this Framework Agreement, unless notified otherwise. The Framework Employer may replace the Framework Manager after he has notified the Contractor of the name of the replacement.
- 9.2 The Contractor Manager acts as the Contractor's representative for all purposes of this Framework Agreement. The Contractor Manager:
- 9.2.1 diligently supervises the performance of any Services instructed under a Call-Off Contract;
 - 9.2.2 attends all contract meetings with any Employer (the location, frequency and time of which are specified by the relevant Employer); and
 - 9.2.3 is available to each Employer on reasonable notice (or as specified in any Call-Off Contract) to resolve any issues arising in connection with this Framework Agreement or any Call-Off Contract.
- 9.3 The Contractor may only make any changes to the Contractor Manager (except in the event of sickness, incapacity or resignation) with the prior consent of the Framework Employer (which is not unreasonably withheld).
- 9.4 No act of or omission by or approval or acceptance from either an Employer, the Framework Manager, or any representative of an Employer in performing any of their respective duties under or in connection with this Framework Agreement or relevant Call-Off Contract relieves the Contractor of any of its duties, responsibilities, obligations or liabilities under this Framework Agreement or any Call-Off Contract.
- 9.5 At the Framework Employer's reasonable request the Contractor attends meetings with the Framework Employer at no additional cost to the Framework Employer.

10. Performance Management and Performance Indicators

The Contractor complies with the requirements of Schedule 13 regarding performance monitoring in respect of its obligations under this Framework Agreement and each Call-Off Contract. No Employer is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 13.

11. Contract Reduction Mechanism

11.1 Starting in the second Framework Year on or before 1 June in each Framework Year of the Framework Term the Contractor's performance in the preceding Framework Year (the "Relevant Year") is assessed by the Framework Manager in accordance with this clause 11 against the Primary Performance Indicators and Secondary Performance Indicators provided that the assessment is not applied in the last 2 Framework Years of the Framework Term.

11.2 If for a Relevant Year the Contractor achieves:

11.2.1 the consolidated annual target and

11.2.2 the monthly target for a minimum of eight months in the Relevant Year (or for a minimum of 3 quarters of the Relevant Year where a Primary Performance Indicator is measured on a quarterly basis)

for each of the Primary Performance Indicators then at the assessment the Framework Term is not reduced.

11.3 If for a Relevant Year the Contractor achieves the requirements of clause 11.2 for 4 of the Primary Performance Indicators and if for that Relevant Year the Contractor achieves the consolidated annual target for:

11.3.1 75% or more of the Secondary Performance Indicators then at the assessment the Framework Term is not reduced provided that if the Contractor fails to achieve the consolidated annual target for any particular Secondary Performance Indicator in consecutive Framework Years then at the assessment the Framework Term is reduced by 6 calendar months;

11.3.2 less than 75% of the Secondary Performance Indicators then at the assessment the Framework Term is reduced by 6 calendar months.

- 11.4 If for a Relevant Year the Contractor achieves the requirements of clause 11.2 for less than 4 of the Primary Performance Indicators then at the assessment the Framework Term is reduced by 6 calendar months.
- 11.5 If at the time of any assessment the Framework Term remains (by reason of the operation of this Contract Reduction Mechanism) less than the Original Framework Term then if at the date of assessment for the Relevant Year the Contractor has achieved the requirements of clause 11.2 in respect of the Default Performance Indicators then at the assessment the Framework Term is increased by 6 months provided that this clause does not operate to increase the Framework Term beyond the Original Framework Term.
- 11.6 Following each assessment pursuant to this clause 11 the Framework Manager notifies the Framework Parties of any adjustment to the Framework Term.

12. Audit

- 12.1 The Contractor undertakes its (and procures that his Subcontractors undertake their) obligations and exercise any rights which relate to the performance of this Framework Agreement and any Call-Off Contract on an open-book basis. The Framework Employer and its authorised representatives may audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this Framework Agreement and any Call-Off Contract, including inspection of the Contractor's technical and organisational security measures for the protection of personal data, any aspect of the Contractor's operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The Framework Employer's rights pursuant to this clause include the right to audit and check and to take extracts from any document or record of the Contractor and/or his Subcontractors.
- 12.2 The Framework Employer uses reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Contractor is not, without due cause, disrupted or delayed in the performance of the Contractor's obligations under this Framework Agreement and any Call-Off Contract.

13. Audit and Surveillance Regime

The Contractor complies with the requirements of Schedule 18 regarding audit and surveillance. No Employer is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 18.

14. Contractor's Personnel

14.1 Nothing in this Framework Agreement or any Call-Off Contract renders the Contractor's Personnel an employee, agent or partner of any Employer by virtue of the provision of any Services by the Contractor under any Call-Off Contract and the Contractor is responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Contractor's Personnel.

14.2 No Employer is under an obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Contractor except as may be specified in any Call-Off Contract.

14.3 The Contractor does not remove any Key Personnel engaged in providing Services or managing this Framework Agreement for more than 15 consecutive Business Days without the prior consent of the Framework Employer, save where such key person, is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the Contractor's employment.

15. Conflict of Interest

15.1 The Contractor acknowledges and agrees that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Framework Scope or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the Framework Manager.

15.2 The Contractor undertakes ongoing and regular conflict of interest checks throughout the duration of this Framework Agreement and in any event not less than once in every 6 months and notifies the Framework Manager in writing immediately on becoming aware of any actual or potential conflict of interest with the Framework Scope or any member of the TfL Group and works with the Framework Employer to do whatever is necessary (including

the separation of staff working on, and data relating to, any Services from the matter in question) to manage such conflict to the Framework Employer's satisfaction, provided that where the Framework Employer is not so satisfied (in its absolute discretion) it is entitled to terminate this Framework Agreement, and any Call-Off Contract between the Contractor and members of the TfL Group in existence, in accordance with clause 32.1.5.

16. Corrupt Gifts and Payment of Commission

16.1 The Contractor does not, and ensures that its employees, agents, Subcontractors and Indirect Subcontractors do not:

16.1.1 pay any commission or agree to pay any commission, fees or grant any rebates to any employee, servant, officer or agent of any Employer;

16.1.2 favour any employee, servant, officer or agent of any Employer with gifts or entertainment of significant cost or value;

16.1.3 enter into any business arrangement with employees, servants, officers or agents of any Employer other than as a representative of the relevant Employer, without the relevant Employer's prior written approval;

16.1.4 offer or agree to give to any servant, employee, officer or agent of any Employer any grant, gift or consideration of any kind as an inducement or reward:

16.1.4.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Framework Agreement and all Call-Off Contracts or any other contract with any Employer; or

16.1.4.2 for showing or not showing favour or disfavour to any person in relation to this Framework Agreement and all Call-Off Contracts or any other contract with any Employer;

16.1.5 commit any offence:

16.1.5.1 under the Prevention of Corruption Acts 1889-1916,

16.1.5.2 under the Bribery Act 2010,

16.1.5.3 under any law or legislation creating offences in respect of fraudulent acts, or

16.1.5.4 at common law in respect of fraudulent acts

in relation to this Framework Agreement and all Call-Off Contracts or any other contract with any Employer;

16.1.6 defraud or attempt to defraud any Employer.

16.2 Without prejudice to its rights under clause 12, the Framework Employer and each other Employer may audit and check any and all such records as are necessary in order to monitor compliance with this clause 16 at any time during performance of this Framework Agreement and each Call-Off Contract and for the period of 12 years after completion of the works and services pursuant to each Call-Off Contract issued hereunder.

16.3 If any fraudulent activity comes to the attention of the Contractor in relation to this Framework Agreement or any Call-Off Contract the Contractor notifies the Framework Manager and any relevant Employer by the most expeditious means available. The Contractor cooperates with the Framework Employer and any relevant Employer in the investigation of any fraudulent activity and implements any changes in the procedures or working practices employed under this Framework Agreement and Call-Off Contracts as may be necessary to ensure that the likelihood or opportunity for a recurrence of such fraud is minimised. The Contractor ensures that no fraudulent activity is committed by the Contractor, its agents, employees, Subcontractors or Indirect Subcontractors.

16.4 If the Contractor any of its shareholders or any Subcontractor or Indirect Subcontractor or anyone employed by or acting on behalf of the Contractor or any of his agents commits any breach of this clause 16, this constitutes a material breach of this Framework Agreement and entitles the Framework Employer to terminate the Framework Agreement and all Call-Off Contracts between the Contractor and members of the TfL Group, in existence, in accordance with clause 32.1.4.

16.5 If a breach of this clause 16 is committed by an employee of the Contractor or by any Subcontractor (or employee or agent of such Subcontractor) then the Framework Employer may (at his sole discretion) choose to serve a

warning notice upon the Contractor instead of exercising his right to terminate with immediate effect and unless, within 20 Business Days of receipt of such warning notice, the Contractor terminates, or procures the termination of, the employee's employment or Subcontractor's appointment (as the case may be) and (if necessary) procures the provision of the affected Services by another person, this constitutes a material breach of this Framework Agreement and entitles the Framework Employer to terminate the Framework Agreement and any Call-Off Contracts between the Contractor and members of the TfL Group in existence, with immediate effect in accordance with clause 32.1.4.

- 16.6 In the event of any breach of this clause 16 by the Contractor or by its Subcontractors or Indirect Subcontractors the Framework Employer recovers from the Contractor any Losses incurred or suffered as a result of the breach of this clause by the Contractor or by its Subcontractors or Indirect Subcontractors.

17. Quality and Best Value

- 17.1 The Contractor acknowledges that each Employer is a best value authority for the purposes of the Local Government Act 1999 and as such an Employer may be required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness. The Contractor assists each Employer (where applicable) to discharge each Employer's duty where possible and, in doing so, inter alia carries out any review reasonably requested by the Employer.
- 17.2 The Contractor provides a quality policy statement within 20 Business Days of the Framework Agreement Service Commencement Date.

18. IT Requirements

- 18.1 The Contractor ensures that:
- 18.1.1 any software, electronic or magnetic media, hardware or computer system used or supplied by the Contractor in connection with this Framework Agreement and each Call-Off Contract:
 - 18.1.1.1 does not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any data related input or processing in or on

any part of such software, electronic or magnetic media, hardware or computer system;

18.1.1.2 does not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of any Employer, on which it is used or with which it interfaces or comes into contact;

18.1.1.3 is compliant with e-GIF;

18.1.1.4 is Euro Compliant; and

18.1.1.5 any variations, enhancements or actions undertaken by the Contractor in respect of such software, electronic or magnetic media, hardware or computer system do not affect the Contractor's compliance with this clause 18.

19. **Set-Off**

When under this Framework Agreement or any Call-Off Contract with any member of the TfL Group any sum of money is recoverable from or payable by the Contractor such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under any Call-Off Contract with any member of the TfL Group or any other contract with the Framework Employer or member of the TfL Group. Any sum due from the Contractor, whether under this Framework Agreement or any other contract with the Framework Employer, is payable as a debt to the Framework Employer.

20. **Confidentiality and Announcements**

20.1 The Contractor acknowledges that during the course of this Framework Agreement and pursuant to Call-Off Contracts it may receive, obtain, prepare or create confidential information.

20.1.1 The Contractor:

- 20.1.1.1 receives and/or maintains the confidential information in strictest confidence and acknowledges that such information is of a proprietary and confidential nature;
- 20.1.1.2 does not use the confidential information for any purposes whatsoever (and in particular does not use the confidential information to the detriment of any Employer) other than for the purpose of any Services;
- 20.1.1.3 does not disclose the confidential information (which includes any information obtained by the Contractor concerning any Employer) to any third party without the prior written consent of the relevant Employer or Employers (as appropriate) except that the Contractor is entitled to the extent strictly necessary to disclose the confidential information:
 - (a) to Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision and provided that the Contractor is responsible for any breach of its obligations occasioned by any act or omission of such Connected Persons; or
 - (b) to any other person or body having a legal right or duty to know the confidential information in connection with the Contractor's business provided that prior to such disclosure the Contractor consults with the relevant Employer or Employers as to the proposed form of such disclosure;
- 20.1.1.4 informs each of the persons referred to in clauses 20.1.1.3(a) and 20.1.1.3(b) to whom confidential information is disclosed of the restrictions as to use and disclosure of the confidential information and uses its best endeavours to ensure that each of them observe such restrictions;
- 20.1.1.5 at the request of an Employer and in any event upon the termination or expiry of the Framework Agreement and each Call-Off Contract, promptly delivers to each

Employer (as appropriate) or destroys as each Employer directs all documents and other materials in its possession, custody or control (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by an Employer in writing, removes all electronically held confidential information, including (without limitation) the purging of all disk-based confidential information and the reformatting of all disks; and

20.1.1.6 does not, except where provided in clause 20.1.1.3 or with the prior written consent of the relevant Employer, disclose to any third party the nature or content of any discussions or negotiations between the Parties relating to the confidential information.

20.2 The obligations set out in this clause 20 do not apply to any confidential information which:

20.2.1 the Contractor shows by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Contractor by the relevant Employer; or

20.2.2 is lawfully disclosed to the Contractor without any obligations of confidence, by a third party who has not derived it directly or indirectly from the relevant Employer; or

20.2.3 is or has come into the public domain through no fault of the Contractor or its personnel; or

20.2.4 is required by law or by order of a court of competent jurisdiction to be disclosed.

20.3 The Contractor acknowledges that damages would not be an adequate remedy for any breach of this clause 20 and that (without prejudice to all other remedies which the Framework Employer or any other Employer may be entitled to as a matter of law) the Framework Employer and each other Employer is entitled to the remedies of injunction, specific performance and other equitable relief to enforce the provisions of this clause and no proof of special damages is necessary for the enforcement of the provisions of this clause.

- 20.4 The Contractor does not advertise or announce this Framework Agreement without the prior written consent of the Framework Employer or any Call-Off Contract or any Services without the prior written consent of the relevant Employer. The Framework Employer or the relevant Employer (as appropriate) has the right to approve any advertisement or announcement before it is made.
- 20.5 Neither the Contractor nor anyone employed by him or acting on his behalf gives information concerning any Services or Call-Off Contract for publication in the press or on radio, television, screen or any other media without the prior written consent of the relevant Employer and, if such consent is given, provides to the relevant Employer a full copy of the information to be released and does not release any such information until the Contractor has received the relevant Employer's prior written consent as to the content of the information to be released. The Contractor does not, without the prior written approval of the relevant Employer, take or permit to be taken any photographs of any Services for use in any publicity or advertising.
- 20.6 The Contractor procures that the Connected Persons comply with the provisions of this clause 20 and is responsible to each Employer for any act or omission of any Connected Person in breach of such obligation.
- 20.7 The Contractor notifies the Framework Employer and any other relevant Employer promptly if the Contractor becomes aware of any breach of confidence by a Connected Person and gives the Framework Employer and any other relevant Employer all assistance which may reasonably be required in connection with any proceedings the relevant Employer may bring or other steps the relevant Employer may take against that Connected Person or any other person for such breach of confidence.

21. Data Protection

The Contractor complies with all of its obligations under the Data Protection Act 1998 and if Processing Personal Data (as such terms are defined in section 1(1) of that Act) on behalf of an Employer ("Employer Personal Data"), the Contractor only carries out such Processing for the purpose of any Services and in accordance with instructions from the relevant Employer.

22. Freedom of Information and Transparency

- 22.1 The Contractor acknowledges that each Employer may be subject to the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation and agrees to assist and co-operate and procure that its Subcontractors assist and co-operate with each Employer to enable each Employer to comply with its obligations under such legislation including providing to an Employer such information as that Employer may reasonably request concerning this Framework Agreement and any relevant Call-Off Contract within 3 Business Days of a request from the Employer. The Contractor further acknowledges that each Employer may be obliged under such legislation to disclose information without consulting or obtaining consent from the Contractor. Without prejudice to the generality of the foregoing the Contractor transfers to the appropriate Employer any request for information under the Act that it receives as soon as reasonably practicable. The Contractor does not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by the appropriate Employer. This clause survives the expiry or termination of this Framework Agreement.
- 22.2 The Contractor acknowledges that each Employer may be subject to the Transparency Commitment. Notwithstanding clause 20.1 and clause 22.1, the Contractor gives its consent for each Employer to publish the Contract Information to the general public.
- 22.3 Each Employer may in its absolute discretion redact all or part of the Contract Information prior to its publication. In doing so and in its absolute discretion the relevant Employer may take into account the exemptions/exceptions that would be available in relation to information requested under the Freedom of Information Act 2000 and all subordinate legislation made under it, the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation. The relevant Employer may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be

published pursuant to clause 22.2. The relevant Employer makes the final decision regarding publication and/or redaction of the Contract Information.

23. London Highways Alliance Logo

- 23.1 The Framework Employer is the beneficial owner of the copyright in the 'London Highways Alliance' name and logo (a copy of which is included in Schedule 3) and licences the Contractor to display the London Highways Alliance Contract logo on all vehicles and equipment and clothing used by the Contractor for or in connection with this Framework Agreement and any Call-Off Contract.
- 23.2 The Contractor displays the logo on all vehicles, equipment and clothing used in the performance of each Call-Off Contract.
- 23.3 Following termination of the Framework Agreement for any reason the licence to use the logo conferred by this clause may be revoked by the Framework Employer at any time and the Contractor removes the logo from its vehicles, equipment and clothing as soon as possible following the date of notice from the Framework Employer of revocation of the licence, except that the Contractor does not remove the logo from any vehicles or equipment which are to be transferred to an Employer or to be transferred to any other contractor appointed by an Employer to undertake the Services.

24. Responsible Procurement

- 24.1 The Contractor acknowledges the requirements of the Responsible Procurement Policy in the performance of its obligations under this Framework Agreement and each Call-Off Contract.
- 24.2 The Contractor provides such cooperation and assistance as may be reasonably requested by each Employer in relation to the Responsible Procurement Policy.
- 24.3 The Contractor complies with the requirements of Schedule 14 regarding strategic labour needs and training in the performance of its obligations under this Framework Agreement and each Call-Off Contract. No Employer is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 14.

25. Equality and Supplier Diversity

25.1 For the duration of this Framework Agreement the Contractor appoints an Equality and Diversity Manager to be responsible for the implementation of the requirements stated in this clause 25 and Schedule 15.

25.2 The Contractor acknowledges that each Employer has a policy to promote and develop the economy of London. This is achieved in part through the promotion and use, where possible, of:

25.2.1 Small and Medium Enterprises;

25.2.2 Black, Asian and Minority Ethnic businesses;

25.2.3 Suppliers from other under-represented or protected groups;

25.2.4 Suppliers demonstrating a diverse workforce composition;

and the Contractor is encouraged to use local suppliers and subcontractors so far as is reasonably practicable and appropriate.

25.3 The Contractor complies with the requirements of the current policies of the Framework Employer which facilitates payments to SMEs of invoices within 7 Business Days of submission of invoice where a SME requests such a facility and where required the Contractor provides evidence to the Framework Employer of its compliance with this condition.

25.4 The Contractor complies with the provisions of Schedule 15 in the performance of its obligations under this Framework Agreement and each Call-Off Contract. No Employer is liable to the Contractor for any costs, charges or expenses arising out of or associated with compliance with Schedule 15.

26. Freight Operator Recognition Scheme and Road User Safety Measures

26.1 Where the Contractor operates Freight Vehicles, the Contractor within 90 days of the Framework Agreement Service Commencement Date:

26.1.1 (unless already registered) registers for membership of FORS or a scheme, which in the reasonable opinion of the Framework Employer, is an acceptable substitute to membership of FORS (the "Alternative Scheme"); and

- 26.1.2 attains the standard of Bronze Membership of FORS (or higher) or the equivalent within the Alternative Scheme.
- 26.2 The Contractor maintains the standard of Bronze Membership (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Membership Terms or takes such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Contractor has attained Silver or Gold Membership of FORS, the maintenance requirements are undertaken in accordance with the periods set out in their FORS Silver or Gold membership agreement.
- 26.3 The Contractor uses its best endeavours to ensure that those of its Subcontractors who operate Freight Vehicles comply with clauses 26.1 and 26.2 as if they applied directly to the Subcontractor.
- 26.4 The Contractor ensures that every Lorry, which it uses to provide the Services:
 - 26.4.1 has Side Guards, unless the Contractor can demonstrate to the reasonable satisfaction of the Framework Employer that the vehicle will not perform the function for which it was built if Side Guards are fitted;
 - 26.4.2 has a Close Proximity Sensor;
 - 26.4.3 has a Class VI Mirror; and
 - 26.4.4 bears prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.
- 26.5 The Contractor ensures that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Contractor's risk scale, provided that the Contractor's risk scale has been approved in writing by the Framework Employer within the last 12 months:
 - 26.5.1 0 – 3 points on the driving licence – annual checks;
 - 26.5.2 4 – 8 points on the driving licence – six monthly checks;

- 26.5.3 9 – 11 points on the driving licence – quarterly checks; or
- 26.5.4 12 or more points on the driving licence – monthly checks.
- 26.6 The Contractor ensures that each of its Drivers who has not undertaken:
 - 26.6.1 Approved Driver Training in the last three years, undertakes Approved Driver Training within 60 days of the Framework Agreement Service Commencement Date;
 - 26.6.2 a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or an equivalent safety module provided by the Alternative Scheme) within 30 days of the Framework Agreement Service Commencement Date.
- 26.7 Within 15 days of the Framework Agreement Service Commencement Date, the Contractor provides to the Framework Employer a Collision Report. The Contractor provides to the Framework Employer an updated Collision Report on a quarterly basis and within five working days of a written request from the Framework Employer.
- 26.8 Within 30 days of its becoming a member of FORS or of the Alternative Scheme, the Framework Employer makes a written report to the Framework Employer at fors@tfl.gov.uk detailing its compliance with clauses 26.4, 26.5 and 26.6 of this Framework Agreement (the “Safety, Licensing and Training Report”). The Contractor provides updates of the Safety, Licensing and Training Report to the Framework Employer at fors@tfl.gov.uk on each three month anniversary of its submission of the initial Safety, Licensing and Training Report.
- 26.9 The Contractor procures that each of its Subcontractors that operates the following vehicles comply with the corresponding provisions of this Framework Agreement as if those Subcontractors were a party to this Framework Agreement:
 - 26.9.1 For Lorries – Clauses 26.4, 26.5, 26.6 and 26.7; and
 - 26.9.2 For Vans – Clauses 26.4.4, 26.5, 26.6 and 26.7.
- 26.10 Without limiting the effect of clause 32, if the Contractor fails to comply with clauses 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8 and 26.9:

- 26.10.1 the Contractor has committed a material breach of this Framework Agreement; and
- 26.10.2 the Framework Employer and any other Employer may refuse the Contractor, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Framework Employer or any other Employer.

27. London Living Wage

- 27.1 Without prejudice to any other provision of this Framework Agreement the Contractor:
 - 27.1.1 ensures that none of its employees, and uses reasonable endeavours to procure that none of the employees of its Subcontractors and Indirect Subcontractors engaged in the provision of works and services under a Call-Off Contract are paid an hourly wage (or equivalent hourly wage) less than the London Living Wage,
 - 27.1.2 provides to each Employer such information concerning the London Living Wage and as the Employer or its nominees may reasonably require,
 - 27.1.3 ensures that none of its employees, and uses reasonable endeavours to procure that none of the employees of its Subcontractors and Indirect Subcontractors, engaged in the provision of works and services under a Call-Off Contract are paid less than the amount to which they are entitled in their respective contracts of employment,
 - 27.1.4 disseminates on behalf of each Employer (as required) to those of its employees who are engaged in the provision of works and services under a Call-Off Contract and were paid the London Living Wage and to its Subcontractors and Indirect Subcontractors such perception questionnaires as each Employer may reasonably require and promptly collates and returns to each relevant Employer responses to such questionnaires, and
 - 27.1.5 co-operates and provides all reasonable assistance in monitoring the effect of the London Living Wage.

27.2 Any breach by the Contractor of the provisions of this clause 27 is treated as a substantial failure by the Contractor to comply with an obligation under this Framework Agreement and each Call-Off Contract for the purposes of clause 32 of this Framework Agreement and clause 91 of each Call-Off Contract.

28. **CRB Checks**

28.1 If required by an Employer the Contractor provides all necessary details to the relevant Employer of staff engaged by the Contractor to enable the relevant Employer to carry out all necessary checks with the Criminal Records Bureau on such staff. Such checks are primarily required in respect of the Contractor's staff who will be executing works or services or any part of them at any school, Adult and Community Services location or other locations identified by the relevant Employer. The costs of such checks are borne by each relevant Employer and the Contractor complies with all requirements of each relevant Employer which may be communicated to the Contractor as a consequence of the findings of such checks and each relevant Employer has no liability in respect of any consequential claim which an employee of the Contractor may make against them.

29. **Quality Submission**

29.1 The Quality Submission sets out the Contractor's proposals for the management and resourcing of the Services.

29.2 The Contractor warrants that the representations contained in the Quality Submission are accurate in every respect and may be fully relied upon by each Employer, including where the standards represented exceed the minimum originally specified by the Framework Employer and each other Employer.

29.3 Should any discrepancy arise between the Quality Submission and other Call-Off Contract documents the Service Information takes precedence except where the Quality Submission includes a standard which exceeds that specified in the other Call-Off Contract documents, in which case the Quality Submission takes precedence over those other documents.

29.4 Any failure by the Contractor to comply with the Quality Submission for any reason does not entitle the Contractor to a change in the prices for any Call-Off Contract or any allowance of time whether by way of compensation event or otherwise pursuant to a Call-Off Contract.

30. **Considerate Contractor Scheme**

- 30.1 The Contractor registers each Call-Off Contract under the Considerate Constructor's Scheme.
- 30.2 The Contractor complies with the Considerate Constructor's Scheme Code of Considerate Practice in providing Services pursuant to each Call-Off Contract.

31. **Complaints Procedure**

- 31.1 The Contractor:
 - 31.1.1 establishes a complaints procedure relating to the Framework Agreement and each Call-Off Contract;
 - 31.1.2 operates it from the Framework Agreement Service Commencement Date; and
 - 31.1.3 at the Framework Employer's request provides a copy of such procedure to it.
- 31.2 The complaints procedure must:
 - 31.2.1 be approved by the Framework Employer (and the Framework Employer will not be unreasonable or delay in giving its approval); and
 - 31.2.2 comply with the requirements of any regulatory body to which the Contractor is subject including any change in such requirements.
- 31.3 At the Framework Employer's reasonable request the Contractor supplies it with a copy of the Contractor's records relating to complaints made in relation to the Framework Agreement and each Call-Off Contract and the Contractor's responses.

32. **Breach and Termination of Framework Agreement**

- 32.1 Without prejudice to the Framework Employer's right to terminate at common law, the Framework Employer may terminate this Framework Agreement immediately upon giving notice to the Contractor if:
 - 32.1.1 except as provided in and without prejudice to clauses 32.1.3 and 32.1.4, the Contractor has committed any material or persistent

breach of this Framework Agreement or any Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by the Framework Employer) from the date of written notice to the Contractor giving details of the breach and requiring it to be remedied; or

32.1.2 the Contractor or the Holding Company is subject to Insolvency; or

32.1.3 any of the events referred to in clause 5.4 occur (regardless of whether or not the notice required by clause 5.4 is given by the Contractor); or

32.1.4 the Contractor is in breach of clause 16; or

32.1.5 the Framework Employer is not satisfied on the issue of any conflict of interest in accordance with clause 15; or

32.1.6 the Contractor is in breach of clause 25; or

32.1.7 the Framework Term is reduced pursuant to clause 11 in two consecutive Framework Years; or

32.1.8 the Contractor commits any of the money laundering related offences listed in the Public Agreement Regulations 2006; or

32.1.9 any other right of termination arises which is referred to in this Framework Agreement.

32.2 Without prejudice to any of the Framework Employer's other rights, powers or remedies (whether under this Framework Agreement or otherwise) if the Contractor is in breach of any of its warranties and/or obligations under clause 5 and/or any of its other obligations in respect of any Services under this Framework Agreement or any Call-Off Contract, the Contractor, if required to do so by the Framework Employer, promptly remedies and/or re-performs the relevant Services or part of it at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this clause 32.2 prevents the Framework Employer from procuring the provision of any Services or any remedial action in respect of any Services from an alternative service provider and, where the Framework Employer so procures any Services or any remedial action, the Framework Employer is entitled to recover from the Contractor all additional Losses incurred by the Framework

Employer as a result including those attributable to any Employer procuring such Services or remedial action from such alternative service provider.

32.3 To the extent that the Framework Employer has a right to terminate this Framework Agreement under this clause 32 then, as an alternative to termination, the Framework Employer may by giving notice to the Contractor require the Contractor to provide part only of the Framework Scope with effect from the date specified in the Framework Employer's notice whereupon the Framework Scope is construed accordingly.

32.4 Termination of the Framework Agreement does not automatically terminate each Call-Off Contract.

33. Consequences of Termination or Expiry

33.1 Notwithstanding the provisions of clause 20 (Confidentiality and Announcements), wherever the Framework Employer chooses to put out to tender for a replacement service provider some or all of the works and services within the Framework Scope, the Contractor discloses to tenderers such information concerning the Framework Scope as the Framework Employer requires for the purposes of such tender. The Contractor may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

33.2 The termination or expiry of this Framework Agreement does not prejudice or affect any right, power or remedy which has accrued or accrues to either Framework Party prior to or after such termination or expiry.

33.3 Upon expiry or termination of this Framework Agreement or relevant Call-Off Contract (howsoever caused) the Contractor, at no further cost to the Framework Employer on receipt of the Framework Employer's written instructions to do so (but not otherwise), arranges to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.

33.4 On termination of this Framework Agreement under clause 32.1 or following an alteration of the Framework Scope under clause 32.3 (but in the case of the latter only insofar as the right to alter the Framework Scope arises as a result of a right for the Framework Employer to terminate under clause 32.1), each Employer may enter into any agreement with any third party or parties as each Employer thinks fit to provide any, or all, or any part of the

Framework Scope and the Contractor is liable for all additional expenditure reasonably incurred by each Employer in having such works and services carried out and all other costs and damages reasonably incurred by each Employer in consequence of such termination. Each Employer may deduct such costs from sums due to the Contractor or otherwise recover such costs from the Contractor as a debt.

34. Survival

The provisions of clauses 1, 3, 4, 5, 7, 8, 9.4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 44, 45, 46, 47 and any other clauses or Schedules that are necessary to give effect to those clauses survive termination or expiry of this Framework Agreement. In addition, any other provision of this Framework Agreement which by its nature or implication is required to survive the termination or expiry of this Framework Agreement or relevant Call-Off Contract does so.

35. Rights of Third Parties

35.1 Subject to clauses 35.2 and 35.3, the Framework Parties do not intend that any of the terms of this Framework Agreement or any relevant Call-Off Contract is enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act") by any person not a party to it.

35.2 Any member of the TfL Group has the right to enforce the terms of this Framework Agreement or any relevant Call-Off Contract as though it were an Employer and/or the Framework Employer in accordance with the Third Party Act.

35.3 Each Employer has the right to enforce the terms of clauses 3, 4, 5, 6, 7, 9.2, 9.4, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 33.4, 34, 35, 38, 39, 44, 45, 46 and 47 of this Framework Agreement in accordance with the Third Party Act subject to the terms of this Framework Agreement.

35.4 Notwithstanding clauses 35.2 and 35.3, the Framework Parties are entitled to vary or rescind:

35.4.1 this Framework Agreement without the consent of any other Employer or any members of the TfL Group (other than the Framework Employer); and

35.4.2 any relevant Call-Off Contract without the consent of any or all members of the TfL Group (other than the Framework Employer).

36. Contract Variation

Save where the Framework Employer may require an amendment to any Services and/or the Framework Scope, this Framework Agreement may only be varied or amended with the written agreement of the Framework Employer and the Contractor.

37. Novation and Assignment

37.1 The Framework Employer may novate or otherwise transfer this Framework Agreement (in whole or in part).

37.2 Within 10 Business Days of a written request from the Framework Employer, the Contractor at its expense executes such agreement as the Framework Employer may reasonably require to give effect to any such transfer of all or part of its rights and obligations under this Framework Agreement to 1 or more persons nominated by the Framework Employer.

37.3 This Framework Agreement is personal to the Contractor who does not assign the benefit or delegate the burden of this Framework Agreement or otherwise transfer any right or obligation under this Framework Agreement without the prior written consent of the Framework Employer.

38. Indemnity and Insurance

38.1 The Contractor indemnifies and keeps indemnified the Framework Employer against all Losses in respect of, or in any way arising out of any breach of this Framework Agreement or from any negligent act or omission of the Contractor (save to the extent that such Losses may have been caused by the Framework Employer).

38.2 The Contractor provides the insurances stated in the Insurance Table and any additional insurances required by each Call-Off Contract except any insurance which an Employer is to provide as stated in the applicable Call-Off Contract. The insurances provide cover from the date of this Framework Agreement until the date identified in the Insurance Table.

38.3 When requested by a Party the other Party provides certificates from his insurer or broker stating that the insurances required by this Framework Agreement and any Call-Off Contract are in force.

38.4 The Contractor's professional indemnity insurance:

38.4.1 is under the usual and customary terms and conditions prevailing in the insurance market,

38.4.2 does not include any term to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers,

38.4.3 does not include any other term which might adversely affect the right of any person (other than the Parties) to recover from the insurers under any applicable law relating to the rights of third parties,

38.4.4 is with a reputable insurer authorised to underwrite such risks in the United Kingdom and approved by the Framework Employer,

provided that such insurance is available upon commercially reasonable terms and premiums. If at any time such insurance becomes unavailable on commercially reasonable terms and premiums (such non availability to be confirmed by an independent insurance agent acceptable to both parties and operating in the UK market and excluding any increase in premiums attributable to the actions, omissions errors or default of the Contractor) the Contractor immediately informs the Framework Employer and each other Employer who has entered into a Call-Off Contract in writing and the relevant Parties meet and agree an alternative method of managing such risks.

39. **VAT**

39.1 All amounts expressed in this Framework Agreement and each Call-Off Contract as being payable by the Contractor are expressed exclusive of any Value Added Tax ('**VAT**') which may be chargeable. In the event that VAT is chargeable on the transfer of the whole or any part of the undertaking pursuant to this Framework Agreement and each Call-Off Contract then subject to receipt by the Contractor of a valid VAT invoice or invoices the Contractor pays to the relevant Employer an amount equal to the VAT

payable (if any) in respect of the same together with any penalty or interest incurred for the late payment of tax.

- 39.2 The Contractor represents and warrants and undertakes to each Employer that it is duly and properly registered for the purpose of VAT.

40. **Non-Waiver of Rights**

No waiver of any of the provisions of this Framework Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the other Framework Party in writing. The single or partial exercise of any right, power or remedy under this Framework Agreement does not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

41. **Illegality and Severability**

If any clause or part of this Framework Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision is, to the extent required, severed from this Framework Agreement and is ineffective without, as far as is possible, modifying any other clause or part of this Framework Agreement and this does not affect any other provisions of this Framework Agreement which remain in full force and effect. In the event that in the Framework Employer's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement, the Framework Employer and the Contractor immediately commence good faith negotiations to remedy such invalidity.

42. **Entire Agreement**

- 42.1 Subject to clause 42.2:

42.1.1 this Framework Agreement and all documents referred to in this Framework Agreement, contain all of the terms which the Framework Parties have agreed relating to the subject matter of this Framework Agreement and such documents supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing;

- 42.1.2 neither Framework Party has been induced to enter into this Framework Agreement by a statement which it does not contain;
 - 42.1.3 and without prejudice to the Contractor's obligations under this Framework Agreement, the Contractor is responsible for and makes no claim against the Framework Employer in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of this Framework Agreement or any incorrect or incomplete information howsoever obtained.
- 42.2 Nothing in this clause 42 excludes any liability which 1 Framework Party would otherwise have in respect of any statement it has made fraudulently to the other Framework Party.

43. Relationship of the Parties

Nothing in this Framework Agreement or any Call-Off Contract constitutes, or is deemed to constitute, a partnership between the Framework Parties. Except as expressly provided in this Framework Agreement and any Call-Off Contract, no Framework Party is deemed to be the agent of any other, and no Framework Party holds itself out as the agent of any other.

44. Notices

Any notice, demand or communication in connection with this Framework Agreement is in writing and may be delivered by hand, post or facsimile addressed to the recipient at the address set out at Schedule 1 or any other address (including a facsimile number) notified to the other Parties in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication is deemed to have been duly served:

- 44.1 if delivered by hand, at the time of delivery;
- 44.2 if delivered by post, 48 hours after being posted or in the case of Airmail 14 Business Days after being posted; or
- 44.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

45. Further Assurance

The Contractor does or procures the doing of all acts and things and executes or procures the execution of all such documents as the Framework Employer reasonably considers necessary to give full effect to the provisions of this Framework Agreement and any relevant Call-Off Contract.

46. Dispute Resolution

- 46.1 The Framework Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this Framework Agreement.
- 46.2 A Framework Party may refer a Dispute to the Adjudicator at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Framework Party may refer a Dispute to the Framework Parties' Senior Representatives for consideration. The written notice identifies the Framework Party's Senior Representative, gives brief written particulars of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- 46.3 Within 10 Business Days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
- 46.4 Within a further 10 Business Days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Framework Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Framework Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.
- 46.5 If a Dispute is to be referred to the Adjudicator the Framework Parties appoint the Adjudicator.
- 46.6 Any person requested or selected to act as the Adjudicator in accordance with this clause 46 is a natural person acting in his personal capacity and is not an employee of any of the Framework Parties, or of any other party to the

Dispute, and declares any interest, financial or otherwise, in any matter relating to the Dispute.

- 46.7 The Adjudicator acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- 46.8 The Framework Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Framework Party may ask the Nominating Authority to choose an adjudicator. Such joint appointment or referral to the Nominating Authority takes place immediately upon the serving of a Notice of Adjudication, or immediately following the position of Adjudicator falling vacant.
- 46.9 The Nominating Authority chooses an adjudicator within 4 Business Days of the request. The chosen adjudicator becomes the Adjudicator.
- 46.10 A replacement Adjudicator has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.
- 46.11 The Adjudicator, his employees and agents are not liable to the Framework Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- 46.12 The Framework Parties may terminate the Adjudicator's appointment at any time. In such a case, or if the Adjudicator fails to give notice of his decision within the period required or agreed under clause 46.24, or if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the Adjudicator in accordance with the provisions of clause 46.8.
- 46.13 Before a Framework Party refers a Dispute to the Adjudicator, he gives a Notice of Adjudication to the other Framework Party with a brief description of the Dispute, including the provisions of this Framework Agreement that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that he wishes the Adjudicator to make. Following the appointment of the Adjudicator, the Framework Party immediately sends a copy of the Notice of Adjudication to the Adjudicator. Within 3 Business Days of the receipt of the Notice of Adjudication, the Adjudicator notifies the Framework Parties

46.13.1 that he is able to decide the Dispute in accordance with this Framework Agreement or

46.13.2 that he is unable to decide the Dispute and has resigned.

If the Adjudicator does not so notify within 3 Business Days of the issue of the Notice of Adjudication, either Framework Party may act as if he has resigned.

46.14 The terms of remuneration of the Adjudicator are agreed by the Framework Parties and the Adjudicator, with the object of securing the appointment of the Adjudicator, within 7 days of the Notice of Adjudication. If any Framework Party (but not all the Framework Parties) rejects the terms of the remuneration of the Adjudicator the same are settled (and binding upon the Framework Parties) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the Framework Parties by the Adjudicator). If all the Framework Parties reject the terms of remuneration proposed by an Adjudicator another person is selected as an Adjudicator in accordance with clause 46.8.

46.15 Within 5 Business Days of a Framework Party giving a Notice of Adjudication he:

46.15.1 refers the Dispute to the Adjudicator,

46.15.2 provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and

46.15.3 provides a copy of the information and supporting documents he has provided to the Adjudicator to the other Framework Party.

Upon receipt of the referral notice, the Adjudicator must inform every party to the Dispute of the date that it was received.

46.16 Within 10 Business Days from the referral, any Framework Party, who is not the Framework Party giving a Notice of Adjudication, provides the Adjudicator with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

These periods may be extended if the Adjudicator and Framework Parties agree.

46.17 The Adjudicator may:

46.17.1 make directions for the conduct of the Dispute

46.17.2 review and revise any action or inaction of the Framework Employer related to the Dispute

46.17.3 take the initiative in ascertaining the facts and the law related to the Dispute

46.17.4 instruct a Framework Party to provide further information related to the Dispute within a stated time and

46.17.5 instruct a Framework Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

46.18 If a Framework Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.

46.19 The Adjudicator considers any relevant information submitted to him by any of the Framework Parties and makes available to them any information to be taken into account in reaching a decision.

46.20 With the consent of the Framework Parties the Adjudicator may adjudicate on more than one dispute under or in connection with the Framework Agreement. The Adjudicator may also adjudicate on matters under or in connection with different contracts, including any Call-Off Contract, or subcontracts where there is a dispute under or in connection with the Framework Agreement. The referral by a Framework Party of any such related dispute to the Adjudicator occurs at the same time as the referral of the dispute under or in connection with the Framework Agreement. In the event of such a referral the Framework Parties are interpreted as including the other relevant parties, for the purposes of the Dispute and this clause 46.

46.21 A communication between a Framework Party and the Adjudicator is communicated to the other Framework Party at the same time.

- 46.22 All notices, written submissions and any other written communications between the Framework Parties and the Adjudicator are either delivered by hand, sent by e-mail or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Framework Parties. Copies by way of confirmation of all communications by e-mail between the Framework Parties and the Adjudicator are also sent by first class post within 24 hours after transmission.
- 46.23 Save as required by law, the Framework Parties and the Adjudicator keep information relating to the Dispute confidential.
- 46.24 The Adjudicator decides the Dispute and notifies the Framework Parties of his decision and his reasons in writing within 28 days of receipt by him of the referral notice. This period may be extended by up to 14 days with the consent of the Framework Party giving the Notice of Adjudication or by any other period agreed by the Framework Parties.
- 46.25 Unless the Framework Parties otherwise agree, the Adjudicator may allocate the costs and expenses of the adjudication, including the fees and expenses of the Adjudicator, as between the Framework Parties. The Adjudicator allocates such costs and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of such costs and expenses. The Framework Parties agree to be bound by the Adjudicator's allocation of such costs and expenses and pay such costs and expenses in accordance with the direction of the Adjudicator unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
- 46.26 Unless and until the Adjudicator has notified the Framework Parties of his decision the Framework Parties proceed as if the matter disputed was not disputed.
- 46.27 If the Adjudicator does not make his decision and notify it to the Framework Parties within the time provided by this Framework Agreement the Framework Parties and the Adjudicator may agree to extend the period for making his decision. If they do not agree to an extension, either Framework Party may act as if the Adjudicator has resigned.

- 46.28 The Adjudicator's decision is binding on the Framework Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Framework Parties and not as an arbitral award. The Adjudicator's decision is final and binding if neither Framework Party has notified the other within the times required by this Framework Agreement that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the courts or unless agreed otherwise by the Framework Parties.
- 46.29 The Adjudicator may, on his own initiative or on the application of a Framework Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within 5 Business Days of the delivery of the decision to the Framework Parties. As soon as possible after correcting a decision in accordance with this clause, the Adjudicator must deliver a copy of the corrected decision to each of the Framework Parties. Any correction of a decision forms part of the decision.
- 46.30 Unless the Framework Parties agree otherwise, a Framework Party does not refer any Dispute under or in connection with this Framework Agreement to the courts unless it has first been decided by the Adjudicator in accordance with this Framework Agreement.
- 46.31 Any Framework Party may apply to any appropriate court for enforcement of the Adjudicator's decision.
- 46.32 If, after the Adjudicator notifies his decision, a Framework Party is dissatisfied, that Framework Party may notify the other Framework Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within 6 weeks of the notification of the Adjudicator's decision.
- 46.33 The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the Framework Employer related to the Dispute. A Framework Party is not limited in court proceedings to the information or evidence put to the Adjudicator.
- 46.34 A Framework Party does not call the Adjudicator as a witness in court proceedings.

47. **Governing Law**

The Framework Agreement is governed by and construed in accordance with the law of England. Without prejudice to clause 46, the courts of England have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Framework Agreement provided that the Framework Employer has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated. The Framework Parties agree irrevocably to submit to that jurisdiction.

THE FRAMEWORK AGREEMENT has been executed as a Deed and delivered by the Framework Parties the day and year written above.

EXECUTED as a **DEED** by the)
Contractor)
acting by a Director and its)
Company Secretary or two)
Directors)

Director

Director/Secretary

The Common Seal/Corporate Seal of
TRANSPORT FOR LONDON was
affixed to this **DEED** in the presence of:

.....
Name and description of authorised signatory

SCHEDULE 1

FRAMEWORK DATA

1. **Agreement Reference Number:** tfl_scp_000254
2. **Contract title:** London Highways Alliance – South Area
3. **Name of Contractor:** EnterpriseMouchel Limited
Address: 4th Floor, St John's House, 2-10 Queen Street, Manchester, M2 5JB
4. **Name of Parent Companies:** EnterpriseMouchel Limited is equally owned by Enterprise (AOL) Ltd and Mouchel Limited
Address: **Enterprise (AOL) Limited**, Lancaster House, Centurion Way, Leyland, Lancashire, PR26 6TX
Address: **Mouchel Limited**, Export House, Causey Way, Woking, Surrey, GU21 6QX
5. **Framework Agreement Service Commencement Date:** the date of the Framework Agreement
6. **Framework Term:** the period from and including the Framework Agreement Service Commencement Date until and including 31 March 2021, subject to adjustment pursuant to clause 11 of the Framework Agreement
7. **Details of the Framework Manager**
Name: [REDACTED]
Address: 8th Floor, Palestra, 197 Blackfriars Road, London, SE1 8NJ
Tel: [REDACTED]
Fax: [REDACTED]
Email: [REDACTED]
8. The Framework Scope is as set out in Schedule 2
9. The Framework Area is as set out in Schedule 2
10. Address for service of notices and other documents in accordance with Clause 44 is:

For the Employer:	Transport for London Surface Transport 8 th Floor, Palestra, 197 Blackfriars, London SE1 8NJ Facsimile number: [REDACTED] For the attention of: [REDACTED]
For the Contractor:	1A Naval Row Poplar London E14 9PS

Telephone number: 02086653550

11. The *language of this contract* is English

12. The *period for reply* is two weeks

13. Payment

- The *currency of this contract* is the pound sterling (£)
- The *interest rate* is 2% per annum above the base rate of Lloyds Bank
- The *assessment interval* is monthly
- The Contractor submits invoices monthly and such invoices contain the information required by each Call-Off Contract,
- The *exchange rates* are those published by Lloyds Bank at 12:00 Monday in the week in which the transaction takes place.

14. The Key Personnel of the Contractor

Position	Name
Contractor Manager	
London Borough Engagement & Mobilisation Manager	
Work Planning & Scheduling Office Manager	
Press & PR Officer	
Core Service Manager	
Tunnels & Structures Manager	
Tunnels Manager	
Scheme Task Order Manager	
Design Manager	
Business Manager	
Business Systems & ICT Manager	
HR Advisor & SLNT Coordinator	
Commercial & Supply Chain Manager	
Quality Manager	

Health & Safety Officer	
Environmental & Carbon Reduction Manager	

15. Subcontractors nominated by the Contractor are:

Subcontractor	Contact details	Work Type
Bardon Contracting Limited		Surfacing
DBI Prismo Limited		Lining & Anti-skid
O'Rourke Limited		General Civils
RTP Limited		General Civils
Flowline Limited		Drainage & Cleansing
Routesigns Limited		Signs
Marshall Surfacing Limited		General Civils & Surfacing

16. PRICING:

The *direct fee percentage* is

The *subcontracted fee percentage* is

The *target cost direct fee percentage* is

The *target cost subcontracted fee percentage* is

The Schedule of Rates is in Volume 4.

Data for Schedule of Cost Components

- The listed items of Equipment purchased for work on this contract, with an on cost charge, are

Equipment	time-related charge	per	time
		period	
.....	per
.....	per

- The rates for special Equipment are

Equipment	size or capacity	rate
.....

-
- The hourly rate for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee	hourly rate
----------------------	-------------

.....
.....

- The percentage of manufacture and fabrication overheads is [REDACTED]

**Data for both schedules
of cost components**

- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
----------------------	-------------

Principal Engineer for Design	[REDACTED]
Specialist/Expert A for Design	[REDACTED]
Specialist Expert B for Design	[REDACTED]
Senior Professional A for Design	[REDACTED]
Senior Professional B for Design	[REDACTED]
Engineer A for Design	[REDACTED]
Engineer B for Design	[REDACTED]
Incorporated Engineer for Design	[REDACTED]
Graduate Engineer for Design	[REDACTED]
Senior Technician for Design	[REDACTED]
Technician for Design	[REDACTED]
CAD Technician for Design	[REDACTED]
Junior for Design	[REDACTED]
Technical Admin Officer for Design	[REDACTED]
CDM Co-Ordinator	[REDACTED]

- The percentage for design overheads is [REDACTED]
- The percentage for people overheads is [REDACTED]

**Data for the Shorter
Schedule of Cost
Components**

- The published list of Equipment is the last edition of the list published by the Civil Engineering Contractors' Association (CECA).
- The percentage for adjustment for Equipment in the published list is [REDACTED]

- The rates for other Equipment are

Equipment	size or capacity	rate
.....
.....

17. CONTRACTOR'S SHARE:

The *Contractor's* share percentages and the share ranges are

<i>share range</i>	<i>Contractor's share percentage</i>
less than 80%	0%
from 80% to 90%	25%
from 90% to 110%	50%
from 110% to 120%	75%
greater than 120%	100%

18. VOLUME REBATE:

In accordance with clause 7 of the Framework Agreement – Volume Rebate Percentage on the following Aggregated Annual Spend thresholds.

Aggregated Annual Spend threshold	Volume Rebate Percentage
£0 - £40,000,000	
£40,000,000.01 - £45,000,000	
£45,000,000.01 - £55,000,000	
£55,000,000.01 - £65,000,000	
£65,000,000.01 - £75,000,000	
£75,000,000.01 - £85,000,000	
£85,000,000.01+	

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SCHEDULE 2

FRAMEWORK SCOPE

Framework Area

The Framework Area of this Framework Agreement is shown in Appendix 1. Broadly the Framework Area is within the geographical boundaries of the London Boroughs of Richmond upon Thames, Kingston upon Thames, Merton, Sutton, Croydon, Bromley, Lewisham, Greenwich and Bexley but also including Rotherhithe and both Blackwall Tunnels

Scope

1. The scope of this framework is to perform highways maintenance and improvement schemes across London, including on the Transport for London Road Network (TLRN) and Borough roads.
2. Although work will be primarily carried out on highways, work may be instructed off highway on housing estates, green space, schools, bus stations, garages, car parks, crematoriums, cemeteries and any other locations requested by an Employer.
3. The scope of this framework includes the following activities and any associated requirements:

- **Maintenance and Improvement Works:**

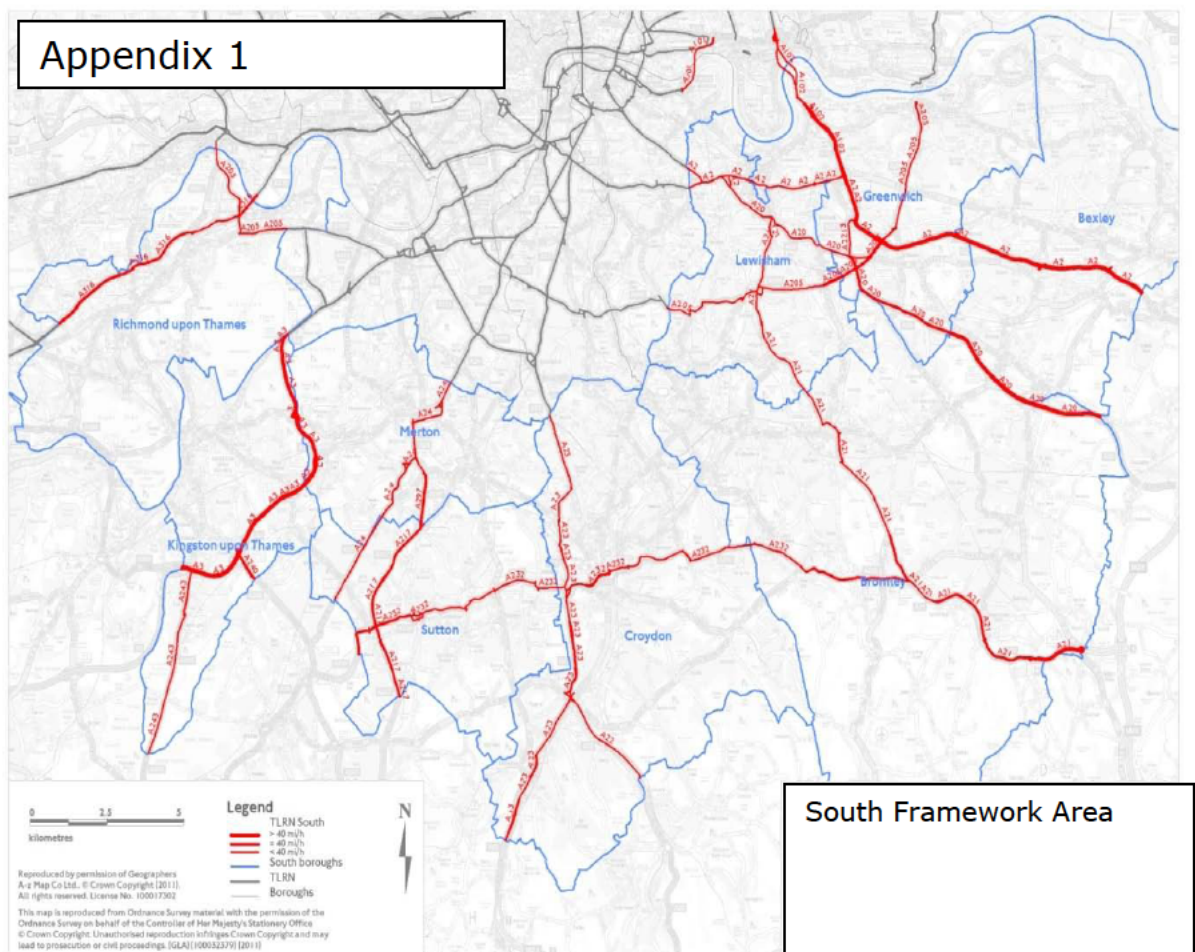
- Road pavements (including minor repairs and resurfacing)
- Kerbs, footways and paved areas
- Traffic signs
- Street lighting
- Road markings
- Fencing
- Road restraint systems (including pedestrian guardrailing)
- Drainage
- Earthworks
- Horticulture, landscaping and ecology
- Bridges and other structures
- Tunnels
- Street furniture

- **Related Services:**

- Winter service

- Emergency call-out service
- Associated civil engineering work
- Horticulture, landscaping and ecology
- Street cleansing (street sweeping and litter picking)
- Street cleansing (gully cleansing)
- **Professional Services:**
 - Asset safety inspections
 - Asset service inspections
 - Inspections of bridges and other structures
 - Design services for design and build scheme work including associated site investigations and surveys

Appendix 1



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SCHEDULE 3
SERVICE INFORMATION

See Volume 2

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SCHEDULE 4

CALL-OFF REQUEST FORM

Framework Number:
Request Form Number:

To:
Address:

From:
Date:

This is a Call-Off Request Form for the provision of works and/or services in accordance with the Framework Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Call-Off Proposal must be submitted as an offer capable of acceptance by the Employer; however such acceptance will not occur unless and until the Employer posts notice of acceptance to you.

Attachment 1 of this Call-Off Request Form sets out the Contract Data Part One and other relevant information.

Attachment 2 of this Call-Off Request sets out the Employer's Call Off Service Information.

In your Call-Off Proposal, you must respond by completing the Contract Data Part Two and attach a copy of the duly completed Price List for the service, Attachment 3.

The Employer is under no obligation to award any Call-Off Contract as a result of this Call-Off Request Form. The Employer shall not be liable for any costs, charges or expenses borne by you or on your behalf whether or not you are awarded a Call-Off Contract, which for the avoidance of doubt includes any costs, charges and expenses arising from or associated with an abortive or cancelled procurement process.

You must complete and return your Call-Off Proposal by [INSERT DATE]. Please e-mail your Call-Off Proposal, and send a paper copy to:

Name:

e-mail address:

Postal address:

Telephone:

Any queries regarding this Call-Off Request Form should be directed to the above via e-mail. Any queries regarding the Framework Agreement should be directed to the Framework Manager named in the Framework Agreement.

Signed: _____
for and on behalf of [NAME OF EMPLOYER]

Attachments: Attachment 1 of this Call-Off Request Form sets out the Contract Data Part One and other relevant information
Attachment 2 of this Call-Off Request sets out the Employer's Service Information
Attachment 3 Price List, Employer lump sums and Employer specific Schedule of Rates items

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SCHEDULE 5

CALL-OFF FORM OF AGREEMENT

Form of Agreement

THIS [DEED] [AGREEMENT] is made the..... day of20[].

BETWEEN

1. [EMPLOYER] of [ADDRESS] [OR] [TRANSPORT FOR LONDON a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42- 50 Victoria Street, London SW1H 0TL]¹ ("the *Employer*") which expression shall include its successors in title and assigns;

AND

2. [INSERT CONTRACTOR'S NAME], a company incorporated in and in accordance with the laws of [INSERT COUNTRY OF REGISTRATION (USUALLY ENGLAND AND WALES)] having as its registered number [INSERT COMPANY NUMBER] and its registered office at [INSERT CONTRACTORS REGISTERED OFFICE ADDRESS - THIS MAY BE DIFFERENT FROM THEIR TRADING/USUAL POSTAL ADDRESS] (hereinafter called "the *Contractor*").

RECITALS

- (1) This contract is made pursuant to a framework agreement between Transport for London and the *Contractor* relating to the provision of highways maintenance and other works or services dated [] ("the Framework Agreement").
- (2) The *Employer* wishes the *Contractor* to provide the *service*.
- (3) The *Employer* has accepted an offer by the *Contractor* in accordance with the Framework Agreement and subject to the provisions of this contract is willing to engage the *Contractor* to carry out the *service* in accordance with this contract.

NOW IT IS HEREBY AGREED as follows:

1. In this Form of Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are an amended NEC Term Services Contract 1st Edition June 2005 (together with and as amended by Dispute Resolution Option W2) as set out in Schedule 7 to the Framework Agreement.
3. This contract shall mean this Form of Agreement and the following documents which are hereby incorporated into and shall comprise this contract:
 - 3.1 the *conditions of contract*;
 - 3.2 the Contract Data Part One;
 - 3.3 the Contract Data Part Two;

¹ Details to be completed for the relevant employer calling off under the Framework Agreement.

3.4 the Service Information;

[3.5 **INSERT DETAILS OF ANY OTHER CONTRACT DOCUMENTS**].

4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in Clause 3 of this Form of Agreement.
5. The *Contractor* Provides the Service in accordance with this contract and the terms of the Framework Agreement.
6. The *Employer* pays the *Contractor* for complying with his obligations to Provide the Service the amount due in accordance with this contract.
- 7 Notwithstanding the manner of execution of this contract it is agreed that:
 - 7.1 the limitation period within which any claim may be brought by the *Employer* for breach of this contract by the *Contractor* is 12 years from the date of breach; and
 - 7.2 the *Contractor* agrees not to raise in defence of any such claim a shorter limitation period whether pursuant to the Limitation Act 1980 (as the same may be amended or re-enacted from time to time) or otherwise.

[THIS DOCUMENT is executed as a deed and delivered on the date stated at the start of this Deed.]
[Note: delete this wording if the Form of Agreement is not executed as a deed]

[INSERT APPROPRIATE EXECUTION CLAUSES]

SCHEDULE 6

CALL-OFF CONTRACT DATA

CONTRACT DATA

Part One - Data provided by the *Employer*

Statements given in all contracts

- 1 General
- The *conditions of contract* are the core clauses and dispute resolution Option W2 of the NEC3 Term Service Contract 1st Edition (June 2005) amended and supplemented as set out in Schedule 7 to the Framework Agreement

- The *service* is.....
and any Task.

- The *Employer* is

Name

Address

- The *Service Manager* is

Name

Address

- The *Adjudicator* is an independent person appointed
to act as an adjudicator in accordance with clause W2.2

- The Affected Property is highways and other assets within the boundaries of [the London Borough of] which the *Employer* has maintenance responsibility for as more fully described in the Employer's Service Information and any Task Site identified in a Task Order which is not within that area.

-
- The Service Information is in the document titled [.....] and the Service Information (common).

-
- The *language of this contract* is as set out in the Framework Data, Schedule 1 to the Framework Agreement

-
- The *period for reply* is as set out in the Framework Data, Schedule 1 to the Framework Agreement

-
- The *Adjudicator nominating body* is the President or

Vice President or other duly authorised officer of the London Court

of International Arbitration

-
- The *tribunal* is the courts of England and Wales
-

-
- The following matters will be included in the Risk Register
-
-

-
- The *Contractor* attends risk reduction meetings at the frequency of once per month.
-

2 The *Contractor's* main responsibilities

-
- The Contractor submits a first plan for acceptance within four weeks of the Contract Date.

3 Time

- The *starting date* is
- The *service period* is the period from and including the *starting date* until and including [.....] subject to adjustment equivalent to any adjustment of the Framework Term under clause 11 of the Framework

Agreement

- 4 Defects
 - Where applicable the defects date for a Task is 52 weeks.
 - The *defect correction period* is 1 week for Immediate and Minor Tasks and 4 weeks for Scheme Tasks and Core Service activities
- 5 Payment
 - See Framework Data, Schedule 1 to the Framework Agreement

Where the Target Cost Option applies

- The *Contractor's* share percentages and the share ranges are as set out in the Framework Data, Schedule 1 to the Framework Agreement.

The amount of the performance bond is

- [£...]

If there are additional *Employer's* risks

- These are additional *Employer's* risks

1

.....

2

.....

3

.....

If the *Employer* is to provide Plant and Materials

- The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of

Part two - Data provided by the *Contractor*

Statements given in all contracts

- The *Contractor* is named in the Framework Data, Schedule 1 to the Framework Agreement
 - The *direct fee percentage* is as set out in the Framework Data, Schedule 1 to the Framework Agreement
 - The *target cost direct fee percentage* is as set out in the Framework Data, Schedule 1 to the Framework Agreement
 - The *subcontracted fee percentage* is as set out in the Framework Data, Schedule 1 to the Framework Agreement
 - The *target cost subcontracted fee percentage* is as set out in the Framework Data, Schedule 1 to the Framework Agreement
- .
- The *price list* is [as attached]

The key persons of the *Contractor* who are not already named in the Framework Agreement as Key Personnel are:

Position	Name
Contract manager	(enter)
Core Service manager	(enter)
Scheme Task Order manager	(enter)
Design manager	(enter)
H&S officer	(enter)
Quality manager	(enter)
Press & PR officer	(enter)
(enter)	(enter)

Subcontractors nominated by the *Contractor* who are not already named in the Framework Agreement are:

Subcontractor	Contact details	Work Type
---------------	-----------------	-----------

(enter)	(enter)	(enter)
(enter)	(enter)	(enter)
(enter)	(enter)	(enter)
(enter)	(enter)	(enter)
(enter)	(enter)	(enter)
(enter)	(enter)	(enter)
(enter)	(enter)	(enter)
(enter)	(enter)	(enter)

**Data for Schedule of
Cost Components**

- is as set out in the Framework Data, Schedule 1 to the Framework Agreement

**Data for the Shorter
Schedule of Cost
Components**

- is as set out in the Framework Data, Schedule 1 to the Framework Agreement

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SCHEDULE 7

CONDITIONS OF CONTRACT

These conditions are based on the NEC family of contracts, the copyright of which
belongs to the Institution of Civil Engineers

CONTENTS

Core clauses	1	General	1
	2	The <i>Contractor's</i> main responsibilities	12
	3	Time	24
	4	Testing and Defects	26
	5	Payment	27
	6	Compensation events	31
	7	Use of equipment, Plant and Materials	37
	8	Risks and insurance	38
	9	Termination	42
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Dispute resolution	W2	Option W2	57

Term Service Contract

CORE CLAUSES

1 General

Actions 10

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

Identified and defined terms 11

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

- 11.2 (1) The Accepted Plan is the plan identified in the Contract Data or is the latest plan accepted by the *Service Manager*. The latest plan accepted by the *Service Manager* supersedes previous Accepted Plans. Neither the Accepted Plan, nor any method statement attached to the Accepted Plan, form part of the Service Information.

(2) Affected Property is property of the *Employer* or Others which is affected by the work of the *Contractor* or used by the *Contractor* in Providing the Service and which is identified in the Contract Data.

(3) The Contract Date is the date of the Form of Agreement.

(4) A Defect is

- a part of the *service* which is not provided in accordance with the Service Information or a Task Order (as appropriate) or the *Contractor's* obligations under this contract or
- a part of the *service* which is not in accordance with the applicable law or the *Contractor's* design which the *Service Manager* has accepted or all applicable licences and approvals or the Accepted Plan.

(5) Defined Cost is

- the cost of the components in the Shorter Schedule of Cost Components attached at Schedule 16 of the Framework Agreement whether work is subcontracted or not excluding the cost of preparing quotations for compensation events

less Disallowed Cost

or when the Target Cost Option applies

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
 - retention,
 - the correction of Defects,
 - payments to Others and
 - the supply of equipment, supplies and services included in the charge for such costs calculated under item 41 of the Schedule of Cost Components attached at Appendix 4 of this contract

and

- the cost of components in the Schedule of Cost Components attached at Appendix 4 of this contract for other work

less Disallowed Cost.

(6) Disallowed Cost is cost which the *Service Manager* decides

- the *Contractor* is unable to demonstrate has been reasonably and properly incurred by the *Contractor* for the purposes of this contract,
- would not have been incurred had the *Contractor* Provided the Service as economically as possible having regard to the nature of the service the prices of materials and goods and the rates of wages current at the time that the relevant work or service is provided,
- would not have been incurred had the number of persons engaged in the Provision of the Service been only that required for Providing the Service in accordance with this contract,
- was incurred as a result of any breach of contract or default by the *Contractor*,
- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Service Information or relevant Task Order (as appropriate) or
 - follow a requirement of this contract or
 - give an early warning which this contract required him to give

and the cost of

- correcting Defects,
- Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Service Information or relevant Task Order (as appropriate),
- resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away from the Affected Property or relevant Task Site (as appropriate) when the *Service Manager* requested and
- preparation for and conduct of an adjudication or proceedings of the *tribunal*.

(7) Equipment is items provided by the *Contractor* and used by him to Provide the Service and which the Service Information does not require him to include in the Affected Property.

(8) The 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

or where the Target Cost Option applies

- *target cost subcontracted fee percentage* to the Defined Cost of subcontracted work and the *target cost direct fee percentage* to the Defined Cost of other work.

(9) Others are people or organisations who are not the *Employer*, the *Service Manager*, the *Adjudicator*, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor*.

(10) The Parties are the *Employer* (which expression includes its successors in title and permitted assigns) and the *Contractor*.

(11) Plant and Materials are items intended to be included in the Affected Property.

(12) The Price List is the *price list* unless later changed in accordance with this contract.

(13) To Provide the Service means to do the work necessary to provide the service in accordance with this contract and all incidental work, services and actions which this contract requires.

(14) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Service Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(15) Service Information is information which

- specifies and describes the *service* and/or
- states any constraints on how the *Contractor* Provides the Service

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with this contract.

(16) A Subcontractor is a person or organisation including, without limitation any sub-consultant who has a contract with the *Contractor* to

- construct or install or design part of the *service* or
- provide a part of the *service* or
- supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *service*.

(17) The Price for Services Provided to Date is

- for any lump sum item where the Price List identifies that payment is to be made in specified instalments the relevant instalment in accordance with the Price List
- for other lump sum items the Price for each lump sum item in the Price List which the *Contractor* has completed in accordance with this contract and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed in accordance with the contract by the relevant rate

or where the Target Cost Option applies

- the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Contractor* before the next assessment date for work or services that has been done at the assessment date which forecast is calculated on the basis of copy invoices provided by the *Contractor* (whether paid or due to be paid before the next assessment date) plus the Target Cost Fee.

(19) The Prices are

for the Core Service

- the amounts stated in the Price column of the Price List. Where a quantity is stated for an amount in the Price List, the Price is calculated by multiplying the quantity by the relevant rate or lump sum prices stated in the Price column of the Price List
- where the Target Cost Option applies, the amounts stated in the Price column of the Annual Price List. Where a quantity is stated for an amount in the Annual Price List, the Price is calculated by multiplying the quantity by the relevant rate

and for Tasks

- the amounts stated in the Price column of the Task Price List where the Lump Sum Option or the Target Cost Option applies. Where a quantity is stated for an item in the Task Price List, the Price is calculated by multiplying the quantity by the relevant rate where the Lump Sum Option or the Target Cost Option applies
- the estimate of the outturn cost of the Task as stated in the Task Price List where the Remeasure Option applies.

(22) Aborted Design Fee is the lesser of

- the amount for services completed calculated by multiplying the quantity of services done by the rates in the Price List or (if applicable) the Task Price List and
- the Design Fee.

(23) The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

(24) Annual Price List means a price list for a Financial Year developed in accordance with clause 119.

(25) Background IPR means IPR owned by the *Contractor* or a Subcontractor

or other third party and which is not assigned to the *Employer* pursuant to clause 28.

(26) Best Value Direction means the Best Value Authorities Staff Transfers (Pensions) Direction 2007, as amended and supplemented from time to time.

(27) CDM Regulations are the Construction (Design and Management) Regulations 2007 and any amendment, consolidation, revision and/or replacement thereto and the related Approved Code of Practice together with any requirements issued from time to time by the Health and Safety Executive.

(28) Cessation Plan means a plan agreed between the Parties or determined by the *Employer* pursuant to clause 94 to give effect to a Declaration of Ineffectiveness.

(29) Construction Industry Scheme means the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Regulations 2005.

(30) Contractor's Personnel means all such employees, officers, suppliers, Subcontractors and agents of the *Contractor* as are engaged in providing the *service*.

(31) Core Service means the *service* excluding instructed Tasks.

(32) Current Supplier means any provider of services substantially similar to the *service* immediately before the *starting date* including, for the avoidance of doubt, the *Employer* in circumstances where it sources in-house the provision of services substantially similar to the *service* immediately before the *starting date*.

(33) Declaration of Ineffectiveness means a declaration of ineffectiveness in relation to this contract made by a Court of competent jurisdiction pursuant to Regulation 47(k) of the Public Contracts Regulations 2006 (as amended) or Regulation 45(k) of the Utilities Contracts Regulations 2006 (as amended).

(34) Design Fee is the amount calculated by applying the percentage stated in the Task Price List to the *Service Manager's* forecast of the cost of construction of the works to which the Task relates by reference to clause 29.2.4.

(35) Dispute means any dispute, controversy or claim arising out of or in connection with this contract.

(36) Eligible Employees means Transferring Staff who are either active members of, or eligible to join the LGPS on the *starting date*.

(37) Employer Lane Rental Scheme (comprising Scheme document, Appendix and Borough Lane Rental Map) is the Lane Rental Scheme described in the Service Information.

(38) Employer Premises are any premises owned, leased or under the control of the *Employer*.

(39) Employment Costs means salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs in respect of the Transferring Staff or the Re-Transferring Personnel.

(40) Financial Year means a calendar year ending 31 March.

(41) Form of Agreement is the document executed by the *Employer* and the *Contractor* under which the *Contractor* has agreed to Provide the Service.

(42) Framework means the framework of agreements entered into between Transport for London and various contractors (including the *Contractor*) referred to as the "London Highways Alliance Framework".

(43) Framework Agreement means the framework agreement between Transport for London and the *Contractor* referred to in the Form of Agreement pursuant to which this contract was issued.

(44) Further Transfer Date means the date of the transfer of employment of the Re-Transferring Personnel from the *Contractor* to the *Employer* or any

Replacement Supplier.

(45) Holding Company means any company which directly or indirectly controls the *Contractor* where “control” is as defined by Section 1124 of the Corporation Tax Act 2010.

(46) Indirect Subcontractor means any subcontractor or subconsultant of whatever tier beneath any Subcontractor appointed in relation to the *service*.

(47) Insolvency means (in the case of a company or partnership) the making of a winding-up order against it, the appointment of a provisional liquidator, the passing of a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency), the making of an administration order against it, the appointment of a receiver, receiver and manager, or administrative receiver over the whole or a substantial part of its undertaking or assets, or the making of an arrangement with its creditors or (in the case of an individual) the presentation of a petition for bankruptcy, the making of a bankruptcy order against him, the appointment of a receiver over his assets or the making of an arrangement with his creditor.

(48) An Immediate Task is work or services within the *service* which requires immediate response within 1 or 2 hours as further described in the Service Information.

(49) IPR means intellectual property rights including patents, trade marks or names, service marks, trade names, design rights (in each case whether registered or unregistered), copyright (including rights in computer software and databases), moral rights, rights in know-how, rights in domain names, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, (including any professional, manufacturer's or supplier's warranties and/or indemnities) in each case whether registered or unregistered, and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world.

(50) Lane Rental Road Segment or Pinchpoint is as identified in the Employers Lane Rental Scheme.

(51) Lane Rental Times and Charge Rates are the times and rates identified in the Employers Lane Rental Scheme.

(52) LGPS means 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.

(53) A Minor Task is work or services within the *service* which is capable of completion within 3 days or less as further described in the Service Information but which is not an Immediate Task.

(54) Mobilisation Plan is the mobilisation plan submitted as part of the Contractor's Quality Submission.

(55) Non-eligible employees means Transferring Staff who are not active members of, or eligible to join the LGPS on the *starting date*.

(56) Notice of Adjudication means any notice given by a party to the Dispute to the other party or parties thereto requiring reference of a Dispute to the *Adjudicator* in accordance with clause W2.1. The Notice of Adjudication includes

- the nature and a brief description of the Dispute,
- details of where and when the Dispute arose, and
- the nature of the redress which is sought.

(57) Pay Less Notice means the notice referred to in clause 51.5.

(58) A Percentage Fee Design Task is a Task for design services where the Lump Sum Option applies and the lump sum is expressed to be a percentage of the construction cost of the works to which the Task relates.

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

(60) Replacement Supplier means any replacement supplier or provider to the *Employer* of the *service* (or any part of it).

(61) Re-Transferring Personnel means any Contractor's Personnel or personnel engaged by any relevant Subcontractor who:

- will transfer to the employment of either the *Employer* or the Replacement Supplier pursuant to the Regulations or
- accepts an offer of employment from the *Employer* or a Replacement Supplier (as appropriate),

upon the expiration or termination (in whole or in part) of this contract or the appointment of a Replacement Supplier.

(62) Schedule of Rates Supplementary Information is the schedule of rates supplementary information set out in the Price List.

(63) A Scheme Task is work or services within the *service* which has a planned duration of 4 days or more as further described in the Service Information.

(64) Senior Representative means a representative of a Party at senior executive level.

(65) Shorter Schedule of Cost Components is set out at Schedule 16 of the Framework Agreement.

(66) A Statutory Requirement is

- any Act of Parliament
- any instrument, rule or order made under any Act of Parliament
- any regulation or bylaw of any local authority or of any Statutory Undertaker which has any jurisdiction with regard to the *service* or with whose systems the same are or will be connected including any statutory provisions and
- any decisions of a relevant authority under the statutory provisions which control the right to develop the Affected Property on which the *service* is to be provided (including, without limitation, any planning permission).

(67) Statutory Undertaker means any governmental or local authority or statutory undertaker

- which has any jurisdiction with regard to the *service* including without limitation any jurisdiction to control development of the Affected Property or any part thereof
- with whose requirements the *Employer* is accustomed to comply or
- with whose systems and/or utilities the *service* will be associated.

(68) Target Cost Election means an election by the *Employer* to apply the Target Cost Option for the Core Service pursuant to clause 119.

(69) Target Cost Option see clause 119.

(70) Not used

(71) A Task is an Immediate Task, a Minor Task or a Scheme Task which the *Service Manager* may instruct the *Contractor* to carry out.

(72) Task Completion is when the *Contractor* has done all the work or services which the Task Order states he is to do and corrected notified Defects which would have prevented the *Employer* or Others from using the Task and Others from doing their work.

(73) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.

(74) Task Defect Certificate is either a list of Defects that the *Service Manager* has notified before the relevant defects date identified in a Task Order for a Task which the *Contractor* has not corrected or, if there are no such Defects in respect of the relevant Task, a statement that there are none.

(75) Task Information is information specific to a Task which

- supplements the Service Information
- specifies and describes the Task and/or
- states any constraints on how the *Contractor* is to provide the Task

and is provided with a Task Order.

(76) A Task Order is the *Service Manager's* instruction to carry out a Task.

(77) Task Price List means the price list for a Task submitted by the *Contractor* with a Task Response.

(78) The Task Price to Date is

- where the Lump Sum Option applies
 - the total of the Price for each lump sum item in the Task Price List which the *Contractor* has completed in accordance with the contract
 - where a quantity is stated for an item in the Task Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed in accordance with the contract by the relevant rate
 - where the Task is a Percentage Fee Design Task the *Service Manager's* reasonable assessment of the proportion of the Design Fee attributable to the design completed in accordance with the contract at the assessment date and
 - where the Task is a Percentage Fee Design Task and the Task has been terminated before Task Completion, the Aborted Design Fee

and

- where the Remeasure Option applies
 - the amount for work or services completed in accordance with the contract calculated
 - by multiplying the quantity of work or services done by the relevant rates and lump sums in the Task Price List in accordance with the Schedule of Rates Supplementary Information
 - where there is no item in the Task Price List that corresponds to an item of work or services done, by multiplying the quantity of work or services done by the rates and lump sums in the Price List in accordance with the Schedule of Rates Supplementary Information
 - where there is no item in the Price List that corresponds to an item of work or services done, by multiplying the quantity of work or services done by the rates and lump sums in the Price List for works or services of a similar character and executed under similar conditions
 - where there is no item in the Price List that corresponds to an item of work or services done and there are no rates or lump sums in the Price List for works or services of a similar character and executed under similar conditions, as the cost of components in the Shorter Schedule of Cost Components for the relevant item plus the amount calculated by applying to such cost components the *subcontracted fee percentage* to subcontracted items and the *direct fee percentage* to other items

and

- where the Target Cost Option applies the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Contractor* before the next assessment date for work or services that has been done at the assessment date which forecast is calculated on the basis of copy invoices provided by the *Contractor* (whether paid or due to be paid before the next assessment date) plus the Fee.

(79) A Task Request is a written request in the form of the template at Appendix 3 of this contract from the *Service Manager* to the *Contractor* in accordance with this contract for a proposed Task.

(80) A Task Response is the *Contractor's* written response in the form of the template at Appendix 3 of this contract to a Task Request in accordance with this contract.

(81) The Task Risk Register is a register of the risks which are listed in the Task Order relating to and in connection with the relevant Task, and the risks

which the *Service Manager* or the *Contractor* has notified as an early warning matter, in connection with the relevant Task. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(82) The Task Site is as stated in the Task Order.

(83) TfL Group means Transport for London ("TfL"), a statutory body set up by the Greater London Authority Act 1999 and all of its subsidiaries and their subsidiaries (as defined in Section 736 of the Companies Act 1985) from time to time, together with Cross London Rail Links Limited (company number 04212657) and reference to any "member of the TfL Group" refers to TfL or any such subsidiary.

(84) Third Party Losses are any claim by a third party arising out of death or personal injury or loss of or damage to property (including any associated costs or expense) arising out of or in connection with the *service*.

(85) Transfer of Provision means the transfer of the provision of the *service* from the provision by the Current Supplier to the provision by the *Contractor*.

(86) Transferring Staff means such employees as are named in Appendix 1 to this contract.

(87) Volume Rebate is the amount payable or allowable to the *Employer* in each Financial Year calculated in accordance with clause 7 of the Framework Agreement.

**Interpretation and
the law 12**

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.2 This contract is governed by English law and the parties submit to the non-exclusive jurisdiction of the English Courts.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 Without prejudice to the terms of the Framework Agreement, this contract supersedes any previous agreement, arrangement or understanding between the *Employer* and the *Contractor* in relation to the matters dealt with in this contract and represents the entire understanding and agreement between the *Employer* and the *Contractor* in relation to such matters. The *Employer* and *Contractor* acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract.
- 12.5 Any obligation imposed on either Party in this contract in the present tense is to be construed as an on-going obligation unless that obligation has been fulfilled.
- 12.6 Where the *Employer* is a member of the TfL Group then any other member of the TfL Group has the right to enforce the terms of this contract in accordance with the Contracts (Rights of Third Parties) Act 1999, but otherwise the *Employer* and the *Contractor* do not intend that any of the terms of this contract are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party. Notwithstanding the terms of this clause, the Parties are entitled to vary or rescind this contract without the consent of any or all members of the TfL Group (other than the *Employer*).
- 12.7 If any clause or part of this contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this contract and will be ineffective without, as far as is possible, modifying any other clause or part of this contract and this will not affect any other provisions of this contract which will remain in full force and effect. In the event that in the *Employer's* reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this contract, the *Employer* and the *Contractor* immediately commence good faith negotiations to remedy such invalidity.
- 12.8 The headings to the sections, clauses and sub-clauses of these *conditions of contract* are for convenience only and do not affect their construction or interpretation.

- 12.9 A reference in these *conditions of contract* to any applicable law or Statutory Requirement includes
- that law or Statutory Requirement as from time to time amended, re-enacted or substituted and
 - any orders, rules, regulations, schemes, warrants, bye-laws, directives or codes of practice raised under any such law or Statutory Requirement.
- 12.10 Notwithstanding the Contract Date, the conditions of this contract cover all work and services carried out by the *Contractor* from the date when he first commenced performance of the *service* and this contract and the warranties and undertakings in this contract are deemed to apply to all work and services performed by the *Contractor* both before and after the Contract Date.
- 12.11 Failure by the *Employer* to exercise his rights under this contract does not constitute waiver of those rights nor any of them nor does any such failure relieve the *Contractor* from any of his obligations under this contract. The waiver in one instance of any right, condition or requirement does not constitute a continuing or general waiver of that or any other right, condition or requirement.
- 12.12 A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
- 12.13 In this contract the words “including”, “includes” and “included” are construed without limitation unless inconsistent with the context.

Communications 13

- 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 *language of this contract*.
- 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 *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*. Where the *period for reply* includes Christmas Day, Good Friday, a day under which the Banking and Financial Dealings Act 1971 is a Bank Holiday in England and Wales or any other public holiday in England, that day is excluded for the purpose of calculating the period.
- 13.4 The *Service Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Service Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Service Manager* may extend the *period for reply* to a communication if the *Service Manager* and the *Contractor* agree to the extension before the reply is due. The *Service Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Service Manager* issues his certificates to the *Employer* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Service Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The Service Manager 14

- 14.1 No acceptance, approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the *Employer* or the *Service Manager*, nor any enquiry or inspection which the *Employer* or the *Service Manager* makes or has carried out for its benefit or on its behalf at any time, operates to reduce, extinguish, exclude, limit or modify the *Contractor's* duties and obligations under this contract unless it is in writing from the *Employer*, refers to

this contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified.

- 14.2 The *Service Manager*, after notifying the *Contractor*, 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 *Contractor* which changes the Service Information or Task Information (as appropriate).
- 14.4 The *Employer* may replace the *Service Manager* after he has notified the *Contractor* of the name of the replacement.
- 14.5 The *Service Manager* is for relevant purposes the "specified person" as defined in Section 110A(6) of the Act.

**Employer provides right
of access and things 15**

- 15.1 The *Employer* provides the right of access for the *Contractor* to Affected Property as necessary for the work in this contract subject to any constraints stated in the Service Information.
- 15.2 The *Employer* provides things which he is to provide as stated in the Service Information.

Early warning 16

- 16.1 The *Contractor* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
 - interfere with the timing of the *service* or
 - impair the effectiveness of the *service*.

The *Contractor* may give an early warning by notifying the *Service Manager* of any other matter which could increase his total cost. The *Service Manager* enters early warning matters in the Risk Register or Task Risk Register (as appropriate). Early warning of a matter for which a compensation event has previously been notified is not required.

- 16.2 The *Service Manager* may instruct the *Contractor* or the *Contractor* may request the *Service Manager* (such request not to be unreasonably refused) to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
- 16.3 At a risk reduction meeting, those who attend co-operate in
- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 - deciding which risks have now been avoided or have passed and can be removed from the Risk Register or Task Risk Register (as appropriate).
- 16.4 The *Service Manager* revises the Risk Register or Task Risk Register (as appropriate) to record the decisions made at each risk reduction meeting and issues the revised Risk Register or Task Risk Register (as appropriate) to the *Contractor*. If a decision needs a change to the Service Information or Task Order, the *Service Manager* instructs the change at the same time as he issues the revised Risk Register or Task Risk Register (as appropriate).
- 16.5 For the avoidance of doubt, entry of a matter in the Risk Register or a Task Risk Register (as appropriate) and any revisions to the Risk Register or a Task Risk Register (as appropriate) do not give rise to a compensation event and merely reflect the acknowledgement of an early warning matter or the decisions reached at a risk reduction meeting. The *Contractor's* only entitlement to a change in the Prices, and any Task Completion Date, as a result of an early warning matter or any revision to the Risk Register or a Task Risk Register is in accordance with clauses 60 to 65.

**Ambiguities and
inconsistencies 17**

- 17.1 The *Service Manager* or the *Contractor* 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 *Service Manager* gives an instruction resolving the ambiguity or inconsistency.

- 17.2 There is no addition to the Prices, or any change to a Task Completion Date arising from any such ambiguity or inconsistency where the *Service Manager* decides that the ambiguity or inconsistency in question is one arising from a document which the *Contractor* prepared or is responsible for. The *Service Manager* notifies the *Contractor* of this decision.
- 17.3 Where there is a discrepancy or conflict between or within the documents forming this contract, the provisions of the *conditions of contract* prevail over all other documents.
- 17.4 The *Contractor* accepts entire responsibility for the *Contractor's* design and for any mistake, inaccuracy, discrepancy or omission contained in the same.
- 17.5 The *Contractor* shall be deemed to have verified the accuracy of any information provided by the *Employer* and/or, the *Service Manager*.

**Illegal and impossible
requirements 18**

- 18.1 The *Contractor* notifies the *Service Manager* as soon as he considers that the Service Information or Task Information (as appropriate) requires him to do anything which is illegal or impossible or to carry out works or services which if completed in accordance with this contract will result in the *service* not being in accordance with the Statutory Requirements. If the *Service Manager* agrees, he gives an instruction to change the Service Information or Task Information (as appropriate) appropriately.

2 The Contractor's main responsibilities

Providing the Service 20

- 20.1 The *Contractor* Provides the Service in accordance with the Service Information, each instructed Task Order and Statutory Requirements, and the *Contractor* ensures that the *service* satisfies any requirement identified in the Service Information, (where relevant) each instructed Task Order and this contract.
- 20.2 In Providing the Service, the *Contractor* minimises the interference caused to the Affected Property and the activities taking place in it and all road users.
- 20.3 The *Contractor* advises the *Service Manager* on the practical implications of the Accepted Plan and on subcontracting arrangements.
- 20.4 The *Contractor* prepares forecasts
- for the Core Service
- of the total of the Prices in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared annually at the start of each Financial Year, from the *starting date* until the end of the *service period*, and an updated version is submitted monthly
 - and where the Target Cost Option applies, of the total Defined Cost for the Core Service in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared annually at the start of each Financial Year, from the *starting date* until the end of the *service period*, and an updated version is submitted monthly
- for instructed Tasks
- of the total of the Prices in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared at the start of each Task and an updated version is submitted monthly
 - and where the Target Cost Option applies, of the total Defined Cost for each relevant Task in consultation with the *Service Manager* and submits them to the *Service Manager*. Forecasts are prepared at the start of each Task and an updated version is submitted monthly.
- An explanation of the changes made since the previous forecast is submitted with each forecast.
- 20.6 The *Contractor* warrants and undertakes to the *Employer* as a condition of this contract that
- he has examined the Service Information and all other documents forming this contract and is not aware of any ambiguity or discrepancy within or between any of the contract documents which might adversely affect the carrying out of his work and services in accordance with this contract,
 - he has all the resources including financial, technical and human resources as are required to carry out and complete his work and services in accordance with this contract,
 - his work and services under this contract will be designed and specified using the best modern engineering principles and practices at the time of preparing the design and in accordance with good industry practice, and
 - the proceeds of a claim made in connection with this contract under insurance taken out by the *Contractor* pursuant to clause 81 of the *conditions of contract* will be used solely for the purposes of the *service* and for no other purpose.

The Contractor's plan 21

- 21.1 If a plan is not identified in the Contract Data, the *Contractor* submits a first plan to the *Service Manager* for acceptance within the period stated in the Contract Data.

- 21.2 The *Contractor* shows on each plan which he submits for acceptance
- the *starting date* and the end of the *service period*,
 - the order and timing for the next 12 month period of each Core Service activity and of each instructed Task,
 - the order and timing of the work of the *Employer* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Service Information,
 - provisions for
 - time risk allowances,
 - environmental and health and safety requirements and
 - the procedures set out in this contract,
 - the dates when, in order to Provide the Service in accordance with his plan, the *Contractor* will need
 - access to the Affected Property as stated in the Service Information,
 - acceptances,
 - Plant and Materials, equipment and other things to be provided by the *Employer* and
 - information from Others,
 - for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and
 - other information which the Service Information or (where relevant) Task Information requires the *Contractor* to show on a plan submitted for acceptance. This information is shown separately for each section of the *service* and for the overall provision of the *service*.

- 21.3 Within two weeks of the *Contractor* submitting a plan to him for acceptance, the *Service Manager* either accepts the plan or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting a plan is that
- the *Contractor's* plans which it shows are not practicable,
 - it does not show the information which this contract requires,
 - it does not represent the *Contractor's* plans realistically or
 - it does not comply with the Service Information.

- 21.4 The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance.

**Revising the
Contractor's plan 22**

- 22.1 The *Contractor* submits a revised plan to the *Service Manager* for acceptance showing the effects of implemented compensation events and other changes. It is submitted
- within the *period for reply* after the *Service Manager* has instructed him to and
 - when the *Contractor* chooses to.

- 22.2 The *Contractor* submits updated plans to the *Service Manager* for acceptance at no longer interval than monthly from the *starting date* until the end of the *service period*.

Design of Equipment 23

- 23.1 The *Contractor* submits particulars of the design of an item of Equipment to the *Service Manager* for acceptance if the *Service Manager* instructs him to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Service in accordance with
- the Service Information,
 - this contract,
 - (where relevant) a Task Order,
 - the Accepted Plan or
 - the applicable law.

The Contractor's design 23A

- 23A.1 The *Contractor* designs the parts of the *service* which the Service Information and any Task Order states he is to design. The *Contractor* integrates and

coordinates his design (if any) with the designs of Others and in accordance with the Service Information, a Task Order and the instructions of the *Service Manager*.

23A.2 The *Contractor* submits the particulars of his design as the Service Information or a Task Order requires to the *Service Manager* for acceptance. Reasons for not accepting the *Contractor's* design are that

- it does not comply with the Service Information, the Task Order (if applicable), applicable law or Statutory Requirements,
- it is not integrated and coordinated with the designs of Others where the *Contractor* is required by the Service Information, a Task Order or the instructions of the *Employer* to integrate and/or coordinate his design with the designs of Others or such integration is necessary for the *Contractor* to Provide the Service, or
- it does not comply with this contract.

The *Contractor* does not proceed with the relevant work or services until the *Service Manager* has accepted his design.

23A.3 The *Contractor* may submit his design for acceptance in parts if the design of each part can be assessed fully.

23A.4 (1) The *Contractor* warrants to the *Employer* that insofar as it is responsible for the design of works or services under this contract, it has exercised and exercises in such design all reasonable skill, care and diligence as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out works or services of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the service.

(2) The *Contractor* warrants to the *Employer* that it uses the reasonable skill, care and diligence set out in clause 23A.4(1) to see that the works or services provided under this contract comply with any performance specification or requirement included or referred to in the Service Information, or any Task Order (where applicable) or the *Contractor's* design (including any changes to the Service Information) and comply with all Statutory Requirements. The *Contractor* warrants that any works or services designed by the *Contractor* will interface and integrate fully with any design prepared by, or on behalf, of the *Employer*.

23A.5 (1) Subject to the Service Information and any changes to it the *Contractor* warrants that to the extent the *Contractor* either is obliged to specify or approve products or materials for use in the service or does so specify or approve, the *Contractor* does not specify, approve or use any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with

- the guidance given in the edition current at the date of specification, approval and/or use of the publication entitled "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices),
- relevant British or European Standards or Codes of Practice, or
- any publications of the Building Research Establishment related to the specification of products or materials.

(2) If in the performance of its duties under this contract, the *Contractor* becomes aware that he or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the *Contractor* notifies the *Service Manager* in writing immediately. This clause does not create any additional duty for the *Contractor* to inspect or check the work of others which is not required by this contract.

23A.6 All design prepared by the *Contractor* and submitted to the *Service Manager* is supported by a design check certificate in the form attached to the Service Information signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Contractor*, he is a Subcontractor.

People 24

24.1 The *Contractor* either employs each key person named to do the job stated in

the Contract Data or employs a replacement person who has been accepted by the *Service Manager*. The *Contractor* 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. The *Contractor* does not remove any key person from the contract for more than 21 consecutive days without the prior written consent of the *Service Manager*, save where such key person is absent on sick leave, or other statutory leave (such as jury service/maternity/paternity or adoption leave) or has left the *Contractor's* employment. In the case of leave due notice of the arrangements for cover during the leave will be notified in advance of the leave commencing and for sick leave as soon as the *Contractor* is aware that the absence will extend beyond 21 days.

- 24.2 The *Service Manager* may, having stated his reasons, instruct the *Contractor* to remove any person under the control of the *Contractor*. The *Contractor* then arranges that, after one day, such person has no further connection with the work included in this contract.

Working with the Employer and Others 25

- 25.1 The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the *service*. He co-operates with Others and shares the Affected Property with them as stated in the Service Information or Task Information (as appropriate).
- 25.2 The *Employer* and the *Contractor* provide facilities and other things as stated in the Service Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the facilities and other things he is to provide is assessed by the *Service Manager* and paid by the *Contractor*.

Subcontracting 26

- 26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Service as if he had not subcontracted. This contract applies as if a *Subcontractor's* employees and equipment were the *Contractor's*.
- 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that his appointment will not allow the *Contractor* to Provide the Service. The *Contractor* does not appoint a proposed Subcontractor until the *Service Manager* has accepted him.
- 26.3 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Service Manager* for acceptance unless

- an NEC contract is proposed or
- the *Service Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Service Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Service or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation or
- in the opinion of the *Service Manager* they are not consistent with the terms of this contract.

- 26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Service Manager* if

- an NEC contract is proposed and
- the *Service Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Service.

- 26.5 Where the *Contractor* has proposed a Subcontractor in Contract Data Part Two for part of the *service*, acceptance of Contract Data Part Two by the *Employer* without qualification of such proposal is deemed to be a consent on the same legal basis as consent by the *Service Manager* under clause 26.2. Any such Subcontractor is not removed by the *Contractor* from the part of the *service* for which he has been proposed without the prior written consent of the *Service Manager*.

- 26.6 Neither the objection to nor any failure to raise an objection to a proposed Subcontractor either by or through the *Service Manager* relieves the *Contractor* of any liability or obligation under this contract.
- 26.7 The *Employer* is or may become party to framework agreements which allow materials and services to be purchased at preferential rates. Where the *Employer* believes that the use by the *Contractor* of such a framework agreement would realise best value the *Employer* may require the *Contractor* to utilise such framework agreement. The *Service Manager* may instruct the *Contractor* to procure materials and services through any such framework agreement and any such instruction is a compensation event.
- Before the *Service Manager* instructs the *Contractor* to procure materials and services through any such framework agreement he may instruct the *Contractor* to submit a quotation for the compensation event arising from such instruction. The *Contractor* submits a quotation to the *Service Manager* in accordance with clause 62.
- 26.8 Any supplier engaged by the *Contractor* in accordance with an instruction under clause 26.7 shall be deemed a Subcontractor for all purposes of this contract and the *Contractor* shall be fully responsible for any act or default of that Subcontractor.

Other responsibilities 27

- 27.1 The *Contractor* obtains approval from Others where necessary.
- 27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for the *Service Manager* and Others notified to him by the *Service Manager*.
- 27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Service Manager*.
- 27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Service Information and, where applicable, the Task Information.
- 27.5 The *Contractor* obtains from and/or gives to Others all licences, consents, notices and approvals necessary or appropriate to enable him to Provide the Service other than those which the Service Information states will be obtained or given by the *Employer* or Others. The *Contractor* ensures that during the *service period* and prior to Task Completion of each instructed Task the conditions and requirements of the licences, consents, notices and approvals, whether obtained by the *Contractor* or the *Employer*, are complied with and that the same are renewed whenever necessary or appropriate.
- 27.6 The terms and conditions of this contract and the warranties and undertakings which it contains apply to all works or services performed and to be performed by the *Contractor* in relation to the *service* both before and after the Contract Date.
- 27.7 The *Employer* may assign the benefit of and its rights under this contract without the consent of the *Contractor* being required. The *Contractor* shall not assign the benefit of and its rights under this contract without the prior written consent of the *Employer*.
- 27.8 (1) The *Contractor* takes full responsibility for the adequacy stability and safety of all site operations and methods of construction and complies fully with the requirements of the CDM Regulations.
- (2) The *Contractor* throughout the *service period* and during the performance of any Task and while the *Contractor* has access to the Affected Property in accordance with this contract has full regard for the safety of all persons entitled to be upon the Affected Property and keeps the Affected Property (so far as the same is under his control) in an orderly state appropriate to the avoidance of danger to such persons and, without limitation, in connection with works or services provided under this contract, provides and maintains at his own cost all lights guards fencing warning signs and watching when and where necessary or where required by any competent statutory or other authority for the protection of works or services provided under this contract or for the safety and convenience of the public or Others.
- (3) Unless otherwise stated, to the extent that the CDM Regulations apply the *Contractor* performs all the functions and duties of and exercises the powers of the "principal contractor" and, where the *Contractor* is responsible for design, a

“designer” as defined in the CDM Regulations. The *Contractor* warrants that it is fully conversant with the Approved Code of Practice published by the Health and Safety Executive in relation to the CDM Regulations.

(4) The *Contractor* warrants to the *Employer* that to the extent it is responsible for design it is fully aware of the provisions of Regulation 11 (“Duties of designers”) of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and shall meet) the requirements of Regulation 11.

(5) Before the commencement of work or services at the Affected Property or any Task Site the *Contractor* provides the *Service Manager* with a copy of his Construction Phase Plan, and that of any Subcontractor prior to such Subcontractor commencing work or services at the Affected Property or any Task Site.

(6) The *Contractor* to the extent that he is in control of the Affected Property or any part thereof within the meaning of Section 4 of the Health and Safety at Work etc. Act 1974 keeps the Affected Property and the access and egress thereto, safe and without risk to the health of persons using the relevant area.

(7) The *Contractor* at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Affected Property for the effective discharge of those responsibilities.

27.9 The *Contractor* acknowledges that the *Employer* is under a duty under Section 17 of the Crime and Disorder Act, 1998 to

- have due regard to the impact of crime, disorder and community safety in the exercise of the *Employer's* duties,
- where appropriate, identify actions to reduce levels of crime and disorder and
- without prejudice to any other obligation imposed on the *Employer*, exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area

and in the performance of this contract, the *Contractor* assists and co-operates, and uses reasonable endeavours to procure that its Subcontractors and Indirect Subcontractors assist and co-operate, with the *Employer* where possible to enable the *Employer* to satisfy its duty.

27.10 Unless otherwise stated, to the extent that the Site Waste Management Plans Regulations 2008 apply the *Contractor* performs all the functions and duties of the “principal contractor” under the Site Waste Management Plans Regulations 2008 and any amendment, consolidation, revision and/or replacement thereto.

27.11 The *Contractor* shall be deemed to be fully acquainted with the physical conditions (including the sub-surface conditions) and other conditions of or affecting the Affected Property before the Contract Date and the physical conditions (including the sub-surface conditions) and other conditions of or affecting any Task Site before commencing any Task and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of works or services under this contract. No failure on the part of the *Contractor* to discover or foresee any such condition, risk, contingency or circumstance entitles the *Contractor* to a compensation event and/or any additional payment (whether by way of an addition to the Prices or otherwise) or to any change to a Task Completion Date. As between the *Contractor* and the *Employer*, the *Contractor* does not rely upon any survey, report or other document prepared by or on behalf of the *Employer* regarding any such matter as is referred to in this clause or as set out in the Service Information or any Task Order and the *Employer* makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The *Employer* has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document.

27.12 The *Contractor* gives notice to the *Employer* within 10 days where

- there is any change in ownership of the *Contractor* where such change relates to fifty percent (50%) or more of the issued share capital of the

Contractor or

- there is any change in ownership of the Holding Company where such change relates to fifty percent (50%) or more of the issued share capital of the Holding Company or
- (in the case of an unincorporated *Contractor*) there is any change in the management personnel of the *Contractor*, which alone or taken with any other change in management personnel not previously notified to the *Employer*, equates to a change in the identity of fifty percent (50%) or more of the management personnel of the *Contractor*.

27.13 If requested by the *Employer*, the *Contractor* enters into a novation agreement within the *period for reply* in such form as the *Employer* may reasonably require in order to novate the benefit and burden of this contract to a person or persons nominated by the *Employer* who has or will assume the responsibilities of the *Employer* in relation to the procurement of the *service*.

**Intellectual Property
Rights 28**

28.1 The parties agree that the IPR in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the *Contractor* in the performance of this contract (including IPR in materials or works created by a Subcontractor or Indirect Subcontractor) vests in the *Employer*. The *Contractor* procures that each Subcontractor and Indirect Subcontractor assigns such IPR to the *Employer*.

28.2 In respect of Background IPR, the *Contractor* grants (in respect of his own Background IPR) and procures the grant of (in respect of a Subcontractor or Indirect Subcontractor's Background IPR) a non-exclusive, perpetual, irrevocable, royalty free licence (including the right to sub-licence) to the *Employer* and any novated *Employer* to use the Background IPR for all purposes, including (without limitation) for the purposes of

- understanding the *service*,
- completing, operating, maintaining, repairing, modifying, altering, enhancing, re-figuring, correcting and replacing the *service* and
- extending, interfacing with, integrating with, connection into and adjusting the *service* and/or the works or services of Others.

28.3 The *Contractor* warrants and undertakes that he has the right to grant the *Employer* a licence to use the *Contractor's* Background IPR for all purposes, including (without limitation) for the purposes listed in clause 28.2.

28.4 The *Contractor* indemnifies the *Employer* against all losses arising out of any use by the *Employer* of the Background IPR, including, without limitation, any claim that the exploitation of the licence granted by the *Contractor* under clause 28.2 infringes the intellectual property rights or other rights of any third party.

28.5 The *Contractor* shall have no right (save where expressly permitted under this contract or with the *Employer's* prior written consent) to use any trade marks, trade names, logos or other intellectual property rights of the *Employer*.

28.6 The *Contractor* acknowledges that he is the author of all documents, drawings, materials, computer software, and any other materials or works prepared and developed by him in the performance of this contract and waives any moral rights which he might be deemed to possess under Chapter IV of the Copyright Design & Patents Act 1988 in respect thereof and of the *service*.

28.7 IPR in all items supplied and owned by the *Employer* to the *Contractor* remains the property of the *Employer*.

28.8 The *Employer* grants to the *Contractor* a non-exclusive, non-transferable, revocable licence to use all IPR owned (or capable of being so licensed) by the *Employer* and required by the *Contractor* in order to Provide the Service. Any such licence is granted for the duration of this contract solely to enable the *Contractor* to comply with its obligations under this contract.

28.9 The *Contractor* promptly notifies the *Employer* upon becoming aware of an infringement, alleged infringement or potential infringement of any IPR (including any claims and demands relating to the same) which affects or may affect the provision of the *service*.

28.10 Subject to the *Employer's* proper observance of its obligations under this contract, the *Contractor* indemnifies the *Employer* against all actions, claims,

demands, costs, damages, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by reason of any infringement or alleged infringement of any IPR.

28.11 The *Employer*, at the request of the *Contractor*, gives the *Contractor* all reasonable assistance for the purpose of contesting any such claim, demand or action. The *Contractor* reimburses the *Employer* for all costs and expenses (including legal costs) incurred in doing so and/or the *Contractor* shall conduct any litigation and all negotiations at its own expense arising from such claim, demand or action. The *Contractor* consults with the *Employer* in respect of the conduct of any claim, demand or action and keeps the *Employer* regularly and fully informed as to the progress of such claim, demand or action.

Tasks 29	General	29.1	<p>29.1.1 The <i>Employer</i> is not obliged to issue Task Requests or Task Orders at any time. The <i>Employer</i> is entitled to invite other contractors to submit offers for a proposed Task in the Affected Property or otherwise.</p> <p>29.1.2 A Task Request may relate to a proposed Task outside the Affected Property.</p> <p>29.1.3 No Task Order is issued after the end of the <i>service period</i>.</p>
Task Request	29.2	29.2.1	<p>The <i>Service Manager</i> may submit to the <i>Contractor</i> a Task Request in relation to a proposed Task other than an Immediate Task. The <i>Service Manager</i> includes in the Task Request the data required to complete the Task Request together with other information necessary for the <i>Contractor</i> to properly assess the Task Request and a copy of the Task Response for completion by the <i>Contractor</i>.</p>
		29.2.2	<p>On receipt of a Task Request, the <i>Contractor</i> provides a Task Response</p> <ul style="list-style-type: none"> • within 4 weeks for a Scheme Task or • within 2 weeks for a Minor Task or <p>within such alternative timescale as the <i>Service Manager</i> and the <i>Contractor</i> may agree.</p> <p>If the Task Request is for a Task outside the Affected Property the <i>Contractor</i> either responds to the effect that he is not in a position to carry out the proposed Task within 1 week or gives a Task Response</p> <ul style="list-style-type: none"> • within 4 weeks for a Scheme Task or • within 2 weeks for a Minor Task or <p>within such alternative timescale as the <i>Service Manager</i> and the <i>Contractor</i> may agree.</p>
		29.2.3	<p>The completed Task Response includes any information necessary for the <i>Service Manager</i> to properly assess the Task Response and, unless provided by the <i>Employer</i>, a Task Price List.</p>
		29.2.4	<p>When preparing a Task Price List for a proposed Task</p> <ul style="list-style-type: none"> • the Prices are built up from the rates and lump sums in the Price List in accordance with the Schedule of Rates Supplementary Information • the <i>Contractor</i> may use rates and lump sums that are less than those in the Price List but does not use any rates and lump sums which exceed those in the Price List • where there is no item in the Price List that corresponds to an item of work or services for the proposed Task, the relevant Prices are calculated by reference to the rates and lump sums in the Price List for works or services of a similar character and executed under similar conditions • where there is no item in the Price List that corresponds to an item of work or services for a proposed Task and there are no rates or lump sums in the Price List for works or services of a similar character and executed under similar conditions, the relevant Prices are calculated by reference to the Shorter

Schedule of Cost Components

- if the Task Request includes delay damages a reasonable adjustment is made to the rates and lumps sums in the Price List.

29.2.5 Upon receipt of a Task Response (and any revised Task Response) the *Service Manager* may

- issue a Task Order for the Task on the terms of the Task Request and the Task Response, or
- instruct the *Contractor* to submit a revised Task Response, on the terms of
 - the original Task Request or
 - a revised Task Request

in each case giving reasons for his decision, or

- notify the *Contractor* that it does not intend to proceed with the Task under the contract.

29.2.6 The *Contractor* does not charge the *Employer* and the *Contractor* is responsible for all and any costs, charges and expenses incurred by the *Contractor* arising from or associated with any work involved in receipt of a Task Request and the preparation of a Task Response.

Task Order 29.3 29.3.1 The *Service Manager* may issue a Task Order to the *Contractor* at any time whether following submission of a Task Request or otherwise, provided that a Task Order for a Task to be delivered using the Target Cost Option will not be issued other than following a Task Request. In the case of Immediate Tasks the *Service Manager* may issue a Task Order by way of telephone instructions.

29.3.2 A Task Order includes

- where a Task Order is issued following receipt of an accepted Task Response confirmation that the Task is to be provided in accordance with the Task Request and accepted Task Response

otherwise

- for Scheme Tasks and Minor Tasks
 - a detailed description of the work or services in the Task,
 - a statement whether the Lump Sum Option, Remeasure Option or Target Cost Option applies,
 - a Task Price List,
 - the Task Information
 - the Task manager,
 - the starting and completion dates for the Task,
 - the Task Order programme,
 - the Task Site,
 - details of any additional insurances, if required,
 - if applicable, the defects date,
 - if applicable, the defect correction period,
 - items to be included in the Task Risk Register,
 - if applicable, the amount of delay damages for the late completion of the Task
- for Immediate Tasks the details required to be completed in the form set out at Appendix 3 of this contract.

Providing the Task 29.4 29.4.1 On receipt of a Task Order, the *Contractor* provides the works or services in accordance with the Task Order and the provisions of this contract. Without prejudice to the *Contractor's* obligation to do so and its liabilities under this contract the *Contractor* notifies the *Employer* if for any reason it is unable to do so.

29.4.2 In case of conflict the requirements of any Task Order take precedence over the Service Information.

	29.4.3	The <i>Contractor</i> designs the parts of the Task which the Task Order states he is to design. The <i>Contractor</i> integrates and coordinates his design (if any) with the designs of Others and in accordance with the Task Order and the instructions of the <i>Service Manager</i> .
	29.4.4	The <i>Contractor</i> proceeds regularly and diligently to provide the Task in accordance with this contract and uses all reasonable endeavours to prevent and/or reduce any delay in the progress of the Task.
Time	29.5	<p>29.5.1 The <i>Contractor</i> does not start any work or services included in the Task until the <i>Service Manager</i> has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date.</p> <p>29.5.2 The <i>Service Manager</i> decides the date of Task Completion. The <i>Service Manager</i> certifies Task Completion within 1 week of Task Completion.</p> <p>29.5.3 If the Task Order states that delay damages apply, if Task Completion is later than the Task Completion Date, the <i>Contractor</i> pays delay damages at the rate stated in the Task Order from the Task Completion Date until the earlier of</p> <ul style="list-style-type: none"> • Task Completion or • the date on which the Employer takes over the relevant Task. <p>29.5.4 If the <i>Employer</i> takes over a part of the Task before Task Completion, the relevant delay damages (if applicable) are reduced from the date on which the part is taken over. The <i>Service Manager</i> assesses the benefit to the <i>Employer</i> of taking over the part of the Task as a proportion of the benefit to the <i>Employer</i> of taking over the whole of the Task not previously taken over. The relevant delay damages are reduced in this proportion. Notwithstanding any other provision of this contract, the <i>Employer</i> does not take over a part of a Task before Task Completion for the purposes of this clause during any periods when a Task Site is being used by the <i>Employer</i> and/or Others and unless the <i>Service Manager</i> issues a certificate in accordance with clause 29.6.3</p> <p>29.5.5 The <i>Service Manager</i> may instruct the <i>Contractor</i> to submit a quotation for an acceleration to achieve Task Completion for a Task before the relevant Task Completion Date. A quotation for an acceleration comprises proposed changes to the Prices and a revised Task Order programme showing the earlier Task Completion Date. The <i>Contractor</i> submits details of his assessment with each quotation. The <i>Contractor</i> submits a quotation or gives his reasons for not doing so within the <i>period for reply</i>.</p> <p>29.5.6 When the <i>Service Manager</i> accepts a quotation for an acceleration, he changes the Prices and the Task Completion Date accordingly and accepts the revised Task Order programme.</p> <p>29.5.7 If the <i>Contractor</i> does not submit a quotation for an acceleration within the <i>period for reply</i> or if the <i>Service Manager</i> decides that the <i>Contractor</i> has not assessed the quotation for an acceleration correctly then the <i>Service Manager</i> may instruct the <i>Contractor</i> to achieve Task Completion before the relevant Task Completion Date. If the <i>Service Manager</i> instructs the <i>Contractor</i> to achieve Task Completion before the relevant Task Completion Date the <i>Service Manager</i> assesses the change to the Prices and the relevant Task Completion Date and informs the <i>Contractor</i> of any changes.</p>
Take Over	29.6	<p>29.6.1 The <i>Employer</i> need not take over a Task before the Task Completion Date if it is stated in the Task Order that he is not willing to do so. Otherwise the <i>Employer</i> takes over a Task not later than 2 weeks after Task Completion.</p> <p>29.6.2 The <i>Employer</i> and Others may use any part of a Task and the Task Site before Task Completion has been certified. If he does so, he does not take over the part of the Task when he begins to use it and the <i>Contractor</i> remains responsible for the Task unless the <i>Service Manager</i> issues a certificate in accordance with clause 29.6.3.</p>

	29.6.3	If the <i>Employer</i> wishes (in its absolute discretion) to take over any part of a Task prior to the date of issue of a certificate of Task Completion pursuant to clause 29.5.2 then the <i>Service Manager</i> shall certify the date on which the <i>Employer</i> has taken over such part of the relevant Task and the extent of the relevant Task taken over by the <i>Employer</i> .
	29.6.4	Notwithstanding any other clause in this contract, for the avoidance of doubt, the <i>Employer</i> shall not be regarded as having taken over a Task, or any part of a Task, during any period when a Task or a Task Site is being used by the <i>Employer</i> and/or Others and unless the <i>Service Manager</i> issues a certificate in accordance with clause 29.6.3.
Task Order programme	29.7	<p>29.7.1 If required by the Task Order, the <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> for acceptance within the period stated in the Task Order.</p> <p>29.7.2 The <i>Contractor</i> shows on each Task Order programme which he submits for acceptance</p> <ul style="list-style-type: none"> • the Task starting date and the Task Completion Date, • planned Task Completion, • the order and timing of the operations which the <i>Contractor</i> plans to do in order to complete the Task, • provisions for <ul style="list-style-type: none"> • float, • time risk allowances, • environmental, health and safety requirements and • the procedures set out in this contract, • the dates when, in order to Provide the Service in accordance with his Task Order programme, the <i>Contractor</i> will need <ul style="list-style-type: none"> • access to the Task Site, • acceptances, • Plant and Materials, equipment and other things to be provided by the <i>Employer</i> and • information from Others, • for each operation, a statement of how the <i>Contractor</i> plans to do the work or services identifying the principal Equipment and other resources which he plans to use and • other information which the Task Order requires the <i>Contractor</i> to show on a Task Order programme submitted for acceptance. <p>29.7.3 Within one week of the <i>Contractor</i> submitting a Task Order programme to him for acceptance, the <i>Service Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting the Task Order programme is that</p> <ul style="list-style-type: none"> • the <i>Contractor's</i> plans which it shows are not practicable, • it does not show the information which this contract requires, • it does not represent the <i>Contractor's</i> plans realistically or • it does not comply with the Service Information or the Task Order.
Revising the Task Order programme	29.8	<p>29.8.1 The <i>Contractor</i> shows on each revised Task Order programme</p> <ul style="list-style-type: none"> • the actual progress achieved on each operation and its effect upon the timing of the remaining works or services, • the effects of implemented compensation events and of notified early warning matters, • how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and • any other changes which the <i>Contractor</i> proposes to make to the Task Order programme. <p>29.8.2 The <i>Contractor</i> submits a revised Task Order programme to the <i>Service Manager</i> for acceptance at intervals stated in the Task Order or within the <i>period for reply</i> after the <i>Service Manager</i> has instructed him to.</p> <p>The latest programme accepted by the <i>Service Manager</i> supersedes</p>

previous accepted programmes.

3 Time

**Starting and the
service period 30**

30.1 The *Contractor* does not start work until the *starting date* and Provides the Service throughout the *service period* provided that the *Employer* may issue Task Orders prior to the *starting date* in which event the *Contractor* Provides the Service in respect of any such Tasks.

Access 31

31.1 The *Contractor* arranges for access to and use of the Affected Property which is necessary for work or services included in this contract.

**Instructions to stop or
not to start work 32**

32.1 The *Service Manager* may instruct the *Contractor* to stop or not to start any work and may later instruct him that he may re-start or start it.

4 Testing and Defects

Tests and inspections 40

- 40.1 The subclauses in this clause only apply to tests and inspections required by the Service Information, a Task Order or the applicable law.
- 40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Service Information or a Task Order (as appropriate).
- 40.3 The *Contractor* and the *Service Manager* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Service Manager* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Service Manager* may watch any test done by the *Contractor*.
- 40.4 If a test or inspection shows that any work has a Defect, the *Contractor* repeats the work if possible or corrects the Defect and the test or inspection is repeated.
- 40.5 The *Service Manager* does his tests and inspections without causing unnecessary delay to the work.
- 40.6 The *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.
- 40.7 When the *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found, he does not include the *Contractor's* cost of carrying out the repeat test or inspection.

Testing and inspection before delivery 41

- 41.1 The *Contractor* does not deliver those Plant and Materials which the Service Information states are to be tested or inspected before delivery until the *Service Manager* has notified the *Contractor* that they have passed the test or inspection.

Searching for and notifying Defects in connection with a Task 41A

- 41A.1 Without prejudice to any other provision in this section 4, for each Task where there is a defects date stated in the Task Order, the *Service Manager* may, until the relevant defects date, instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include
- uncovering, dismantling, re-covering and re-erecting work,
 - providing facilities, materials and samples for tests and inspections done by the *Service Manager* and
 - doing tests and inspections which the Service Information or Task Order does not require.
- 41A.2 For each Task where there is a defects date identified in the Task Order, until the relevant defects date, the *Service Manager* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Service Manager* of each Defect as soon as he finds it.

Correcting Defects 42

- 42.1 The *Contractor* corrects Defects in the Core Service within the *defect correction period*. If the *Contractor* does not correct a Defect within the time required by this contract, the *Service Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount.
- 42.2 The *Contractor* arranges for access and permissions to and use of the Affected Property or a Task Site (as applicable) if it is needed for correcting a Defect.
- 42.3 The *Contractor* corrects a Defect whether or not the *Service Manager* notifies him of it.
- 42.4 In connection with a Task the *Contractor* corrects a notified Defect before the end of the defect correction period stated in the relevant Task Order (if applicable). The relevant defect correction period (if applicable) begins at Task Completion for Defects notified before Task Completion and when the Defect is

notified for other Defects.

- 42.5 For each Task where there is a defects date identified in the Task Order, the *Service Manager* issues a Task Defect Certificate at the later of the defects date stated in the Task Order and the end of the last defect correction period for the Task. The *Employer's* rights in respect of a Defect which the *Service Manager* has not found or notified are not affected by the issue of a Task Defect Certificate.

Accepting Defects 43

- 43.1 The *Contractor* and the *Service Manager* may each propose to the other that the Service Information or Task Order (as applicable) should be changed so that a Defect does not have to be corrected. If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or, where applicable, an earlier Task Completion Date or both to the *Service Manager* for acceptance. If the *Service Manager* accepts the quotation, he gives an instruction to change the Service Information or Task Order (as applicable), the Task Completion Date (if applicable) and the Prices accordingly.
- 43.2 For the avoidance of doubt, the *Contractor* continues to be liable for Defects (including Defects listed in any Task Defect Certificate and latent or inherent Defects) after
- the issue of any Task Defect Certificate
 - the operation of this section 4 and
 - the termination of this contract for any reason (including breach by the *Employer*)

in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract.

5 Payment

Assessing the amount due 50

- 50.1 The *Service Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Service Manager* to suit the procedures of the *Employer* and is not later than the *assessment interval* after the *starting date*. Later assessment dates occur at the end of each *assessment interval* until four weeks after the later of the end of the *service period* and where any Task has not been completed by the end of the *service period* the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate.
- 50.1A The *Contractor* submits an application for payment to the *Service Manager* in a form approved by the *Service Manager* not less than 7 days prior to each assessment date. The application states the sum that the *Contractor* considers to be due to him at the payment due date and the basis on which that sum is calculated and, where the Target Cost Option applies, such application shall set out the Defined Cost and the Fee as separate entries.
- Where the Target Cost Option applies, the *Contractor* maintains and submits with each application for payment all timesheets, labour, allocation sheets, invoices, Equipment records and all other relevant supporting documents and information as may be reasonably required by the *Service Manager*.
- 50.1B The date on which a payment becomes due is the later of
- the assessment date and
 - 14 days after the date of receipt by the *Service Manager* of the *Contractor's* application for payment in accordance with clause 50.1A.
- The final date for payment is 28 days or a different period for payment if stated in the Contract Data after the date on which payment becomes due.
- 50.2 The amount due is
- the Price for Services Provided to Date for the Core Service,
 - the Task Price to Date for instructed Tasks,
 - plus other amounts to be paid to the *Contractor*,
 - less amounts to be paid by or retained from the *Contractor*.
- Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.
- 50.3 If no plan is identified in the Contract Data, one quarter of the Price for Services Provided to Date is retained in assessments of the amount due until the *Contractor* has submitted a first plan to the *Service Manager* for acceptance showing the information which this contract requires.
- 50.4 In assessing the amount due, the *Service Manager* considers any application for payment the *Contractor* has submitted in accordance with clause 50.1A. The *Service Manager* gives the *Contractor* details of how the amount due has been assessed.
- 50.5 The *Service Manager* corrects any wrongly assessed amount due in a later payment certificate.
- 50.6 Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of this contract* are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the *currency of this contract* in order to calculate the Fee and any *Contractor's* share using the *exchange rates*.
- 50.7 The *Contractor* complies with the requirements of Appendix 6 (Cost Capture) of this contract. The *Employer* is not liable to the *Contractor* for any costs, charges or expenses arising out of or associated with his compliance with Appendix 6.
- 50.8 All sums payable by or to the *Employer* or the *Contractor* are exclusive of Value Added Tax ("VAT"). Where VAT is chargeable on such sums, the payer pays, upon production of a valid VAT invoice by the payee, such VAT in addition to such sums.

- 50.9 (1) If a performance bond has been required from the *Contractor* pursuant to clause 120 (performance bond) then one quarter of the sum of the Price for Services Provided to Date and the Task Price to Date is retained in assessments of the amount due until the *Contractor* has provided the relevant performance bond in accordance with clause 120, and
- (2) the *Employer* shall pay any amount retained pursuant to clause 50.9(1) to the *Contractor* within 10 days of the provision to the *Employer* of the relevant performance bond. The total amount retained by the *Employer* pursuant to this clause 50.9 shall not exceed the value of the relevant performance bond.
- 50.10 The *Employer* reserves the right to audit on an open book basis any costs associated with this contract and any adjustments in cost found will be adjusted at the next monthly assessment.
- 50.11 In addition to any other rights of the *Employer* whether at law or equity under this contract, whenever
- under this contract or any other contract between the *Employer* and the *Contractor* any sum of money is recoverable from or payable by the *Contractor* or
 - any damages, costs, charges, expenses, debts, sums or other amounts are reasonably and properly owed to, or incurred by, the *Employer* arising out of or attributable to this contract or any other contract between the *Employer* and the *Contractor*
- then the same may be deducted from any sum otherwise due or which at any time may otherwise become due to the *Contractor* under this contract.
- 50.12 The Target Cost Option applies to Tasks where stated in a Task Order and to the Core Service only after the Target Cost Election has been made.
- 50.13 If the *Contractor's* employment is terminated under clause 91.1 because the *Contractor* has become insolvent within the meaning of Section 113 of the Act (R10A), the *Employer* need not pay any sum due to the *Contractor* other than any amount due to him under clause 90.4 either
- where the *Contractor* becomes insolvent prior to the prescribed period before the final date for payment, provided that the *Employer* or *Service Manager* issues a Pay Less Notice notifying the *Employer's* intention not to pay such sum, or
 - in any event, if the *Contractor* becomes insolvent after the prescribed period before the final date for payment.

Payment 51

- 51.1 The *Service Manager* certifies a payment not later than 5 days after each payment due date and issues a copy of the payment certificate to the *Contractor*. 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 *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract. The *Service Manager* does not certify and the *Contractor* is not paid any amount in respect of works or services provided by the *Contractor*
- for the Core Service
- in a Financial Year which has not been applied for by the *Contractor* prior to the date 6 weeks after the end of that Financial Year and
- for each Task
- which has not been applied for by the *Contractor* prior to the date 6 weeks after the relevant Task Completion.
- 51.1A As soon as reasonably practicable and in any event not later than five days after receipt of a certificate in accordance with clause 51.1 the *Contractor* issues a valid VAT invoice for the amount stated on the certificate. The *Contractor* issues invoices in the manner and format required by the Service Information. The *Contractor* issues a corrected VAT invoice, where required, within 5 days of receipt of any Pay Less Notice.
- 51.1B If a certificate is not issued by the *Service Manager* in accordance with clause

51.1, the sum to be paid by the *Employer* is, subject to clause 51.5, the sum stated as due in the *Contractor's* application in accordance with clause 50.1A.

51.2 Each certified payment is made by the relevant final date for payment. If a certified payment is late, or if a payment is late because the *Service Manager* does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

51.3 If an amount due is corrected in a later certificate either

- by the *Service Manager* in relation to a mistake or a compensation event or
- following a decision of the Adjudicator or the tribunal,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually. The parties agree that the provisions in this contract for the payment of interest constitute a substantial remedy for late payment of any sum payable under this contract in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

51.5 If either Party intends to pay less than the notified sum, he notifies the other Party not later than 1 day (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract. In the case of the *Employer*, the notice may be given on his behalf by the *Service Manager*.

Defined Cost 52

52.1 All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Amounts included in Defined Cost are at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.2 The *Contractor* keeps these records

- accounts of payments of Defined Cost,
- proof that the payments have been made,
- communications about and assessments of compensation events for Subcontractors and
- other records as stated in the Service Information.

52.3 The *Contractor* allows the *Service Manager* to inspect at any time within working hours the accounts and records which he is required to keep.

The Contractor's share 53

53.1 Where the Target Cost Option applies, the *Service Manager* assesses the *Contractor's* share of the difference between the total of the Prices and the Price for Services Provided to Date or the Task Price to Date (as appropriate). The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Services Provided to Date or Task Price to Date (as appropriate) divided by the total of the Prices, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.

53.2 If the Price for Services Provided to Date or the Task Price to Date (as appropriate) is less than the total of the Prices, the *Contractor* is paid his share of the saving. If the Price for Services Provided to Date or the Task Price to Date (as appropriate) is greater than the total of the Prices, the *Contractor* pays his share of the excess.

53.3 The *Service Manager* assesses the *Contractor's* share

- for the Core Service, 6 weeks following the end of each Financial Year and

- for each Task, 6 weeks following Task Completion.

This share is included in the next amount due following each assessment. The *Service Manager* uses in his assessment the Price for Services Provided to Date or the Task Price to Date (as appropriate) and the total of the Prices for the work done at the date of the assessment.

- 53.4 Without limiting clause 53.3 if the *Service Manager* (acting reasonably) assesses prior to the end of each Financial Year or in respect of a Task prior to Task Completion that (having regard to the Price for Services Provided to Date or, as appropriate, the Task Price to Date at the relevant time) the Price for Services Provided to Date at the end of the relevant Financial Year or in respect of a Task the Task Price to Date at Task Completion is likely to exceed the total of the Prices for the relevant Financial Year or the relevant total of the Prices for the Task (as appropriate) the *Service Manager* may deduct from sums otherwise due to the *Contractor* a sum equivalent to the *Service Manager's* reasonable assessment of the likely *Contractor's* share of the relevant excess. Any sum so deducted shall be taken into account in assessing the amount due under clause 53.3.

The Price List 54

- 54.1 Information in the Price List is not Service Information. Information in a Task Price List is not Service Information or Task Information.
- 54.2 If the *Contractor* changes a planned method of working at his discretion so that the item descriptions on the Price List or Task Price List (as applicable) do not relate to the operations on the Accepted Plan or the Task Order programme (as applicable), he submits a revision of the Price List or Task Price List (as applicable) to the *Service Manager* for acceptance.
- 54.3 A reason for not accepting a revision of the Price List or Task Price List (as applicable) is that
- it does not comply with the Accepted Plan or Task Order programme (as applicable),
 - any changed Prices are not reasonably distributed between the items in the Price List or Task Price List (as applicable) or
 - the total of the Prices is changed.

6 Compensation events

Compensation events 60

60.1

The following are compensation events

(1) The *Service Manager* gives an instruction changing the Service Information or Task Information except

- a change made in order to accept a Defect, or
- a change to the Service Information or a Task Information provided by the *Contractor* for his plan or his design which is made either at his request or to comply with other Service Information or Task Information provided by the *Employer*.

(2) The *Employer* does not provide or obtain the right of access for which he is responsible to the Affected Property in accordance with the Accepted Plan.

(3) The *Employer* does not provide or obtain the right of access to a Task Site for which he is responsible in accordance with the latest accepted Task Order programme.

(4) The *Employer* does not provide something which he is to provide as stated in the Service Information in accordance with the Accepted Plan.

(5) The *Employer* does not provide something which he is to provide as stated in the Task Information in accordance with the latest accepted Task Order programme.

(6) The *Service Manager* gives an instruction to stop or not to start any work.

(7) The *Employer* or Others do not work in accordance with the Accepted Plan, or within the conditions stated in the Service Information.

(8) The *Employer* or Others do not work in accordance with the latest accepted Task Order programme, or within the conditions stated in the Service Information or Task Information (as applicable).

(9) The *Service Manager* does not reply to a communication from the Contractor within the period required by this contract.

(10) The *Service Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Affected Property.

(11) The *Service Manager* changes a decision which he has previously communicated to the *Contractor*.

(12) The *Service Manager* withholds an acceptance (other than acceptance of a quotation for not correcting a Defect) for a reason not stated in this contract.

(13) A test or inspection done by the *Service Manager* causes unnecessary delay, but delay is not unnecessary if it arises only from the proper carrying out of a test which is provided for in the contract, a Task Order or the Service Information.

(14) A change in the Affected Property other than a change as a result of Providing the Service.

(15) The *Employer* does not provide materials, facilities and samples for tests and inspections as stated in the Service Information or a Task Order.

(16) An event which is an *Employer's* risk in this contract.

(17) The *Service Manager* certifies take over of a part of a Task before both Task Completion and the Task Completion Date.

(18) The *Service Manager* notifies a correction to an assumption which he has stated about a compensation event.

(19) Where the Remeasure Option applies, a difference between the final total quantity of work done and the quantity stated for an item stated in a Task Order is a compensation event if the *Employer* provided the design or entered the quantities in the Task Order and if

- the difference does not result from a change to the Service

Information,

- the difference in quantity changed from that stated in the Task Order is more than 0.5%.

If the cost per unit of quantity is reduced, the affected rate is reduced.

(20) Where the Remeasure Option applies, a difference between the final total quantity of work done and the quantity for an item stated in a Task Order which delays Task Completion is a compensation event if the *Employer* provided the design and / or entered the quantities in the Task Order.

(21) Where the Remeasure Option applies, the *Service Manager* corrects mistakes in a Task Order which are departures from the rules for item descriptions and for division of the work into items in the Schedule of Rates Supplementary Information or are due to ambiguities or inconsistencies. Each such correction is a compensation event which may lead to reduced Prices.

(22) A change in law of the country in which the Affected Property is located occurs after the Contract Date which affects the Core Service and which would not have been reasonably foreseeable to an experienced contractor at the Contract Date.

(23) The *Contractor* exercises his right under the Act to suspend performance whether or not the event has been notified by the *Contractor* within the period specified in clause 61.3.

(24) The *Service Manager* issues an instruction under clause 26.7 for the *Contractor* to procure materials and services through a framework agreement. Each such instruction is a compensation event which may lead to reduced Prices.

(25) A breach of contract or act of prevention on the part of the *Employer* (except to the extent that it is caused or contributed to by the *Contractor* any Subcontractor or Indirect Subcontractor or any person for whom those parties are responsible) which is not one of the other compensation events in this contract.

Notifying compensation events 61

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

61.2 The *Service Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect.

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

- the *Contractor* believes that the event is a compensation event and
- the *Service Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within 4 weeks of when he becomes aware or ought reasonably to have become aware of the event, he is not entitled to a change in the Prices or (where applicable) a Task Completion Date unless the *Service Manager* should have notified the event to the *Contractor* but did not.

61.4 If the *Service Manager* decides that an event notified by the *Contractor*

- arises from a fault of the *Contractor* including, without limitation, any error, omission, negligence, default, breach of contract or breach of statutory duty of the *Contractor* or any of its employees or agents or of any Subcontractor, Indirect Subcontractor or supplier or any of their employees or agents,
- has not happened and is not expected to happen,
- has no effect upon Task Completion,
- has no effect upon the cost to the *Contractor* or
- is not one of the compensation events stated in this contract

he notifies the *Contractor* of his decision that the Prices and, if applicable, the relevant Task Completion Date are not to be changed.

If the *Service Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations including sufficient supporting information.

If the *Service Manager* does not notify his decision to the *Contractor* within either

- two weeks of the *Contractor's* notification or
- a longer period to which the *Contractor* has agreed,

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

61.5 If the *Service Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he notifies this decision to the *Contractor* when he instructs him to submit quotations.

61.6 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 *Contractor* 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.

61.7 A compensation event is not notified after

for the Core Service

- the date 6 weeks after the end of the Financial Year in which the compensation event occurred and

for each Task

- the date 6 weeks after the relevant Task Completion.

Quotations for compensation events

62.1 After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* 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 proposed changes to the Prices and, where applicable, any delay to the relevant Task Completion Date assessed by the *Contractor*. The *Contractor* submits details of his assessment including a detailed breakdown of any changes to the Prices and the measures to be taken in respect of Subcontractors and Indirect Subcontractors (where relevant) with regards to the service and any planned service by Others with each quotation. If the plan for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Plan or, where applicable, the Task Order programme in his quotation.

62.3 The *Contractor* submits quotations within three weeks of being instructed to do so by the *Service Manager*. The *Service Manager* replies within two weeks of the submission. His reply is

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
- a notification that he will be making his own assessment.

62.4 The *Service Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Service Manager* extends the time allowed for

- the *Contractor* to submit quotations for a compensation event and

- the *Service Manager* to reply to a quotation

if the *Service Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Service Manager* notifies the extension that has been agreed to the *Contractor*.

- 62.6 If the *Service Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* 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 to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated as acceptance of the quotation by the *Service Manager*.

Assessing 63 compensation events

- 63.1 Save where the Target Cost Option applies, and subject to clause 63.13, to the extent that a compensation event affects either work or services done or work or services not yet done the change to the Prices for a compensation event is assessed

- to the extent that the compensation event only affects the quantities of work shown in the Price List or the Task Price List (as applicable), by multiplying the changed quantities of work by the appropriate rate in the Price List or the Task Price List (as applicable)
- to the extent that the compensation event does not only affect the quantities of work shown in the Price List or the Task Price List (as applicable), by using other appropriate rates and Prices in the Price List or the Task Price List (as applicable)
- to the extent that the compensation event does not only affect the quantities of work shown in the Price List or the Task Price List (as applicable) and to the extent that there is no appropriate rate or prices in the Price List or the Task Price List (as applicable), by using the rates or prices in the Price List or the Task Price List (as applicable) for works or services of a similar character and executed under similar conditions to the compensation event
- to the extent that the compensation event does not only affect the quantities of work shown in the Price List or the Task Price List (as applicable) and to the extent that there is no rate or prices in the Price List or the Task Price List (as applicable) for works or services of a similar character and executed under similar conditions to the compensation event, in accordance with clause 63.2.

- 63.2 Where stated in clause 63.1 and where the Target Cost Option applies the changes to the Prices are assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting Fee.

The date when the *Service Manager* instructed or should have instructed the *Contractor* to submit quotations divides the work already done from the work not yet done.

Effects on the Defined Cost are assessed separately for

- people who are employed by the *Contractor*,
- Plant and Materials,
- work subcontracted by the *Contractor* and
- Equipment.

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

- 63.3 If the *Service Manager* and the *Contractor* agree, rates and Prices in the Price List may be used as a basis for assessment instead of Defined Cost and the resulting Fee.

- 63.4 If the effect of a compensation event is to reduce the cost to the *Contractor* the Prices are not reduced except as stated in this contract.

- 63.4A A delay to a Task Completion Date is assessed as the length of time that, due to the compensation event, planned Task Completion is later than planned Task Completion as shown on the relevant accepted Task Order programme.
- 63.5 The rights of the *Employer* and the *Contractor* to changes to the Prices and, where applicable, a Task Completion Date are their only rights in respect of a compensation event and the *Employer* has no financial liability to the *Contractor* other than amounts claimable and recoverable under this contract.
- 63.6 If the *Service Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* had given early warning.
- 63.7 Assessment of the effect of a compensation event includes reasonable and proportionate risk allowances for cost for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract.
- 63.8 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any cost (including where relevant Defined Cost) and time due to the event is reasonably incurred and that the Accepted Plan or Task Order programme (as applicable) can be changed. Where the *Employer* decides that the *Contractor* has failed to act in accordance with the assumptions in this clause the failure is taken into account when making the assessment.
- 63.9 A compensation event which is an instruction to change the Service Information or Task Information (as applicable) in order to resolve an ambiguity or inconsistency is assessed as if the Prices and, where applicable, the Task Completion Date were for the interpretation most favourable to the Party which did not provide the Service Information or, where applicable, the Task Information.
- 63.10 If the effect of a compensation event is to reduce the cost to the *Contractor* and the event is
- a change to the Service Information or Task Information or
 - a correction of an assumption stated by the *Service Manager* for assessing an earlier compensation event or
 - a change in a decision which the *Service Manager* has previously communicated to the *Contractor* or
 - a change in the Affected Property other than a change as a result of Providing the Service or
 - a correction to an assumption which the *Service Manager* has stated about a compensation event or
 - a change in law of the country in which the Affected Property is located occurs after the Contract Date which affects the Core Service and which would not have been reasonably foreseeable to an experienced contractor at the Contract Date or
 - an instruction under clause 26.7 for the *Contractor* to procure materials and services through a framework agreement.
- the Prices are reduced.
- 63.12 Assessments for changed Prices for compensation events are in the form of changes to the Price List or Task Price List (as applicable).
- 63.13 Where as a result of a compensation event the *Contractor* undertakes additional design for a Task designed by the *Contractor* pursuant to a Percentage Fee Design Task ("Related Build Task") the change to the Prices for that additional design is assessed by applying the relevant percentage set out in the relevant Task Price List for the Percentage Fee Design Task to the change to the Prices for the Related Build Task excluding any other assessment for the additional design.

The Service Manager's 64 assessments

- 64.1 The *Service Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment within the time allowed including a detailed breakdown of any changes to the Prices and the measures to be taken with regard to each Subcontractor and Indirect Subcontractor and with regard to the service and planned works by Others,

- if the *Service Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,
- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a plan or alterations to a plan which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Service Manager* has not accepted the *Contractor's* latest plan for one of the reasons stated in this contract.

64.2 The *Service Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor'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 *Contractor* may notify the *Service Manager* to this effect. If the *Contractor* 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 two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Service Manager*.

Implementing 65 compensation events

65.1 A compensation event is implemented when

- the *Service Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Service Manager* notifies the *Contractor* of his own assessment or
- a *Contractor'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.

65.3 The changes to the Price List or Task Price List and, where applicable, a Task Completion Date are included in the notification implementing a compensation event.

7 Use of equipment, Plant and Materials

The Parties' use of equipment, Plant and Materials

- 70.1 The *Contractor* has the right to use equipment, Plant and Materials provided by the *Employer* only to Provide the Service.
- 70.2 At the end of the *service period* the *Contractor*
- returns to the *Employer*, equipment and surplus Plant and Materials provided by the *Employer*,
 - provides items of Equipment for the *Employer's* use as stated in the Service Information and
 - provides information and other things as stated in the Service Information.
- 70.3 Whatever title the *Contractor* has to Plant and Materials passes to the *Employer* when it has been delivered to the site at which it will be used (or, if earlier, when it is delivered to the place where it is going to be stored by or on behalf of the *Contractor* for use in the provision of the *service*).

8 Risks and insurance

Employer's risks 80

80.1 The following are *Employer's* risks.

- Claims, proceedings, compensation and costs payable which are due to
 - the unavoidable result of the *service* or of Providing the Service,
 - negligence, 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 *Contractor* or
 - a fault of the *Employer* or a fault in his design.
- Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Employer*, or by Others on the *Employer's* behalf, until the *Contractor* has received and accepted them.
- Loss of or damage to the Affected Property, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Contractor's* employees or
 - radioactive contamination.
- Loss of or wear or damage to any Equipment, Plant and Materials retained by the *Employer* after a termination, except loss, wear or damage due to the activities of the *Contractor* after the termination.
- Additional *Employer's* risks stated in the Contract Data.

The Contractor's risks 81

81.1 From the *starting date* or, if earlier, the date of the first issued Task Order until the end of the *service period* or where any Task has not been completed by the end of the *service period* the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate, the risks which are not carried by the *Employer* are carried by the *Contractor*.

Indemnity 82

82.1 The *Contractor* is responsible for and indemnifies the *Employer*, his employees and agents against all expenses, liabilities, losses, claims, proceedings, compensation and costs whatsoever ("Losses") incurred in respect of

- death or injury to any person,
- loss or damage to property (including property belonging to the *Employer* or for which he is responsible, other than any works the *Contractor* is instructed to undertake under this contract) and
- any other loss, damage, cost or expense including but not limited to that incurred or suffered by the *Employer* due to losses arising under its contracts with Others which may arise out of or in the course of or by reason of the *Contractor's* performance, non-performance or part performance of this contract

to the extent that such Losses are due to any negligence, breach of contract, breach of statutory duty, error, act, omission, or default by the *Contractor*, his employees, Subcontractors, Indirect Subcontractors or agents or due to matters, circumstances or events which are at the *Contractor's* risk.

82.2 The *Contractor's* indemnity under sub-clause 82.1 remains in force for the duration of this contract and continues to survive the expiry or termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract. Without prejudice to the survival of any other clauses or schedules, the clauses or schedules of this contract necessary to give effect to the *Contractor's* indemnity under clause 82.1 also survive expiry or termination of the *Contractor's* appointment under this contract and/or the expiry or termination of this contract.

82.3 The *Contractor* is not responsible for and does not indemnify the *Employer* for Losses to the extent that such Losses are caused by the negligence of the

Employer, his employees or agents.

- 82.4 For each Task, until the later of Task Completion or (where relevant) issue of the Task Defect Certificate and unless otherwise instructed by the *Service Manager*, the *Contractor* promptly replaces loss of and repairs damage to the works or services, Plant and Materials and (when required) undertakes the removal and disposal of debris. The *Contractor* bears the cost of dismantling and replacing any Plant necessary to affect such replacements or repairs. The *Employer* in his sole and absolute discretion is entitled to decide not to replace and/or repair any loss and/or damage to works or services, Plant and Materials.

Insurance cover 83

- 83.1 The *Contractor* provides the insurances stated in the Insurance Table set out in Schedule 8 of the Framework Agreement except any insurance which the *Employer* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data. Subject to clause 83.4, the insurances provide cover from the *starting date* or, if earlier, the date of the first issued Task Order until a termination certificate in relation to the *Contractor's* obligation to Provide the Service has been issued or until the later of the end of the *service period* and where any Task has not been completed by the end of the *service period* the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate (or for such other period as stated in the Contract Data). The *Contractor* bears the cost of all deductibles for the insurances he provides.
- 83.2 The insurances are in the joint names (save for professional indemnity insurance) of the Parties and provide cover for events which are at the *Contractor's* risk.
- 83.3 The insurance requirements under this contract do not relieve the *Contractor* from any of his other obligations and liabilities under this contract.
- 83.4 (1) The *Contractor*, at his own cost, takes out and maintains professional indemnity insurance with a limit of indemnity of not less than the sum stated in Schedule 8 of the Framework Agreement for any one occurrence or series of occurrences arising out of any one event, in relation to the *service* provided always that
- such insurance is in place from the Contract Date until no less than 12 years after the end of the *service period* or where any Task has not been completed by the end of the *service period* 12 years after the later of the last Task Completion or (where relevant) issue of the last Task Defect Certificate
 - the insurance premiums in respect of the insurance are at all times the responsibility of the *Contractor* and
 - if such insurance ceases to be available to the *Contractor* (and/or contractors engaged in services of a similar size, nature and complexity as the *Contractor*) at commercially reasonable rates and terms (such non availability to be confirmed by an independent insurance agent operating in the UK market), excluding any increase in premiums attributable to the actions, omissions, claims record, error or defaults of the *Contractor*, the *Contractor* immediately notifies the *Employer* and the *Contractor* and the *Employer* then meet and the *Contractor* outlines the steps he intends to take to manage such risks. If the steps proposed by the *Contractor* are not reasonably acceptable to the *Employer*, the parties shall agree an alternative method of managing such risk.
- (2) The *Contractor* carries out his obligations under this contract and ensures that his servants or agents carry out their respective obligations in such manner that all requirements, terms, conditions, stipulations and provisos of the insurance required by clause 83.4 (1) are at all times fully complied with.
- 83.5 The *Contractor* provides insurance covering loss or damage to motor vehicles and liability to third parties arising out of the use of motor vehicles used in connection with the *service*. The minimum amount of cover/indemnity provided by such insurance shall be the amount required by the applicable law in respect of third party liability.
- 83.6 The *Employer* provides the insurances set out in the Contract Data Part One to the extent such insurance is available at reasonable commercial rates. Nothing

in such insurance changes the allocation of risks to the *Contractor* and the *Employer* as set out in clause 80 and clause 81.

Insurance policies 84

- 84.1 Before the *starting date* and on each renewal of the insurance policy, the *Contractor* submits to the *Service Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with this contract.
- 84.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.
- 84.3 The Parties comply with the terms and conditions of the insurance policies.
- 84.4 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.
- 84.5 In relation to all claims made under insurances obtained by the *Employer* (as set out in the Contract Data Part One) the following provisions apply
- (1) Unless the *Employer* otherwise decides, the *Contractor* authorises the *Employer* to submit all claims and the *Employer* submits and administers all claims.
- (2) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* must provide such information, documents and records in connection with such claims as the *Employer* requires forthwith on demand, regardless of whether the *Employer* is submitting or administering the claim.
- (3) Without prejudice to any other right, remedy or power of the *Employer*, the *Contractor* authorises insurers to pay monies under the insurances to the *Employer*.
- (4) The *Employer*, after receipt of monies paid under the insurances, allocates and pays to each party insured that portion of the monies received for the purpose of rectifying the loss that each party insured has suffered.
- 84.6 The *Contractor* effects any insurances which it is required to provide under this contract promptly with a reputable insurer or insurers accepted by the *Service Manager* and authorised to underwrite such risks in the United Kingdom.
- 84.7 The *Contractor* promptly notifies the *Service Manager* in writing of any claim, event, fact, matter or circumstance which may give rise to the right to make any claim on any insurance.
- 84.8 The *Contractor* does not compromise, surrender, release, settle or waive any claim or potential claim which the *Contractor* has or may have the right to bring, or has brought, under any insurance without the prior consent of the *Service Manager*.
- 84.9 The *Contractor* does not by any act or omission exclude, limit, reduce, vitiate, prejudice, lose or forgo any of the *Contractor's* and/or the *Employer's* rights to make or proceed with a claim against any insurer.
- 84.10 If the *Contractor* is informed that any insurer providing insurance required by this contract intends to cancel or change any term of any insurance required by this contract, the *Contractor* promptly notifies the *Service Manager* of such intention.
- 84.11 The *Contractor* promptly notifies the *Service Manager* in writing of any anticipated or actual event or circumstance which may lead or has led to any insurance required by this contract lapsing or being terminated or the cover under it being reduced or modified.
- 84.12 To the extent that the *Contractor* is entitled to bring any claim or claims under any insurance relating to this contract then the *Contractor* deals with all such claims promptly and diligently and (subject to the requirements of this contract) in accordance with all insurer requirements and recommendations.
- 84.13 The *Contractor* acknowledges that the *Employer* has the right to control and to supervise all dealings with the press, television, reporters, and any other media in relation to any incident, event, claim or action arising in connection with this contract and the *Contractor* complies with clause 20.5 of the Framework

Agreement.

- 84.14 If and to the extent that the *Contractor* receives payment in respect of any damage or destruction following an insurance claim in respect of damage or destruction of the *services* the *Contractor* shall apply the same to remedy the damage or destruction.

**If the *Contractor* does
not insure 85**

- 85.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Employer* is paid by the *Contractor*.

**Insurance by the
Employer 86**

- 86.1 The *Service Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 86.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 86.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.

Third Party Claims 87

- 87.1 In relation to Claims against Third Parties, the *Contractor* complies at all times with the relevant provisions of the Service Information.
- 87.2 For the avoidance of doubt, the *Contractor's* compliance with clause 87.1 shall not constitute a compensation event or result in a change to the Prices or in an allowance of time.
- 87.3 Where the Service Information incorporates or includes reference to a claims handling procedure in relation to claims from third parties the Parties agree that all claims by third parties for Third Party Losses shall be handled in accordance with such claims handling procedure.

9 Termination

Termination 90

90.1 If either Party wishes to terminate the *Contractor's* obligation to

- Provide the Service or
- provide an instructed Task or
- provide the Core Service

he notifies the *Service Manager* and the other Party giving details of his reason for terminating. The *Service Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.

90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	Termination of obligation to Provide the Service:	Termination of obligation to Provide the Service:	Termination of obligation to Provide the Service:
	a reason other than R1-R23	P1, P1C, P2 and P4	A1, A2, A4 and A4A
	R1-R15 or R10A or R18 or R22 or R23	P1, P1C, P2 and P4	A1 and A3
	R17 or R20	P1, P1C, and P4	A1 and A2
	R21	P1, P1C, P3 and P4	A1 and A2
	Termination of obligation to provide an instructed Task:	Termination of obligation to provide an instructed Task:	Termination of obligation to provide an instructed Task:
	a reason other than R1-R23	P1A, P1C, P2A and P4A	A1A, A2A and A4A
	R1-R10 or R10A or R11A-R13 or R14A or R15 or R18 or R22 or R23	P1A, P1C, P2A and P4A	A1A and A3A
	R17A or R20	P1A, P1C and P4A	A1A and A2A
	R21	P1A, P1C, P3A and P4A	A1A and A2A
	Termination of obligation to provide the Core Service	Termination of obligation to provide the Core Service	Termination of obligation to provide the Core Service
	a reason other than R1-R23	P1B, P1C, P2 and P4	A1B, A2 and A4

	R1-R15 or R10A or R18 or R22 or R23	P1B, P1C, P2 and P4	A1B and A3
	R17B or R20	P1B, P1C and P4	A1B and A2
	R21	P1B, P1C, P3 and P4	A1B and A2
The <i>Contractor</i>	Termination of obligation to Provide the Service:	Termination of obligation to Provide the Service:	Termination of obligation to Provide the Service:
	R1-R10, R10A or R19	P1, P1C, P3 and P4	A1, A2, A4 and A4A
	R17 or R20	P1, P1C, P3 and P4	A1 and A2
	Termination of obligation to provide an instructed Task:	Termination of obligation to provide an instructed Task:	Termination of obligation to provide an instructed Task:
	R1-R10, R10A, R16A or R19	P1A, P1C, P3A and P4A	A1A, A2A and A4A
	R17A or R20	P1A, P1C, P3A and P4A	A1A and A2A
	Termination of obligation to provide the Core Service	Termination of obligation to provide the Core Service	Termination of obligation to provide the Core Service
	R1-R10, R10A, R16 or R19	P1B, P1C, P3 and P4	A1B, A2 and A4
	R17B or R20	P1B, P1C, P3 and P4	A1B and A2

90.3 The procedures for termination are implemented immediately after the *Service Manager* has issued a termination certificate.

90.4 Within thirteen weeks of any termination, the *Service Manager* certifies a final payment to or from the *Contractor* which is the *Service Manager's* assessment of the amount due on the relevant termination less the total of previous payments. Payment is made within three weeks of the *Service Manager's* certificate.

90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to

- Provide the Service, where the termination certificate states that it relates to the *Contractor's* obligation to Provide the Service or
- provide the relevant Task identified in the termination certificate, where the termination certificate states that it relates to the *Contractor's* obligation to provide the Task or
- provide the Core Service, where the termination certificate states that it relates to the *Contractor's* obligation to provide the Core Service.

Reasons for termination 91

91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.

- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),

- had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct without insolvency) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9),
 - made an arrangement with its creditors (R10), or
 - if the other Party has become insolvent as defined in Section 113 of the Act (R10A).
- 91.2 The *Employer* may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to Provide the Service (R11).
 - Substantially failed to Provide the Service for a Task (R11A).
 - Not provided a bond or guarantee which this contract requires (R12).
 - Appointed a Subcontractor for substantial work before the *Service Manager* has accepted the Subcontractor (R13).
- The *Employer* may also terminate if the *Service Manager* notifies that the *Contractor* has defaulted in one of the ways listed at R11-R13 on two occasions within a period of 8 weeks whether or not the *Contractor* has remedied the default within 4 weeks of the second notification by the *Service Manager*.
- 91.3 The *Employer* may terminate if the *Service Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).
 - In performing a Task the *Contractor* substantially hindered the *Employer* or Others (R14A).
 - Substantially broken a health or safety regulation (R15).
- 91.4 Save when the *Employer* has complied with clause 51.5, the *Contractor* may terminate if
- in connection with the Core Service the *Employer* has not paid an amount certified by the *Service Manager* within 13 weeks of the date of the relevant certificate and the *Employer* does not remedy that non-payment within a further 12 weeks of receipt of a written notice issued by the *Contractor* after expiry of the 13 week period (R16)
 - in connection with a Task the *Employer* has not paid an amount certified by the *Service Manager* within 13 weeks of the date of the relevant certificate and the *Employer* does not remedy that non-payment within a further 12 weeks of receipt of a written notice issued by the *Contractor* after expiry of the 13 week period (R16A).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the relevant obligation to
- Provide the Service (R17)
 - provide an instructed Task (R17A)
 - provide the Core Service (R17B)
- 91.6 If the *Service Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work connected with the relevant obligations and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
 - providing the *Contractor* has given written notification to the *Employer* of an intention to terminate at least 12 weeks prior to such termination and

no instruction allowing the *service* to restart or start has been given within that period the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and

- providing written notification of an intention to terminate is given to the other Party at least 12 weeks prior to such termination and no instruction allowing the *service* to restart or start has been given within that period either Party may terminate if the instruction was due to any other reason (R20).

91.7 The *Employer* may terminate if an event which the Parties could not reasonably prevent has substantially affected the *Contractor's* work in relation to the relevant obligation to Provide the Service, provide the Task or provide the Core Service (as applicable) for a continuous period of more than thirteen weeks (R21).

91.8 The *Employer* may terminate if the *Contractor* is in breach of clause 104 (Conflict of Interest) and/or clause 107 (Corrupt Gifts) or any of the events referred to at clause 27.12 occur (regardless of whether or not the notice required by clause 27.12 is given by the *Contractor*) (R22).

91.9 The *Employer* may terminate if any circumstances arise which entitle the Framework Employer to terminate the Framework Agreement (R23).

91.10 To the extent that the *Employer* has a right to terminate any of the *Contractor's* obligations then, as an alternative to termination, the *Employer* may by giving notice to the *Contractor* require the *Contractor* to provide part only of the relevant *service* with effect from the date specified in the *Employer's* notice whereupon the relevant Service Information and Task Order (as applicable) is construed accordingly but the *Contractor* has no entitlement to an increase to any Prices nor to additional time for completion.

Procedures on termination 92

92.1 On termination, the *Employer* may

- complete the *service* and may use any Plant and Materials provided by the *Contractor* (P1)
- complete the relevant Task and may use any Plant and Materials provided by the *Contractor* (P1A)
- complete the Core Service and may use any Plant and Materials provided by the *Contractor* (P1B).

On termination the *Contractor* makes available to the *Employer* within 14 days all information prepared in relation to the *service* or, where the termination relates to a Task or Tasks only, all information prepared in relation to the relevant Task or Tasks in either electronic or documentary form including all drawings, specifications, reports and any other information held in an agreed format (P1C).

92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.

P2 The *Employer* may instruct the *Contractor* to remove any Equipment, Plant and Materials and assign the benefit of and/or enter into a novation of (in such format as the *Employer* may reasonably require) any subcontract or other contract related to performance of this contract to the *Employer*.

P2A The *Employer* may instruct the *Contractor* to remove any Equipment, Plant and Materials from the relevant Task Site and assign the benefit of and/or enter into a novation of (in such format as the *Employer* may reasonably require) any subcontract or other contract related to performance of the relevant Task or Tasks to the *Employer*.

P3 The *Employer* may use any Equipment to which the *Contractor* has title to complete the *service*. The *Contractor* promptly removes the Equipment when the *Service Manager* notifies him that the *Employer* no longer requires it to complete the *service*.

P3A The *Employer* may use any Equipment to which the *Contractor* has title to complete the relevant Task or Tasks. The *Contractor* promptly removes the Equipment when the *Service Manager* notifies him that the *Employer* no longer requires it to complete the relevant Task or Tasks.

P4 The *Contractor* provides to the *Employer* information and other things which the Service Information states he is to provide at the end of the *service period*.

P4A The *Contractor* provides to the *Employer* information and other things which the relevant Task Order states he is to provide on Task Completion.

92.3 In the event that the Framework Agreement is terminated but the *Employer* elects not to terminate this contract then any provisions of the Framework Agreement which have application to this contract shall continue to apply and where necessary the *Employer* operates and administers the relevant provisions of the Framework Agreement in place of the Framework Employer.

Payment on termination 93

93.1 The amount due on termination includes (A1)

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials
 - which have been delivered and retained by the *Employer* or
 - which the *Employer* owns and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the whole of the *service* and
- any amounts retained by the *Employer*.

93.1A The amount due on termination includes (A1A)

- an amount due assessed as for normal payments.
- the Defined Cost for Plant and Materials for the relevant Task
 - which have been delivered and retained by the *Employer* or
 - which the *Employer* owns and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the relevant Task and
- any amounts retained by the *Employer*.

93.1B The amount due on termination includes (A1B)

- an amount due assessed as for normal payments.
- the Defined Cost for Plant and Materials (excluding any Plant and Materials for instructed Tasks)
 - which have been delivered and retained by the *Employer* or
 - which the *Employer* owns and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the Core Service and
- any amounts retained by the *Employer*.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

A2 The forecast Defined Cost of removing the Equipment.

A2A The forecast Defined Cost of removing the Equipment from the relevant Task Site.

A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*.

A3A A deduction of the forecast of the additional cost to the *Employer* of completing the relevant Task or Tasks.

A4 The *direct fee percentage* applied to any excess of the total of the Prices at the Contract Date over the Price for Services Provided to Date.

A4A The *direct fee percentage* or the *target cost direct fee percentage* (as applicable) applied to any excess of the total of the Prices stated in the relevant Task Price List over the Task Price to Date for the relevant Task.

93.3 For the Core Service where the Target Cost Option applies, if there is a termination, the *Service Manager* assesses the *Contractor's* share after he has certified termination. His assessment uses, as the Price for Services Provided to Date, the total Defined Cost which the *Contractor* has paid and which he is committed to pay for work done before termination. The assessment uses as the

total of the Prices

- the quantity of the work which the *Contractor* has completed for each item on the Annual Price List multiplied by the rate and
- a proportion of each lump sum which is the proportion of the work covered by the item which the *Contractor* has completed.

93.3A If there is a termination in relation to a Task and the Target Cost Option applies, the *Service Manager* assesses the *Contractor's* share after he has certified termination of the relevant Task. His assessment uses, as the Task Price to Date, the total Defined Cost which the *Contractor* has paid in relation to the Task and which he is committed to pay for work done in relation to the Task before termination. The assessment uses as the total of the Prices

- the quantity of work which the *Contractor* has completed for each item on the Task Price List multiplied by the rate and
- a proportion of each lump sum which is the proportion of the work covered by the item which the *Contractor* has completed.

93.4 The *Service Manager's* assessment of the *Contractor's* share is added to the amount due to the *Contractor* on termination if there has been a saving or deducted if there has been an excess.

Ineffectiveness and Cessation 94

94.1 Without prejudice to the *Employer's* right to terminate the *Contractor's* obligation to Provide the Service under clauses 90 to 93 or at common law, the *Employer* may terminate the *Contractor's* obligations to Provide the Service at any time following a Declaration of Ineffectiveness in accordance with the provisions of this clause 94.

94.2 In the event that a court makes a Declaration of Ineffectiveness, the *Employer* promptly notifies the *Contractor*. The Parties agree that the provisions of clause 94 shall apply as from the date of receipt by the *Contractor* of the notification of Declaration of Ineffectiveness. Where there is any conflict or discrepancy between the provisions of clauses 90 to 93 and this clause 94 or the Cessation Plan, the provisions of this clause 94 and the Cessation Plan prevail.

94.3 The Declaration of Ineffectiveness does not prejudice or affect any right, liability or remedy which has accrued or accrues to either Party prior to or after such Declaration of Ineffectiveness.

94.4 As from the date of receipt by the *Contractor* of the notification of the Declaration of Ineffectiveness, the Parties (acting reasonably and in good faith) agree or, in the absence of such agreement, the *Employer* reasonably determines an appropriate Cessation Plan with the object of achieving

- an orderly and efficient cessation of the *service* or (at the *Employer's* request) a transition of the *service* to the *Employer* or such other entity as the *Employer* may specify, and
- minimal disruption or inconvenience to the *Employer* or to road users, in accordance with the provisions of this clause 94 and to give effect to the terms of the Declaration of Ineffectiveness.

94.5 Upon agreement, or determination by the *Employer*, of the Cessation Plan the Parties comply with their respective obligations under the Cessation Plan.

94.6 The *Employer* pays the *Contractor's* reasonable costs in assisting the *Employer* in preparing, agreeing and complying with the Cessation Plan. Such costs are based on any comparable costs or charges agreed as part of this contract or as otherwise reasonably determined by the *Employer*. Provided that the *Employer* is not liable to the *Contractor* for any loss of profit, revenue goodwill or loss of opportunity as a result of the early termination of the *Contractor's* obligation to Provide the Service or this contract pursuant to this clause 94.

10 Additional Conditions of Contract

Warranties 100

- 100.1 The *Contractor*, within fourteen (14) days of the *Service Manager's* request, provides to the *Employer* collateral warranties executed as deeds in the forms attached at Schedule 11 to the Framework Agreement in favour of
- any London Borough notified to the *Contractor*
 - the GLA
 - the London Development Agency
 - the Metropolitan Police Authority
 - the London Fire and Emergency Planning Authority
 - any person or institution providing finance in connection with or secured upon the *service* or any Task or any part of them
 - any other person with an interest in the *service* or any Task notified to the *Contractor*.
- 100.2 The *Contractor*, within fourteen (14) days of the *Service Manager's* request, procures that the "Principal Subcontractors" enter into collateral warranties executed as deeds in the forms attached at Schedule 12 to the Framework Agreement in favour of
- the *Employer*
 - any London Borough notified to the *Contractor*
 - the GLA
 - the London Development Agency
 - the Metropolitan Police Authority
 - the London Fire and Emergency Planning Authority
 - any person or institution providing finance in connection with or secured upon the *service* or any Task or any part of them
 - any other person with an interest in the *service* or any Task notified to the *Contractor*

and "the Principal Subcontractors" means all Subcontractors with a design responsibility (including those responsible for the selection of goods and materials and the supply of proprietary products and systems) and such other Subcontractors as the *Employer* may from time to time by notice in writing to the *Contractor* specify as being Principal Subcontractors.

- 100.3 The *Employer* specifies at the appropriate time which form of warranty is appropriate for each particular recipient. Where the terms of a collateral warranty grant the recipient a right to stand as substitute for the *Employer*, then as between the *Contractor* and the *Employer*, upon such recipient of the collateral warranty serving the requisite notice, the *Contractor* treats the said recipient as standing in substitution for the *Employer* and the *Employer* raises no objection to such substitution. Without prejudice to the obligations of the *Contractor* to the *Employer* and to the rights of the *Employer*, the *Employer* is not obliged to make any payment to the *Contractor* if (and for so long as) the *Contractor* fails within the time limit specified above to deliver such warranties duly executed provided always that the *Employer* notifies the *Contractor* of the identity of the relevant beneficiaries.

Employer's Business 101

- 101.1 The *Contractor* acknowledges that it
- has sufficient information about the *Employer* and the *service*, and
 - is aware of the *Employer's* processes and business and
 - has made all appropriate and necessary enquiries to enable it to Provide the Service in accordance with this contract, and
 - is aware of the purposes for which the *service* is required, and
 - shall neither be entitled to any additional payment nor excused from any obligation or liability under this contract due to any misinterpretation or misunderstanding by it of any fact relating to the *service*.

TUPE 102

- 102.1 The *Contractor* complies with the provisions of Appendix 2 to this contract.

Use of and Access to 103

Premises

- 103.1 The *Contractor* does not carry out any works at any premises owned or occupied

by the *Employer* (including any premises leased by the *Employer* to the *Contractor* for the purposes of this contract) other than the *service* or acts incidental to the *service* without the prior written consent of the *Employer* which may be withheld at its absolute discretion.

- 103.2 Any Employer Premises made available to the *Contractor* in connection with this contract shall be free of charge and shall be used by the *Contractor* solely so the *Contractor* can Provide the Service provided, for the avoidance of doubt, that the *Contractor* is responsible for its own costs of travel including any congestion charging and/or low emission charging. The *Contractor* shall
- have the use of such Employer Premises as licensee and shall not have or purport to claim any sole or exclusive right to possession or to possession of any particular part of such Employer Premises,
 - vacate such Employer Premises upon the termination or expiry of the contract or at such earlier date as the *Employer* may determine,
 - not exercise or purport to exercise any rights in respect of any Employer Premises in excess of those granted under this clause 103.2,
 - ensure that the *Contractor's* employees, Subcontractors and Indirect Subcontractors and persons connected to them carry any identity passes issued to them by the *Employer* at all relevant times and comply with the *Employer's* security procedures as may be notified by the *Employer* from time to time, and
 - not damage the Employer Premises or any assets on the Employer Premises.
- 103.3 Nothing in this clause 103 shall create or be deemed to create the relationship of landlord and tenant in respect of any Employer Premises between the *Contractor* and the *Employer* or any member of the *Employer's* group.
- 103.4 The *Employer* shall be under no obligation to provide office or other accommodation facilities or services (including telephony and IT services) to the *Contractor* except as may be specified in the Service Information.
- 103.5 The *Employer* is responsible for maintaining the security of Employer Premises in accordance with its standard security requirements. The *Contractor* shall comply with all of the *Employer's* security requirements while on Employer Premises, and shall ensure that all of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them comply with such requirements. Upon request, the *Employer* shall provide the *Contractor* with details of the *Employer's* security procedures.
- 103.6 The *Contractor* shall issue to its staff who have access to any relevant Employer Premises security passes in such form as the *Employer* may require.
- 103.7 The *Contractor* shall be responsible for the safekeeping of any keys, passes and any other means of access provided by the *Employer* and shall only permit them to be given to the staff whose names and addresses have been supplied to the *Employer* and then only to the extent required for the purposes of the contract. The *Contractor* shall ensure that the *Employer* is informed immediately of the loss of any keys or passes and other means of access and shall pay the costs of replacement and/or any reasonable additional security measures implemented as a result of such loss.
- 103.8 The *Employer* reserves the right under this contract to refuse to admit to any Employer Premises any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them who fail to comply with any of the *Employer's* policies and standards referred to in this contract.
- 103.9 The *Employer* reserves the right under this contract to instruct any of the *Contractor's* employees, Subcontractors, Indirect Subcontractors and persons related to them to leave any Employer Premises at any time for any reason and such personnel shall comply with such instructions immediately.

Conflict of Interest 104

- 104.1 The *Contractor* acknowledges and agrees that it does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the provision of the *service* or any member of the *Employer's* group, save to the extent fully disclosed to and approved in writing by the *Employer*.
- 104.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of this contract and in any event not less than once in

every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with the provision of the *service* under this contract or any member of the *Employer's* group and shall work with the *Employer* to do whatever is necessary (including the separation of staff working or, and data relating to, the *service* from the matter in question) to manage such conflict to the *Employer's* satisfaction, provided that, where the *Employer* is not so satisfied (in its absolute discretion) it shall be entitled to terminate the contract.

Compliance with Policies 105

- 105.1 The *Contractor* notifies its personnel Subcontractors and Indirect Subcontractors and the *Employer* of any health and safety hazards that exist or that may arise in connection with the provision of the *service* of which the *Contractor* is aware or ought reasonably to be aware.
- 105.2 The *Contractor* undertakes that all its personnel and those of its Subcontractors and Indirect Subcontractors comply with all of the *Employer's* policies and standards that are relevant to the provision of the *service*, including those relating to safety, security, business ethics, responsible procurement, work place harassment, drugs and alcohol and illegal substances and any other on site regulations specified by the *Employer* for personnel working at Employer Premises or accessing the *Employer's* computer systems. The *Employer* provides the *Contractor* with copies of such policies on request.
- 105.3 The *Contractor* shall as he Provides the Service (while taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the *Contractor's* activities may impact on the environment) to the need to
- preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment,
 - enhance the environment and have regard to the desirability of achieving sustainable development,
 - conserve and safeguard flora, fauna and geological or physiological features of special interest, and
 - sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

Records, Audit and Inspection 106

- 106.1 In this clause 106
- "Records" means
- all necessary information for the evaluation of claims or compensation events, whether or not relating to Subcontractors and/or Indirect Subcontractors,
 - management accounts, information from management information systems and any other management records,
 - accounting records (in hard copy as well as computer readable data),
 - sub-contract files (including proposals of successful and unsuccessful bidders, bids, rebids, etc.),
 - original estimates,
 - estimating worksheets,
 - correspondence,
 - compensation event files (including documentation covering negotiated settlements),
 - schedules including capital works costs, timetable and progress reports,
 - general ledger entries detailing cash and trade discounts and rebates,
 - commitments (agreements and leases) greater than £5,000 (five thousand pounds),
 - detailed inspection records,
 - such materials prepared in relation to the invitation to tender and subsequent tendering process relating to cost breakdowns, in each case which have not already been provided to the *Employer*, and
 - accounts and records of the Price for Services Provided to Date, the Task Price to Date and all other amounts to be paid to the *Contractor* under this contract.

- 106.2 The *Contractor* maintains and procures in each subcontract that each of his Subcontractors, maintains and retains the Records for a minimum of 12 years from the end of the *service period* with respect to all matters for which the *Contractor* and his Subcontractors and Indirect Subcontractors are responsible under this contract. The *Contractor* procures that each subcontract contains open-book audit rights in favour of the *Employer* and their authorised representatives.
- 106.3 The *Contractor* undertakes and procures that his Subcontractors and Indirect Subcontractors undertake their obligations and exercise any rights which relate to the performance of this contract on an open-book basis. The *Employer* and their authorised representatives may from time to time audit on an open-book basis and check any and all information regarding any matter relating to the performance of or compliance with this contract, including without limitation, inspection of the *Contractor's* technical and organisational security measures for the protection of personal data, any aspect of the *Contractor's* operations, costs and expenses, sub-contracts, claims related to compensation events, and financial arrangements or any document referred to therein or relating thereto. The *Employer's* rights pursuant to this sub-clause include the right to audit and check and to take extracts from any document or record of the *Contractor* and/or his Subcontractors and Indirect Subcontractors including, without limitation, the Records.
- 106.4 The *Contractor* promptly provides (and procures that his Subcontractors and Indirect Subcontractors promptly provide) all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance by
- granting or procuring the grant of access to any premises used in the *Contractor's* performance of this contract, whether the *Contractor's* own premises or otherwise,
 - granting or procuring the grant of access to any equipment or system (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of this contract, wherever situated and whether the *Contractor's* own equipment or otherwise,
 - making any contracts and other documents and records required to be maintained under this contract (whether exclusively or non-exclusively) available for audit and inspection,
 - providing a reasonable number of copies of any subcontracts and other documents or records reasonably required by the *Employer's* auditor and/or granting copying facilities to the *Employer's* auditor for the purposes of making such copies, and
 - complying with the *Employer's* reasonable requests for access to senior personnel engaged by the *Contractor* in the performance of this contract and/or the *service*.

Corrupt Gifts, Fraud and the Payment of Commission 107

- 107.1 If a breach of clause 16 (corrupt gifts) of the Framework Agreement is committed by an employee of the *Contractor* or by any Subcontractor (or employee or agent of such Subcontractor) then the *Employer* may (at his sole discretion) choose to serve a warning notice upon the *Contractor* instead of exercising his right to terminate with immediate effect and unless, within 30 days of receipt of such warning notice, the *Contractor* terminates, or procures the termination of, the employee's employment or Subcontractor's appointment (as the case may be) and (if necessary) procures the provision of the affected *service* by another person, this constitutes a material breach of this contract and entitles the *Employer* to terminate this contract with immediate effect in accordance with clause 91.
- 107.2 In the event of any breach of clause 16 (corrupt gifts) of the Framework Agreement by the *Contractor* the *Employer* recovers from the *Contractor* any loss liability or damage incurred or suffered as a result of the breach of such clause by the *Contractor*.

Quality Statement 108

- 108.1 The quality statement sets out the *Contractor's* proposals for the management and resourcing of the *service*.
- 108.2 The *Contractor* warrants that the representations contained in the quality

statement section of his tender are accurate in every respect and may be fully relied upon by the *Employer*, including where the standards represented exceed the minimum originally specified by the *Employer*.

- 108.3 Should any discrepancy arise between the quality statement and other contract documents the Service Information takes precedence except where the quality statement includes a standard which exceeds that specified in the other contract documents, in which case the quality statement shall take precedence over those other documents.

**Responsibility for
Statutory Undertakers
and Special
Requirements of
Statutory and Other
Bodies**

109

- 109.1 The *Contractor* on behalf of the *Employer*

- identifies those measures which need to be taken as a consequence of or in order to facilitate the *service* with any Statutory Undertaker,
- agrees a specification for the measures which need to be taken and determines by whom those measures are to be taken with the Statutory Undertaker,
- co-ordinates the taking of those measures and the execution of the *service* with the Statutory Undertaker,

and the *Employer* as the *Contractor's* principal pays the Statutory Undertaker's allowable costs in respect of these measures.

The *Contractor*

- is responsible (at no cost to the *Employer*) for ensuring the Statutory Undertaker's compliance with any agreement or arrangement entered into under clause 109
- indemnifies and keeps indemnified the *Employer* against
 - all claims demands actions and proceedings
 - costs charges and expenses arising therefrom
 - loss or damage to any property
 - increased costs of working or
 - business interruption

which may be brought or made by any Statutory Undertaker in connection with such an agreement including but not limited to the negligence or default of the *Contractor*.

- 109.2 The *Contractor* allows in any plan or programme required under this contract, any notice period required by a Statutory Undertaker in relation to any matter which is the subject of clause 109.1 and for all periods required in the taking of measures which are the subject of clause 109.1.

- 109.3 The *Contractor*

- complies at his own cost with all special requirements of Statutory Undertakers and other bodies as set out in the Service Information,
- is not excused from the performance of any his obligations under the contract and is not entitled to any allowance of time or to any additional remuneration or compensation in consequence of the requirement to comply with this clause 109.3,
- acknowledges and agrees that the *Employer* does not warrant and has not warranted the accuracy or completeness of any data or information which has been or will be provided to the *Contractor* by the *Employer*, *Service Manager* or Others relating to the location, size, nature or condition of services in, on, over or under the Affected Property or any Task Site or in the vicinity of the Affected Property or any Task Site,
- further acknowledges and agrees that he neither has nor will have any claim of any kind whatsoever against the *Employer* founded upon the accuracy or completeness of any such data or information.

Nuisance 110

- 110.1 The *Contractor* at all times prevents any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the *service* or of any obligation under clause 42 and assists the *Employer* in defending any action or proceedings which may be instituted in relation to the same. The

Contractor is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*.

- 110.2 Without prejudice to the *Contractor's* obligations under clause 110.1, the *Contractor* ensures that there is no trespass on or over any adjoining or neighbouring property arising out of the *service* or of any obligation under clause 42. If the carrying out of the *service* or of any obligation under clause 42 is likely to necessitate any interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the *Contractor*, at no cost to the *Employer*, obtains the prior written agreement of such owners and/or occupiers to the work, and such agreement will be subject to the approval of the *Employer* before execution. The *Contractor* complies in every respect with any conditions in any such agreement.

Construction Industry Scheme 111

- 111.1 Where the Construction Industry Scheme applies to any payment to be made by the *Employer* to the *Contractor* under this contract, the obligations of the *Employer* to make such payment will be subject to the provisions of the Construction Industry Scheme. Unless and until HM Revenue and Customs confirms to the *Employer* that the *Employer* can make any payment to the *Contractor* without any tax deduction, the *Employer* deducts any tax from payments due to the *Contractor* under this contract at the rate specified by HM Revenue and Customs pursuant to the Construction Industry Scheme before paying the balance to the *Contractor*. The *Employer* accounts to HM Revenue and Customs for any tax so deducted.

Use of Existing Services 112

The *Employer* does not warrant the suitability or availability of installations and services for the *Contractor's* use and the *Contractor* shall take measures to supplement them as necessary.

Volume Rebate 113

- 113.1 The *Contractor* notifies the *Service Manager* of the amount of the Volume Rebate within 5 days of calculation of such amount under clause 7 of the Framework Agreement.
- 113.2 Following notification pursuant to clause 113.1 the *Employer* may:
- issue an invoice to the *Contractor* for the Volume Rebate and the *Contractor* pays the relevant Volume Rebate to the *Employer* within 30 days of receipt of such invoice or
 - request that the *Contractor* provides a credit against future sums payable by the *Employer* in the amount of the Volume Rebate and any such credit is applied in accordance with the instructions of the *Employer*.

Adjustment for Inflation 114

- 114.1 The rates, prices and lump sums set out in the Price List and any other rates, values or sums set out in this contract which are expressly stated to be adjusted for inflation are adjusted in accordance with Schedule 17 of the Framework Agreement.

Lane Rental 115

- 115.1 The *Contractor* complies with the Employer Lane Rental Scheme.
- 115.2 The *Contractor* pays the Lane Rental charges
- as stated in the Employer Lane Rental Scheme and
 - at the rate stated in the Employer Lane Rental Scheme for each Lane Rental Road Segment or Pinchpoint which he occupies during Lane Rental Times. Provided that the *Employer* will reimburse the *Contractor* the applicable Lane Rental charges if such occupation is solely due to
 - the occurrence of an *Employer's* risk or
 - the *Contractor* fulfilling his obligations to provide emergency response services to a 3rd Party incident or
 - the *Contractor* attending site at the request of the emergency services as long as the response request is not due to a failure of the *Contractor's* contractual obligations or
 - the *Employer* requiring the occupation during the chargeable period.

Save that any reimbursement will only be for those charges that are incurred in

accordance with the agreed programme. For the avoidance of doubt where the charge has been incurred due to a *Contractor's* risk or as a result of a failure to meet the agreed programme, then these charges will not be reimbursable.

- 115.3 Lane Rental charges will be recovered independently and will not affect other payments due under the contract, unless they are an element of the Defined Cost associated with a compensation event that occurs. The *Employer* will send a schedule of Lane Rental Charges due to the *Contractor* each 4-week period. If the *Contractor* disagrees with the schedule he shall within 10 days respond providing details of the dispute as requested in the schedule. Once 10 days have elapsed or after any dispute has been investigated and the *Employer* has confirmed the schedule as issued or amended, an invoice will be issued by the *Employer*.

Fixed Penalty Notice 116

- 116.1 Save where stated otherwise in the Service Information, for roads within the Affected Property subject to permitting requirements under the provisions of the Traffic Management Act, the *Contractor* will be responsible for meeting the cost of any fixed penalty charges attributable to his operations resulting in the occupation of road space while not being covered by a valid permit, or failure to meet the conditions of a permit, or through any administrative failures including, but not limited to, failures to submit notifications within the required timescales, or failure to include accurate information within such notifications.

**Goods Vehicles
Operator's Licence 117**

- 117.1 Each goods vehicle used by the *Contractor* or his Subcontractors in connection with this contract displays the vehicle licence disc relevant to the goods operator's licence under which the vehicle is operated or, in the absence of an operator's licence disc, the vehicle carries documentation giving the operator's licence number, name and address.

**Mobilisation and
Demobilisation Audits 118**

- 118.1 If instructed by the *Employer*, an independent audit team will carry out an audit of the *Contractor's* progress against his Mobilisation Plan half way between the date of this contract and the *starting date*. If such audit concludes that the *Contractor* is not achieving his Mobilisation Plan then the *Contractor* will be required to develop and agree an Action Plan with the *Employer* demonstrating how the *Contractor* will have achieved his Mobilisation Plan by the *starting date*.
- 118.2 If at any time following this audit or implementation of an associated Action Plan the *Employer* believes that the *Contractor* will not be able to commence Providing the Service other than in respect of any already instructed Task on the *starting date*, then the *Employer* may delay the *starting date*.
- 118.3 The *Contractor* shall be fully responsible for all his own costs resulting from any delay to the *starting date* and will reimburse the *Employer* for the costs that he has directly or indirectly incurred as a result of any delays to the commencement of the *service*.
- 118.4 A delay to the *starting date* as a result of the *Contractor's* failure to successfully implement his Mobilisation Plan is treated as a substantial failure to Provide the Service by the *Contractor* for the purposes of clause 91.
- 118.5 Within the last year of the *service period* a de-mobilisation audit will be conducted to review the status of contract compliance and delivery of requirements ready for handover to a new contract. This will be fully specified by the *Employer* within the first six months of the last year of the *service period*.

**Application of the Target
Cost Option to the Core
Service 119**

- 119.1 At any time on or after the second anniversary of the *starting date* the *Employer* may elect to pay for the Core Service on a target cost basis ("the Target Cost Election").
- 119.2 If during the second year of the *service period* or any subsequent Financial Year the *Employer* intends to make the Target Cost Election at the end of that Financial Year ("the Relevant Year") the following procedure is applied
- not later than 6 months before the end of the Relevant Year the *Employer* notifies the *Contractor* of his intention,
 - following that notification the parties negotiate in good faith the total of the Prices and the Annual Price List applicable for the Core Service for the following Financial Year ("the First Target Year") if the Target Cost Election is made,

- if the parties cannot reach agreement by the end of the 11th month of the Relevant Year the *Employer* on or before the end of the Relevant Year
 - notifies the *Contractor* that he is not making the Target Cost Election at that time or
 - makes the Target Cost Election and the *Service Manager* assesses the total of the Prices for the Core Service for the First Target Year and notifies them to the *Contractor* and issues the Annual Price List.

119.3 The *Service Manager* assesses for the Core Service the total of the Prices as and prepares the Annual Price List on the basis of

- the *Contractor's* Defined Cost for the Core Service for the first 11 months of the Relevant Year adjusted for inflation between the Relevant Year and the First Target Year
- the *Service Manager's* forecast of the *Contractor's* Defined Cost for the 12th month of the Relevant Year adjusted for inflation between the Relevant Year and the First Target Year and
- the relevant fee calculated by applying the *target cost subcontracted fee percentage* to the above Defined Cost of subcontracted work and the *target cost direct fee percentage* to the above Defined Cost of other work.

119.4 From the beginning of the Financial Year which follows the date of the Target Cost Election the Target Cost Option applies to the Core Service and the total of the Prices and the Annual Price List for the Core Service are as agreed or assessed in accordance with this clause.

119.5 After the Target Cost Election has been made the following procedure is applied in each Financial Year

- not later than 3 months before the end of the Financial Year the parties negotiate in good faith the total of the Prices and the Annual Price List for the Core Service for the following Financial Year ("the Subsequent Target Year"),
- if the parties cannot reach agreement by the end of the 11th month of the relevant Financial Year the *Service Manager* assesses the total of the Prices for the Core Service for the Subsequent Target Year and notifies them to the *Contractor* and issues the Annual Price List

and the total of the Prices and the Annual Price List for the Core Service for the Subsequent Financial Year is as agreed or assessed.

119.6 For the purpose of clause 119.5 the *Service Manager* assesses for the Core Service the total of the Prices as and prepares the Annual Price List on the basis of

- the *Contractor's* Defined Cost for the Core Service for the first 11 months of the relevant Financial Year adjusted for inflation between the relevant Financial Year and the Subsequent Target Year
- the *Service Manager's* forecast of the *Contractor's* Defined Cost for the 12th month of the relevant Financial Year adjusted for inflation between the relevant Financial Year and the Subsequent Target Year and
- the relevant fee calculated by applying the *target cost subcontracted fee percentage* to the Defined Cost of subcontracted work and the *target cost direct fee percentage* to the Defined Cost of other work.

119.7 The total of the Prices in any Financial Year in which the Target Cost Option applies to the Core Service is not more than the total of the Prices for the Core Service for the first year of the *service period* adjusted for inflation and any compensation events.

119.8 For the avoidance of doubt each Task Order identifies whether or not the Target Cost Option applies for a Task and nothing in this clause 119 prevents the *Employer* from applying the Target Cost Option for a Task at any time.

Performance Bond 120

120.1 When requested by the *Employer*, the *Contractor* gives the *Employer* a performance bond in the form set out at Appendix 5 of this contract, provided by a bank or insurer which the *Service Manager* has accepted, for the amount stated in the Contract Data. A reason for not accepting the bank or insurer is that its

commercial position is not strong enough to carry the bond. If a bond was not given before the Contract Date, it is given to the *Employer* upon the execution by the *Contractor* of the Form of Agreement and within 14 Business Days of any subsequent request.

- 120.2 On or before the date that any performance bond provided by the *Contractor* expires in accordance with its terms the *Contractor* gives the *Employer* a replacement performance bond in accordance with clause 120.1.

**Objects and Materials
within the Affected
Property**

- 121**
- 121.1 The *Contractor* has no title to an object of value or of historical or other interest within the Affected Property or any Task Site. The *Contractor* notifies the *Service Manager* when such an object is found and the *Service Manager* instructs the *Contractor* how to deal with it. The *Contractor* does not move the object without instructions.

DISPUTE RESOLUTION

Option W2

Dispute resolution procedure (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies).

Dispute resolution W2
W2.1

- The Parties follow the procedure below for the avoidance and resolution of any Dispute arising under or in connection with this contract.
- In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.
- A Party may refer a Dispute to the *Adjudicator* at any time by way of a Notice of Adjudication. Subject to that, by notice in writing, a Party may refer a Dispute to the Parties' Senior Representatives for consideration. The written notice identifies the Party's Senior Representative, gives brief written particulars of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought and the basis for claiming the relief sought.
- Within 14 days of receipt of the notice of referral to Senior Representatives, the responding party provides the referring party with a brief written response and identifies the responding party's Senior Representative.
- Within a further 14 days the Senior Representatives meet and try to reach agreement to resolve the Dispute. Each Party bears its own costs and expenses in relation to any reference of a Dispute to the Senior Representatives. Any documents prepared or exchanged in relation to the reference of the Dispute to Senior Representatives and any discussions between the Senior Representatives are without prejudice and the Parties do not make use of or rely upon any without prejudice statements in any subsequent Dispute proceedings.

W2.2

- If a Dispute is to be referred to the *Adjudicator* the Parties appoint the *Adjudicator*.
- Any person requested or selected to act as the *Adjudicator* in accordance with this clause W2 is a natural person acting in his personal capacity and is not an employee of any of the Parties, or of any other party to the Dispute, and declares any interest, financial or otherwise, in any matter relating to the Dispute.
- The *Adjudicator* acts impartially and decides the Dispute as an independent adjudicator and not as an arbitrator.
- The Parties may choose an adjudicator (or replacement adjudicator, as necessary) jointly or a Party may ask the *Adjudicator nominating body* to choose an adjudicator. Such joint appointment or referral to the *Adjudicator nominating body* shall take place immediately upon the serving of a Notice of Adjudication, or immediately following the position of *Adjudicator* falling vacant.
- The *Adjudicator nominating body* chooses an adjudicator within four (4) days of the request. The chosen adjudicator becomes the *Adjudicator*.
- A replacement *Adjudicator* has the power to decide a Dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided Dispute as if it had been referred to him on the date he was appointed.

- The *Adjudicator*, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.
- The Parties may terminate the *Adjudicator's* appointment at any time. In such case, or if the *Adjudicator* fails to give notice of his decision within the period required or agreed, or if at any time the *Adjudicator* declines to act or is unable to act as a result of his death, disability, resignation or otherwise, a person is appointed to replace the *Adjudicator* in accordance with the provisions of this clause W2.2.

W2.3

- Before a Party refers a Dispute to the *Adjudicator*, he gives a Notice of Adjudication to the other Party with a brief description of the Dispute, including the provisions of this contract that are relevant to the Dispute, the relief sought, the basis for claiming the relief sought and the decision that he wishes the *Adjudicator* to make. Following the appointment of the *Adjudicator*, the Party immediately sends a copy of the Notice of Adjudication to the *Adjudicator*. Within 3 days of the receipt of the Notice of Adjudication, the *Adjudicator* notifies the Parties
 - that he is able to decide the Dispute in accordance with the contract or
 - that he is unable to decide the Dispute and has resigned.

If the *Adjudicator* does not so notify within 3 days of the issue of the Notice of Adjudication, either Party may act as if he has resigned.

- The terms of remuneration of the *Adjudicator* are agreed by the Parties and the *Adjudicator*, with the object of securing the appointment of the *Adjudicator*, within 7 days of the Notice of Adjudication. If any Party (but not all the Parties) rejects the terms of the remuneration of the *Adjudicator* the same are settled (and binding upon the Parties) by agreement between the *Adjudicator nominating body* and the *Adjudicator* (provided that the level of the *Adjudicator's* remuneration does not exceed the level originally proposed to the Parties by the *Adjudicator*). If all the Parties reject the terms of remuneration proposed by an *Adjudicator* another person is selected as an *Adjudicator* in accordance with clause W2.2.
- Within 7 days of a Party giving a Notice of Adjudication he
 - refers the Dispute to the *Adjudicator*,
 - provides the *Adjudicator* with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents, and
 - provides a copy of the information and supporting documents he has provided to the *Adjudicator* to the other Party.

Upon receipt of the referral notice, the *Adjudicator* must inform every party to the Dispute of the date it was received.

Within fourteen (14) days from the referral, any Party, who is not the Party giving a Notice of Adjudication, provides the *Adjudicator* with the information on which he relies, including the factual and contractual or other basis of the claim, the amount (if any) claimed and any supporting documents.

These periods may be extended if the *Adjudicator* and Parties agree.

- If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract the *Contractor* may, with the consent of the Subcontractor and *Employer*, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor. The Parties comply with any reasonable request by the *Adjudicator* for more time to decide the disputes referred to him.

If this contract is a subcontract and the main contract provides for joint adjudication of disputes, the following procedure applies.

Within two (2) weeks of the notification of the dispute by the *Contractor* to

the *Employer*, the *Employer* notifies the *Contractor* if the matter disputed is a matter disputed under or in connection with the main contract.

The *Employer* may then

- submit the subcontract dispute to the main contract adjudicator at the same time as the main contract submission and
- instruct the *Contractor* to provide any information which the *Employer* may require.

The main contract adjudicator then gives his decision on the disputes together.

- The *Adjudicator* may
 - make directions for the conduct of the Dispute
 - review and revise any action or inaction of the *Employer* related to the Dispute and alter a quotation which has been treated as having been accepted
 - take the initiative in ascertaining the facts and the law related to the Dispute
 - instruct a Party to provide further information related to the Dispute within a stated time and
 - instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.
- If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make his decision based upon the information and evidence he has received.
- The *Adjudicator* shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching a decision.
- A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.
- All notices, written submissions and any other written communications between the Parties and the *Adjudicator* are either delivered by hand, sent by facsimile, sent by electronic mail (if agreed between the Parties and the *Adjudicator*) or sent by first class pre-paid post or recorded delivery and in each case are copied simultaneously (delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile or by electronic mail between the Parties and the *Adjudicator* are also sent by first class post not later than the business day next following the date of the original facsimile transmission or electronic mail (as applicable).
- Save as required by law, the Parties and the *Adjudicator* keep information relating to the Dispute confidential.
- If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed.
- The *Adjudicator* decides the Dispute and notifies the Parties of his decision and his reasons in writing within 28 days of receipt by him of the referral notice. This period may be extended by up to 14 days with the consent of the Party giving the Notice of Adjudication or by any other period agreed by the Parties.
- Unless the Parties otherwise agree, the *Adjudicator* may allocate the costs and expenses of the adjudication, including the fees and expenses of the *Adjudicator*, as between the Parties. The *Adjudicator* allocates such costs and expenses on the general principle that costs should follow the event, except where it appears to the *Adjudicator* that in the circumstances this is not appropriate in relation to the whole or part of such costs and expenses. The Parties agree to be bound by the *Adjudicator's* allocation of such costs and expenses and pay such costs and expenses in accordance with the direction of the *Adjudicator* unless and until the direction of the *Adjudicator* is set aside or revised by a court pursuant to any legal proceedings.

- Unless and until the *Adjudicator* has notified the Parties of his decision the Parties proceed as if the matter disputed was not disputed.
 - If the *Adjudicator* does not make his decision and notify it to the Parties within the time provided by this contract the Parties and the *Adjudicator* may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.
 - The *Adjudicator's* decision is binding on the Parties unless and until revised by the courts pursuant to any legal proceedings and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the time required by this contract that he is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the courts or unless agreed otherwise by the Parties.
 - The *Adjudicator* may, on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within 7 days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this clause, the *Adjudicator* must deliver a copy of the corrected decision to each of the Parties. Any correction of a decision forms part of the decision.
 - If the *Adjudicator's* decision changes an amount notified as due, payment of the sum decided by the *Adjudicator* is due not later than 7 days from the date of the decision or the final date for payment of the notified amount whichever is the later.
- W2.4
- Unless the Parties agree otherwise, a Party does not refer any Dispute under or in connection with this contract to the courts unless it has first been decided by the *Adjudicator* in accordance with this contract.
 - Any Party may apply to any appropriate court for enforcement of the *Adjudicator's* decision.
 - If, after the *Adjudicator* notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the courts. The Dispute may not be referred to the courts unless this notification is given within six (6) weeks of the notification of the *Adjudicator's* decision.
 - The courts settle the Dispute referred to it. The courts have the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Employer* related to the Dispute. A Party is not limited in court proceedings to the information or evidence put to the *Adjudicator*.
 - A Party does not call the *Adjudicator* as a witness in court proceedings.

APPENDIX 1

LIST OF TRANSFERRING STAFF

See Employer Call-Off Contract

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APPENDIX 2

TUPE

1 TRANSFER OF EMPLOYEES TO CONTRACTOR

1.1 It is understood and acknowledged by the Parties that the Regulations apply to the Transfer of Provision and accordingly, pursuant to the Regulations, the contracts of employment between the Current Supplier and the Transferring Staff will have effect from the *starting date* as if originally made between the *Contractor* and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be subject to the provisions of paragraphs 1.2 and 1.3).

1.2 The *Contractor* will, and will procure that each of its Subcontractors will, comply with the provisions of sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 with effect from the *starting date* in respect of any Non-Eligible Employees.

1.3 The *Contractor* will, and will procure that each of its Subcontractors will, comply with the Best Value Direction in respect of any Eligible Employees in accordance with the requirements of the *Employer* in relation to pension protection (if any).

1.4 In respect of the Transferring Staff, the parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

1.4(1) up to 23:59 on the date immediately preceding the *starting date* will be the responsibility of the Current Supplier; and

1.4(2) from 00:00 on the *starting date* and thereafter will be the responsibility of the *Contractor*,

except that there will be no apportionment in respect of the Transferring Staffs' holiday entitlement.

1.5 The *Employer* (on behalf of the Current Supplier) will indemnify, keep indemnified and hold harmless the *Contractor* (and any of its Subcontractors) from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Contractor* (or its Subcontractors) incurs or suffers arising out of or in connection with:

1.5(1) any breach or default by or on behalf of the Current Supplier in respect of the Transferring Staff before the *starting date*; and/or

1.5(2) any failure by the Current Supplier to comply with Regulation 11 of the

Regulations; and/or

- 1.5(3) any failure by the Current Supplier to comply with Regulation 13 of the Regulations; and/or
- 1.5(4) the employment or termination of employment by the Current Supplier of any Transferring Staff (whether or not terminated by notice and, if so terminated, whenever that notice expires) before the *starting date*; and/or
- 1.5(5) any breach or default by or on behalf of the Current Supplier in respect of any person who is or was employed or engaged by it, except in the case of the Transferring Staff where the *Employer's* indemnity will only apply in respect of such employees insofar as and to the extent that any such breach or default occurred on or before the *starting date* or was undertaken by, or on behalf or at the instruction of the Current Supplier; and/or
- 1.5(6) any claim or demand or other action taken against the *Contractor* (or its Subcontractors) by any person employed or engaged by the Current Supplier (other than Transferring Staff) who claims (whether correctly or not) that the *Contractor* (or its Subcontractors) has inherited any liability from the Current Supplier in respect of such person by virtue of the Regulations.

1.6 The *Contractor* will indemnify, keep indemnified and hold harmless the *Employer* and the Current Supplier from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Employer* or the Current Supplier incurs or suffers arising out of or in connection with:

- 1.6(1) any breach or default by or on behalf of the *Contractor* (or its Subcontractors) in respect of any person employed or engaged by it on or after the *starting date*, including the Transferring Staff; and/or
- 1.6(2) any failure by the *Contractor* or its Subcontractors to comply with their obligations under Regulation 13 of the Regulations; and/or
- 1.6(3) any claim brought or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any breach or default and/or, communication made to the Transferring Staff before the *starting date* by, on behalf of and/or at the instruction of the *Contractor* or its Subcontractors;
- 1.6(4) the employment or termination of employment by the *Contractor* or its Subcontractors of any Transferring Staff (whether or not terminated by notice and, if so terminated, whenever that notice expires) on or from the

starting date; and/or

1.6(5) any actual, proposed or anticipated changes by the *Contractor* (or its Subcontractors) to the terms and conditions of employment of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

1.7 The *Contractor* will provide the Current Supplier, as soon as practicable, but in any event in good time before the *starting date* with all information which the Current Supplier may reasonably require to enable it to comply with its information and consultation obligations under the Regulations.

1.8 The *Contractor* warrants and undertakes to the *Employer* that all information given to the *Employer* regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.

2 PROVISION OF INFORMATION

2.1 The *Contractor* will promptly when requested by the *Employer* (and not more than 7 days after the date of any notice to terminate this contract given by either Party for any reason whatsoever) provide, and use its best endeavours to procure that any relevant Subcontractor provides, the following information to the *Employer*:

2.1(1) a list of current Contractor's Personnel and any persons employed or engaged by its Subcontractors wholly or mainly in the provision of the *service* (each identified as such in the list) (the "Staff List");

2.1(2) all material terms and conditions relating to the employment or engagement of the persons listed on the Staff List;

2.1(3) written job descriptions of the persons listed on the Staff List;

2.1(4) all other information which the *Contractor* or its Subcontractors knows or ought to know about its or their rights, powers, duties and liabilities under or in connection with the contracts of employment of the persons listed on the Staff List including without limitation their job titles, grades or seniority, dates of commencement of continuous employment, remuneration (salary and benefits) and pension rights; and

2.1(5) in the situation where notice to terminate this contract has been given, a list of all persons who are engaged or have been engaged during the preceding six months in the provision of the *service*, whom the *Contractor* considers will not transfer under the Regulations for any reason whatsoever together with details of their role and a full explanation of why the *Contractor* thinks such persons will not transfer,

such information together being the "Staffing Information".

- 2.2 The *Contractor* will notify the *Employer* in as much detail as possible as soon as practicable and in any event within 5 days of the *Contractor* becoming aware of any additional or new Staffing Information and/or any changes to any Staffing Information already provided.
- 2.3 The *Contractor* warrants to the *Employer* that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.
- 2.4 Subject to paragraph 2.2, the *Contractor* will provide the *Employer* with a final Staff List (the "Final Staff List") not less than 14 days before the date of expiry or earlier termination of this contract.
- 2.5 If this contract is terminated by either Party in accordance with clause 90 then the Final Staff List will be provided by the *Contractor* to the *Employer* within 14 days of the date of termination of the contract.
- 2.6 The *Contractor* warrants that as at the date of expiry or earlier termination of the contract:
- 2.6(1) the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
 - 2.6(2) the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
 - 2.6(3) it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Employer.
- 2.7 From the earlier of:
- 2.7(1) the date falling 3 calendar months before the date of expiry of this contract; or
 - 2.7(2) if the contract is terminated by either Party in accordance with clause 90, the date of the relevant termination notice or
 - 2.7(3) if either Party refers a dispute to adjudication in accordance with clause W2, the date of such referral;
- the *Contractor* will not and will procure that its Subcontractors do not without the prior written consent of the *Employer* (such consent not to be unreasonably withheld or delayed):
- 2.7(4) terminate or give notice to terminate the employment or engagement, or replace, the persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
 - 2.7(5) deploy or assign any other person to perform the *service* who is not

included on the most recent Staff List

- 2.7(6) make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List and/or any Re-Transferring Personnel;
- 2.7(7) increase to any significant degree the proportion of working time spent on the *service* by any of the Contractor's Personnel; or
- 2.7(8) introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List.

2.8 The *Contractor* will promptly notify the *Employer* of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the period referred to in paragraph 2.7 regardless of when such notice takes effect.

2.17 For the avoidance of doubt, the *Contractor* confirms that the *Employer* will be permitted to disclose any information provided to it under this paragraph 2 in summary form to any person who has been invited to tender for the provision of the *service* (or similar services) and to any Replacement Supplier.

3 TRANSFER OF EMPLOYEES ON EXPIRY OR TERMINATION OR APPOINTMENT OF A REPLACEMENT SUPPLIER

3.1 If the Regulations apply on the expiration or termination of contract and/or the appointment of a Replacement Supplier, the following will apply:

3.1(1) The contracts of employment of each member of the Re-Transferring Personnel will have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the Regulations which will be treated in accordance paragraphs 3.2(1) and 3.2(2) below) from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the *Employer* or Replacement Supplier (as appropriate).

3.1(2) During the period commencing on the earlier of:

3.1(2)(a) the date falling 6 calendar months before the Further Transfer Date; or

3.1(2)(b) if the contract is terminated by either Party in accordance with clause 90 the date of the relevant termination notice.

3.1(2)(c) and ending on the Further Transfer Date the *Contractor* will:

- (i) provide the *Employer* with access to such employment records as the *Employer* may

require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to the *Employer* or Replacement Supplier (as appropriate);

- (ii) allow the *Employer* to have copies of any of the documents referred to in paragraph 3.1(2)(c)(i); and
- (iii) provide all original employment records relating to the Re-Transferring Personnel to the *Employer* or Replacement Supplier (as appropriate).

If the Re-Transferring Personnel are employed or engaged by Subcontractors, the *Contractor* will procure such Subcontractors provide the *Employer* or Replacement Supplier (as appropriate) with the same level of access and information

3.1(3) The *Contractor* warrants to each of the *Employer* and the Replacement Supplier (as applicable) that as at the Further Transfer Date no Re-Transferring Personnel (except where the *Contractor* has notified the *Employer* and the Replacement Supplier (if appointed) in writing to the contrary) to the *Contractor's* knowledge:

- 3.1(3)(a) is under notice of termination;
- 3.1(3)(b) is on long-term sick leave;
- 3.1(3)(c) is on maternity, parental or adoption leave;
- 3.1(3)(d) has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- 3.1(3)(e) is entitled or subject to any additional terms and conditions of employment other than those disclosed to the *Employer* or Replacement Supplier (as appropriate);
- 3.1(3)(f) is or has been within the previous two years the subject of formal disciplinary proceedings;
- 3.1(3)(g) has received a written warning (other than a warning that has lapsed);
- 3.1(3)(h) has taken or been the subject of a grievance procedure

within the previous two years; or

3.1(3)(i) has objected, or has indicated an intention to object, in accordance with the Regulations to his or her employment transferring to the *Employer* or Replacement Supplier (as appropriate) under the Regulations.

3.1(4) The *Contractor* undertakes to each of the *Employer* and any Replacement Supplier (as appropriate):

3.1(4)(a) that it will (and will procure that its Subcontractors) continue to perform and observe all of its obligations and those of any of its predecessors under or in connection with the contracts of employment of the Re-Transferring Personnel up to the Further Transfer Date;

3.1(4)(b) to pay to the Re-Transferring Personnel all sums to which they are entitled from the *Contractor* and/or any Subcontractor up to the Further Transfer Date (regardless of when such sums fall due) including, without limitation, all wages and salaries, sick pay, maternity pay, any liability to taxation, expenses, accrued bonus, commission and other sums payable in respect of any period up to the Further Transfer Date; and

3.1(4)(c) to comply (and to procure that its Subcontractors comply) in all respects with its information and consultation obligations under the Regulations and to provide to the *Employer* or Replacement Supplier (as appropriate) such information as the *Employer* or Replacement Supplier may request in order to verify such compliance.

3.1(5) In respect of the Re-Transferring Personnel the Parties agree that all Employment Costs will be apportioned on a time basis (regardless of when such sums fall to be paid) as follows:

3.1(5)(a) up to 23:59 on the date immediately preceding the Further Transfer Date the *Contractor* will be responsible for the Employment Costs

3.1(5)(b) from 00:00 on the Further Transfer Date and thereafter the *Employer* and/or Replacement Supplier (as appropriate) will be responsible for the Employment Costs

except that there will be no apportionment in respect of the Re-Transferring Personnel's holiday entitlements.

3.1(6) The *Contractor* will indemnify, keep indemnified and hold harmless each of the *Employer* and any Replacement Supplier from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profit, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) which the *Employer* and/or the Replacement Supplier (as appropriate) incurs or suffers arising directly or indirectly out of or in connection with:

3.1(6)(a) any failure by the *Contractor* to comply with its obligations under paragraph 3.1(4);

3.1(6)(b) any breach or default by or on behalf of the *Contractor* (or any of its Subcontractors) in respect of any person who is or was employed or engaged by it, except in the case of the Re-Transferring Personnel where the *Contractor's* indemnity will only apply in respect of such employees insofar as and to the extent that any such breach or default occurred on or before the Further Transfer Date or was undertaken by, on behalf or at the instruction of the *Contractor* or its sub-contractors; and/or

2.1(6)(c) any claim or demand or other action taken against the *Employer* and/or Replacement Supplier by any person employed or engaged by the *Contractor* or its sub-contractors (other than Re-Transferring Personnel) who claims (whether correctly or not) that the *Employer* or Replacement Supplier has inherited any liability from the *Contractor* or its Subcontractors in respect of such person by virtue of the Regulations.

3.1(7) The *Contractor* will procure that whenever the *Employer* so requires on reasonable notice at any time during the continuance in force of this contract and for 6 years following the date of expiry or earlier termination of the contract the *Employer* and any Replacement Supplier will be given access to and be allowed to consult with any person, consultant or employee who, at that time:

3.1(7)(a) is still an employee or Subcontractor of the *Contractor* or any of the *Contractor's* associated companies or Subcontractors; and

3.1(7)(b) was at any time employed or engaged by the *Contractor* or its Subcontractors in order to provide the service to the *Employer* under the applicable contract

and such access and consultation will be provided free of charge and

thereafter be charged at reasonable rates for the time spent by the *Contractor* (or its Subcontractors) and/or its employees or Subcontractors on such consultation. The *Contractor* will further procure that all such persons co-operate with the *Employer's* requests.

- 3.2 3.2(1) The *Employer* or Replacement Supplier (as appropriate) will comply with the provisions of sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 with effect from the Further Transfer Date in respect of any Non-Eligible Employees.
- 3.2(2) The *Employer* or Replacement Supplier (as appropriate) will comply with the Best Value Direction in respect of any Eligible Employees.

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APPENDIX 3

CALL OFF CONTRACT

MANAGEMENT FORMS

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Form	Title
1	DELEGATION OF THE SERVICE MANAGER'S DUTIES
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3	COMMUNICATION FORM
4	SERVICE MANAGER'S INSTRUCTION
5	EARLY WARNING NOTIFICATION
6	COMPENSATION EVENT NOTIFICATION BY THE SERVICE MANAGER
7	COMPENSATION EVENT NOTIFICATION BY THE CONTRACTOR
8	SERVICE MANAGER'S REPLY TO A COMPENSATION EVENT
9	INSTRUCTION TO SUBMIT QUOTATIONS FOR A PROPOSED INSTRUCTION OR PROPOSED CHANGED DECISION
10	SERVICE MANAGER'S REPLY TO A QUOTATION FOR A COMPENSATION EVENT
11	IMMEDIATE TASK ORDER INSTRUCTION
12	SERVICE MANAGERS TASK ORDER REQUEST
13	CONTRACTORS TASK ORDER RESPONSE
14	MINOR & SCHEME TASK ORDER
15	DEFECTS NOTIFICATION
16	TASK DEFECTS CERTIFICATE
17	DEFECTS CORRECTED BY OTHER PEOPLE
18	TASK COMPLETION CERTIFICATE
19	TAKE OVER CERTIFICATE

Framework Forms

20	FRAMEWORK ANNUAL VOLUME REBATE CERTIFICATE
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Other Forms

21	TRAFFIC MANAGEMENT MEETING
22	QUALITY WAIVER FORM
23	HAZARD FORM
24	SITE INSPECTION FORM
25	FINAL INSPECTION FORM
26	TASK ORDER FINAL AGREED ACCOUNT FORM
27	PAYMENT CERTIFICATE
28	CE TRACKER

NB This Appendix is not an exhaustive list of the forms that may be required in the course of this contract.

DELEGATION OF THE SERVICE MANAGER'S DUTIES (Clause 14.2)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number (if applicable):

To: (The Contractor)	
----------------------	--

In accordance with the terms of clause 14.2 of the conditions of contract I delegate the following Service Manager's duties to:

Name:	
For the period:	

Clause No:	Duty

Delegate:

Signature

Name

Date

Service Manager

Signature

Name

Date

Distribution:				

DELEGATION OF THE SERVICE MANAGER'S DUTIES – CANCELLATION (Clause 14.2)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number (if applicable):

To: (The Contractor)	
----------------------	--

In accordance with the terms of clause 14.2 of the conditions of contract I hereby cancel the previous delegation of the following Service Manager's duties to:

Name:	
-------	--

Clause No:	Duty

Delegate:

Signature

Name

Date

Service Manager:

Signature

Name

Date

Distribution:				

To: (The Contractor / Service Manager)	
Issued in response to Communication No. _____ dated:	

[illegible]

Distribution:				

SERVICE MANAGER'S INSTRUCTION

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

To: (The Contractor)	
----------------------	--

The Service Information is changed as follows:

Delete:	
Add:	
Amend:	

		Tick
This change is a Compensation Event		
This is / is not	A change made in order to accept a Defect	
This is / is not	A change to the Service Information requested by the Contractor for his design made:	
	• At his request	
	• To comply with other Service Information provided by the <i>Employer</i> .	
I hereby instruct you to submit quotations for this compensation event.		
I hereby instruct you to submit alternative quotations for this compensation event.		
I hereby notify you that you did not give an early warning of this event which an experienced contractor could have given.		
I hereby state assumptions about the event because the effects of the Compensation Event are too uncertain to be forecast reasonably (attached).		
You are not required to submit quotations for this event because:		
• The event arises from a fault of the Contractor		
• Quotations have already been submitted		

Service Manager:

Signature

Name

Date

Distribution:				

EARLY WARNING NOTIFICATION (Clause 16)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

Early Warning Number:

Date of this early warning notification:

To: (The <i>Contractor</i> / Service Manager)	
From:	

The matter notified is as follows:

The event could: (tick as appropriate)	Increase the total of the Prices	Interfere with the timing of the <i>service</i>	Impair the effectiveness of the <i>service</i>

The Contractor is instructed to attend an Early Warning meeting within day/hours of this notification

The Service Manager is requested to attend an Early Warning meeting within day/hours of this notification

Service Manager / Contractor:

Signature

Name

Date

Distribution:				

Compensation Event Notification by the Service Manager (Clause 60)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number (if applicable):

Compensation Event number:

To: (The <i>Contractor</i>)	
Site/ Service	

The Compensation Event is as per clause 60.1 sub-paragraph:_____

	Day	Month	Year	
The Event started to occur on:				

The details of the Event are as follows:

The date of this notification by the Service Manager is:				Day	Month	Year	
						Yes	No
Quotation for the Event have already been submitted							
The Service Manager hereby instructs the <i>Contractor</i> to submit quotations							
The Service Manager hereby notifies the <i>Contractor</i> that he did not give Early Warning for this Event, which he could have given							
The Service Manager hereby states the following assumptions about the event, because the effects of the Event are too uncertain to be forecast reasonably							
The Service Manager hereby instructs the Contractor to submit alternative quotations based on the following ways of dealing with the event							
The date by which the Contractor is to submit quotations is (within two weeks of being instructed to do so) unless stated otherwise.				Day	Month	Year	

Notified by the Service Manager

Signature

Name

Date

Distribution:				

Compensation Event number:

The Compensation Event is as per clause 60.1 sub-paragraph:_____

The details of the Event are as follows:

Acknowledgement of Receipt

This notification and all enclosures stated above have been received.

Signed:

Date:

This acknowledgement does not constitute a CE and the Service Manager will respond separately regarding the CE

Notified by the Contractor:

Signature

Name

Date _____

Distribution:				

SERVICE MANAGER'S REPLY TO A COMPENSATION EVENT NOTIFICATION BY THE **CONTRACTOR** (Clause 63)

London Highways Alliance Contract: North East / North West / Central / South:

Call Off Contract Number:

Task Order Number (if applicable):

Compensation Event number:

To: (The <i>Contractor</i>)				
Address:				
Telephone:				
Site:				
The Service Manager decides that the Event notified by the Contractor			Yes	No
• Arose from a fault of the Contractor				
• Has not happened and is not expected to happen				
• Has no effect on the cost to the Contractor or (where applicable) a Task Completion Date				
• Is not one of the Compensation Events stated in this contract				
• Was notified more than four weeks after the <i>Contractor</i> became aware of it				
			Yes	No
The Service Manager hereby notifies the Contractor that the Prices and (where applicable) a Task Completion Date will not be changed				
The Service Manager hereby instructs the Contractor to submit quotations for the event				
The Service Manager hereby notifies the Contractor that he did not give an Early Warning for this event, which he could have given				
The Service Manager hereby states the following assumptions about the event, because the effects of the event are too uncertain to be forecast reasonably				
The Service Manager hereby instructs the Contractor to submit alternative quotations based on the following ways of dealing with the event				
The date by which the Contractor is to submit quotations is (within two weeks of being instructed to do so) unless stated otherwise.		Day	Month	Year

Notified by Service Manager:

Signature		Name		Date
Distribution:				

Compensation Event number:

Notified by Service Manager:

Signature		Name		Date
Distribution:				

SERVICE MANAGER'S REPLY TO A QUOTATION FOR A COMPENSATION EVENT (Clause 63)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number (if applicable):

Compensation event number:

To: (The Contractor)				
Site/Service:				
	Day	Month	Year	
The Contractor's quotation was received on				
The date of this reply is (within two weeks of the submission of the quotation unless extended by agreement)				
The Service Manager's reply to the quotations is:			Yes	No
• acceptance of the quotation				
• a notification that the proposed instruction or a proposed changed decision will not be given				
• a notification that the Service Manager will be making his own assessment for the following reasons:			Yes	No
• the Contractor did not submit the required quotation and details of his assessment within the time allowed				
• the Contractor as not assessed the compensation Event correctly				
• the Contractor has not submitted a plan/programme which this contract requires him to submit				
• the Contractor's latest plan/programme has not been accepted for one of the reasons stated in this contract				
• an instruction to submit a revised quotation				
The reasons for instructing the Contractor to submit a revised quotation are as follows:				
.....				
.....				
.....				
.....				

Service Manager:

Signature	Name	Date
Distribution:		

SERVICE MANAGERS IMMEDIATE TASK ORDER (Clause 29.3.1)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

From: (The <i>Service Manager</i>)		To: (The <i>Contractor</i>)	
In accordance with the conditions of contract and (further to my request) this is the confirmation you are hereby authorised and instructed to carry out and complete the Task described below.			
Task Title		Task Site	
Date of issue of Task Order to Contractor		Time of issue of Instruction	
Task start date		The Task Manager is	
Task covered under Core Service Lump Sum	Yes / No	Previous Immediate Task request was issued by:	email / telephone / NA
Price option for the Task	Lump Sum	Remeasure	
Traffic Management noticing and permitting requirements are being planned to coordinate with the proposed Task	Yes / No	By Contractor	By Service Manager
The following matters will be included on the Task Risk Register			
Risk No.	Risk description		
Additional Employer Risks	Additional Employer Risks in respect of the Task Order		
Total of the Prices for the Task (if known)	[£] (see attached Task Price List)		

Service Manager:

Signature

Name

Date

Distribution:				

SERVICE MANAGERS TASK REQUEST (Clause 29.2.1)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

To: (The Contractor)		From: (The Service Manager)	
Task Type:	Minor	Scheme	
Task Title		Employer Design	Yes /No
Task Site		Contractor Design	Yes / No
Task outside the Affected Property	Yes/No	Anticipated <i>starting date</i> for the works	
Date of issue of Task Request to Contractor		Drawings attached to Task request	Yes / No
Expected date of Task Response from Contractor __/__/__	2 weeks Minor Task 4 weeks Scheme Task	Drawing references(s):	
Contractor required to provide a Task Order Programme	Yes/No	Contractor submits revised Task Order Programme at intervals no longer than two (2) weeks	Yes /No
Description of Task to be delivered:			
Anticipated start date for the Task:			
Anticipated completion Date for the Task:			
Restrictions on working:			
Price Option for the Task	Lump Sum	Remeasure	Target Cost

If Employer Design is selected, the Service Manager provides the quantities and corresponding items from the Price List associated with the Task for the Contractor to submit his prices.

The Task Manger is	
The following matters will be included on the Task Risk Register	
Risk No.	Risk description

Additional Employer Risks	Additional Employer Risks in respect of the Task
Additional Insurance (if required)	

If Delay Damages apply:

Damages in respect of the Task per day are as follows:		
Mon to Friday		£
Saturday		£
Sunday		£

Service Manager:

Signature

Name

Date

Distribution:				

CONTRACTORS TASK ORDER RESPONSE (Clause 29.2.2)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

From: (The <i>Contractor</i>)		To: (The <i>Service Manager</i>)	
Task Title		Employer Design	Yes /No
Task Site		Contractor Design	Yes / No
Date of issue of Task request to Contractor		Drawings attached to scheme response	Yes / No
Response date of Task Response from Contractor		Drawing references(s):	
Proposed start date for the Task		Proposed Task Completion Date	
Task Order Programme attached with this Task Response	Yes/No	If No reasons	
If Contractor Design was selected in the Task Request the Task Price List is as attached			
If Employer Design was selected in the Task Request the Task Price List is as supplied.			
Task Information			
Noted Restrictions on working:			
Price Option for the Task	Lump Sum	Remeasure	Target Cost

The Contractors Manger for the Task is			
Traffic Management noticing and permitting requirements are being planned to coordinate with the proposed Task	Yes / No		
By Contractor	By Service Manager		
The Following Statutory Bodies have been notified	Yes / No		

The following matters will be included on the Task Risk Register		
Risk No.	Risk description	
Additional Employer Risks	Agreed Additional Employer Risks in respect of the Task	
Additional Insurances to be provided (if required)		
The Total of the Prices for the Task is	[£] (see attached Task Price List breakdown)	

Contractor:

Signature

Name

Date

Distribution:				

SERVICE MANAGERS MINOR / SCHEME TASK ORDER (29.3.1)

In Response to a Task Response

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

From: (The <i>Service Manager</i>)		To: (The <i>Contractor</i>)	
In accordance with the conditions of contract and further to your Task Order Response number you are hereby authorised and instructed to carry out the works described below:			
Task Order title		Employer Design	Yes /No
Task Order Site		Contractor Design	Yes / No
Minor Task	Yes/No	Scheme Task	Yes /No
Date of issue of Task Order to Contractor		Drawings attached to Task instruction	Yes / No
Drawing references(s):			
Starting date for the Task		Planned Completion Date for the Task	
Programme attached with this Task response	Yes/No	If No reasons	
Contractor required to provide a Task Order Programme	Yes/No	Contractor submits revised Task Order Programme at intervals no longer than two (2) weeks	Yes /No
Task defect date (if applicable):	__/__/__	Defect correction period:	__ weeks
The Programme for the Task is reference			
The Total of the Prices for the Task is		£ (see attached Task Price List)	

Task Information			
Restrictions on working:			
Price Option for this Task	Lump Sum	Remeasure	Target Cost
If Contractor Design was selected in the Task Order Request the Task Price List is attached			
If Employer Design was selected in the Employers Task Order Price List is as supplied.			

The Contractors Manger for the Service is			
The Service Managers Task Manager is			
Traffic Management noticing and permitting requirements are being planned to coordinate with the proposed scheme			Yes / No
By The Contractor		By the Service manager	
The following matters will be included on the Task Order Risk Register			
Risk No.	Risk description		
Agreed Additional Employer Risks	Additional Employer Risks in respect of the Task		
Additional Insurances to be put in place (if required)			

If Delay Damages apply:

Damages in respect of the Task per day are as follows:		
Mon to Friday		£
Saturday		£
Sunday		£

Service Manager:

Signature

Name

Date

Distribution:				

DEFECTS NOTIFICATION (Clause 40)

London Highways Alliance Contract North East / North West / Central / South

Call Off Contract Number:

Task Order Number (if applicable):

DEFECTS NOTIFICATION NUMBER:

To: (The <i>Contractor</i> / <i>Service Manager</i>)			
Description of Core Service/Task:	Site:		

The following Defects are notified:

The defect correction period is: One / Four Weeks			
The end of this defect correction period is on:			
	Day	Month	Year

Notified by the Service Manager / Contractor:

Signature

Name

Date

Distribution:				

TASK DEFECTS CERTIFICATE (Clause 42)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

To: (The <i>Contractor</i>)		From: (The <i>Service Manager</i>)	
Description of Task		Task Site:	

Completion achieved on:			
The defects date is:			
The end of the last defect correction period is:			
*This Task Defects Certificate date is:			
(*at the later of the Defects date or the end of the last defect correction period):	Day	Month	Year

List of Defects notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected (or, if there are no such defects, a statement that there are none)	

Checked by:

Signature

Name

Date

Certified by:

Signature

Name

Date

Distribution:				

DEFECTS CORRECTED BY OTHER PEOPLE (Clause 40)

London Highways Alliance Contracts: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

To: (The <i>Contractor</i>)		From: (The <i>Service Manager</i>)	
Description of Core Service/Task:		Site:	

Refer to the Defects Notification Dated:

Number:

Defect Reference	End of the <i>defect correction period</i>	Uncorrected defects	Assessed cost of having the Defect corrected by other people (excl. VAT)

Checked by:

Signature

Name

Date

Certified by the Service Manager:

Signature

Name

Date

Distribution:				

TASK COMPLETION CERTIFICATE (Clause 29.6.2)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

To: (The <i>Contractor</i>)		From: (The <i>Employer</i>)			
Description of Task		Task Site:			
			Day	Month	Year
Task Completion Date is:					
Completion achieved on: (NB Completion will only be given when all the obligations under 2.0.4 Scheme General have been discharged including 2.0.4.3 and updated the Employers Asset Management systems as required)					
Date of this Task Completion certificate (within one week of Task Completion):					
The Defects date is (52 weeks after Task Completion):					
The Defects on the attached schedule are to be corrected within the defect correction period (One / Four Weeks) which ends on:					
Lane Rental Charges apply	Yes/No	Amount £			
Delay Damages apply	Yes/No	Amount £			
The <i>Employer</i> takes over the Task not more than two weeks after Task Completion					

Task checked by:

Signature

Name

Date

Certified by the Service Manager:

Signature

Name

Date

Distribution:				

TASK TAKE OVER CERTIFICATE (Clause 29.6A)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

To: (The <i>Contractor</i>)		From: (The <i>Service Manager</i>)			
Description of Task:		Task Site:			
Take Over Certificate for all of the Task YES/NO		Take Over Certificate for part of the Task YES/NO			
Events			Day	Month	Year
Task Completion was achieved on:					
The Task Completion Date is:					
The take over date is (2 weeks after Task Completion):					
The date of this Task Take Over Certificate is:					

Certified by the Service Manager:

Signature

Name

Date

Distribution:				

FRAMEWORK ANNUAL VOLUME REBATE CERTIFICATE (Framework Agreement Clause 7)

London Highways Alliance Contracts: North East / North West / Central / South

Framework Number:

From: (The <i>Contractor</i>)		To: (The <i>Framework Manager</i>)	
-----------------------------------	--	--	--

In accordance with Framework Agreement Clause 7, I certify that at the end of the Financial Year; 20__/_ that the Aggregated Annual Spend was £_____. The details are broken down by payments from each individual Employer as follows:

Employer	Revenue Spend	Capital Spend	Total Spend
	£	£	£
	£	£	£
	£	£	£
	£	£	£
	£	£	£
Total	£	£	£

Within 4 weeks of the end of each Financial Year and the end of the Framework Term the Contractor *will* submits to the Framework Manager details of the Aggregated Annual Spend. The details are broken down by Capital and Revenue payments by each individual Employer.

Certified Contractor:

Signature

Name

Date

Distribution:				

TRAFFIC MANAGEMENT / SITE RESTRICTIONS

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

From / To: (The Service Manager)		From / To: (The Contractor)	
Street Name	Site Requirements/Restrictions	Working Times	
General Comments			

Signature

Name

Date _____

Distribution:				

QUALITY WAIVER FORM

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

From / To: (The <i>Service Manager</i>)				From / To: (The <i>Contractor</i>)			
PROJECT/PROGRAMME/CORE SERVICE/TASK							
Reason for Amendment/Replacement of Procedure				Amendment/Replacement Procedure			
Requested by					Date		
Approved by					Date		

Signature

Name

Date

Distribution:				

HAZARD FORM

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

From / To: (The <i>Service Manager</i>)			To / From: (The <i>Contractor</i>)	
PROJECT/PROGRAMME/CORE SERVICE/TASK				
Number	Date	Hazard	Control Measure	

Signature

Name

Date

Distribution:				

SITE INSPECTION FORM

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

Route Number:

Site Address:

From: (The <i>Service Manager</i>)		To: (The <i>Contractor</i>)	
Description of Activity			
Date of inspection:			
SIGNING & GARDING	Acceptable	Unacceptable	Unseen
Permit displayed			
Correct type			
Distance			
Safety zone			
Barriers			
Traffic control			
Pedestrian control			
S/A Plant Dwgs/Plan			
S/A Equipment Traced			
PPE			
EXCAVATION			
Cover			
Duct configuration			
Excavated material storage			
Excavated material clearance			
Width of slot (slot cutting only)			
Depth of slot (slot cutting only)			
Cable configuration (slot cutting only)			
Slot dried prior to cable install (slot cutting only)			
Civil engineering			
REINSTATEMENT			
Finefill			
Backfill			
Sub-base			
Compaction			
Road-Base (C/W only)			
Basecourse (C/W only)			
Loop resin (slot cutting only)			
Joint resin (slot cutting only)			
Slot sealed (slot cutting only)			
Concrete in U/Kerb (slot cutting only)			
Temp of hot pour bitumen (slot cutting only)			
(slot cutting only)			
WEARING COURSE			
Edge depressions / Trips			
Surface depressions			
Surface crowning			
Edge cracking			

Texture depth				
Surface regularity				
OTHER				
COMMENTS				
1				
2				
3				
4				

Signature

Name

Date

Distribution:				

FINAL INSPECTION FORM

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

Task Order Number:

Route Number:

Site Address:

From: (The <i>Service Manager</i>)		To: (The <i>Contractor</i>)	
Description of Activity			
Date of Final Inspection:			
PERMANENT REINSTATEMENT	Acceptable	Unacceptable	N/A
All notices removed			
All TM removed			
All plant and materials removed			
Edge depressions / trips			
Surface depressions			
Surface crowing			
Edge cracking			
Surface regularity			
Texture depth			
Replaced Modules			
Drawropes			
Road marking			
Width of slot			
Damage to kerb			
Underkerbs			
R-Notice details			
Residual hazard register completed			
Drawpit connection			
Joint			
Cable & Rope			
Measure			
As-built drawing complete			
Civil works completed			
Other			
COMMENTS			
1			
2			
3			

4	
---	--

Signature

Name

Date

Distribution:				

TASK ORDER FINAL AGREED ACCOUNT FORM

London Highways Alliance Contract: North East / North West / Central / South

Call off Contract Number:

Task Order Number:

From: (The <i>Service Manager</i>)			To: (The <i>Contractor</i>)	
Certificate date:			Certificate Number	
Prepared by:			Date:	
Description of Task:				
	Contract Sum	Omissions £	Additions £	Total £
1	Task			
2	Compensation Events #			
3	Adjustments			
	Subtotal			
4	Charges / Lane Rental / Delay Damages			
	Final Agreed Total			

Refer to Compensation Register for a list of Compensation Events

Total amount due to/from the <i>Contractor</i>	£
---	---

Certified by:

Signature

Name

Date

Approved by

Signature

Name

Date

Agreed by Contractor

Signature

Name

Date

Approved by Contractor

Signature

Name

Date

PAYMENT CERTIFICATE (if not specified in Employer's Service Information)

London Highways Alliance Contract: North East / North West / Central / South

Call Off Contract Number:

From: (The Contractor)		To: (The Service Manager)	
Certificate No:			
Assessment date:			
Certificate date:			
Certificate due date:			
Payment due date:			
Prepared by:			
Total amount due to/from the Contractor			
(a)	Cumulative Price for Service Provided and the Task Price to Date (excl. VAT)		
(b)	Retention at 25% if Bond outstanding		
(c)	Subtotal (a) - (b)		
(d)	Interest:		
	(i) late payment		
	(ii) corrected amounts - underpayment		
	(iii) corrected amounts – overpayment=		
	Total interest [d (i) + (ii) - (iii)]		
(e)	Lane Rental Charges		
(f)	Delay damages		
(g)	Total cumulative amount certified [c + d + e + f]		
(h)	Less amount previously certified		
(i)	Amount due this certificate		
(j)	Add VAT @ %		
(k)	Total amount due to / from Contractor		

Assessment checked by:

Signature _____

Name _____

Date _____

Certified by the Service Manager:

Signature _____

Name _____

Date _____

Distribution:				
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CE TRACKER

TRACKER SCHEDULE

[illegible]

Number of Agreed CE	0
Number of Non-CE Items	0

APPENDIX 4

Schedule of Cost Components (SCC)

For the purpose of this Schedule the “Working Areas” are

- any depot or office within the area the subject of the Framework used only for providing work or services under this contract and any other Call-Off Contract under the Framework Agreement and
- those parts of the Affected Property

which are necessary to Provide the Service, unless later changed in accordance with this contract.

In this schedule the *Contractor* means the *Contractor* and not his Subcontractors.

An amount is included only in one cost component and only if it is incurred in order to Provide the Service.

People	1	The following components of the cost of <ul style="list-style-type: none">• people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Working Areas and• people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Working Areas but who are working in the Working Areas.
	11	Wages, salaries and amounts paid by the <i>Contractor</i> for people paid according to the time worked while they are within the Working Areas.
	12	Payments to people for <ul style="list-style-type: none">(a) bonuses and incentives(b) overtime(c) working in special circumstances(d) special allowances(e) absence due to sickness and holidays(f) severance related to work on this contract.
	13	Payments made in relation to people for <ul style="list-style-type: none">(a) travel within the Affected Property(b) protective clothing(c) meeting the requirements of the law(d) pensions and life assurance(e) death benefit(f) occupational accident benefits(g) medical aid(h) a vehicle(i) safety training.
	14	The following components of the cost of people who are not directly employed by the <i>Contractor</i> but are paid for by him according to the time worked while they are within the Working Areas. Amounts paid by the <i>Contractor</i> .
Equipment	2	The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people

overheads).

- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
 - his parent company or
 - by a company with the same parent company
- at the hire or rental rate multiplied by the time for which the Equipment is required.
- 22 Payments for Equipment which is not listed in the Contract Data but is
- owned by the *Contractor*,
 - purchased by the *Contractor* under a hire purchase or lease agreement or
 - hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company
- at open market rates, multiplied by the time for which the Equipment is required.
- 23 Payments for Equipment purchased for work or services included in this contract listed with a time-related on cost charge, in the Contract Data, of
- the change in value over the period for which the Equipment is required and
 - the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.
- The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.
- If the *Service Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.
- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- If the *Service Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.
- 25 Payments for the purchase price of Equipment which is consumed.
- 26 Unless included in the hire or rental rates, payments for
- transporting Equipment to and from the Working Areas other than for repair and maintenance,
 - erecting and dismantling Equipment and
 - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 27 Payments for purchase of materials used to construct or fabricate Equipment.
- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.
- Plant and Materials** 3 The following components of the cost of Plant and Materials.
- 31 Payments for
- purchasing Plant and Materials,

		<ul style="list-style-type: none"> • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	<p>A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of</p> <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>service</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Service Manager's</i> office.
	45	Specialist services.
Manufacture and fabrication	5	<p>The following components of the cost of manufacture and fabrication of Plant and Materials which are</p> <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>service</i> and • manufactured or fabricated outside the Working Areas.
	51	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	52	An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.
Design	6	The following components of the cost of design of the <i>service</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
Insurance	7	<p>The following are deducted from cost</p> <ul style="list-style-type: none"> • the cost of events for which this contract requires the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers.

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APPENDIX 5

FORM OF PERFORMANCE BOND

PERFORMANCE BOND

Between

[BANK]

and

[EMPLOYER]

Relating to the

London Highways Alliance Framework (South Area)

(Letterhead of Bank)

To: [insert name and address of the Employer]

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into a Call Off Contract ("**the Call Off Contract**") with [insert name of Contractor] ("**the Contractor**") in respect of [insert brief description of scope of the call off contract] we [insert name of Bank] ("**the Bank**") hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter ("**this Bond**").

PROVIDED THAT:

1. This Bond shall come into force on the date of this Bond.
2. Any demand under this Bond shall be substantially in the form of either Annex 1 or Annex 3 to this Bond as required by the circumstances in which such demand is made, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.
3. Any demand in the form of Annex 1 shall be accompanied by a copy of a letter from you sent to the Contractor by first class recorded delivery post 14 or more days before the date of the demand, substantially in the form of Annex 2 of this Bond.
4. Our liability under this Bond shall be limited so as not to exceed the aggregate sum of £[FIGURE] and we shall have no liability under this Bond in respect of any demand dated after [DATE OR PERIOD].
5. Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Call Off Contract made by agreement between you and the Contractor including, without limitation, any alteration in the extent or nature or sequence or method or timing of the works or services to be carried out under the Call Off Contract or any novation of the Call Off Contract (in whole or in part); or
 - (b) any defence, counterclaim, withholding, set off or other deduction available to the Contractor under the Call Off Contract or otherwise; or
 - (c) any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor whether express or by conduct or any other thing done, omitted or neglected to be done under the Call Off Contract; or
 - (d) any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Contractor under the Call Off Contract; or
 - (e) the release or waiver of any such bond, security or guarantee referred to in paragraph 5(d) above; or
 - (f) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or
 - (g) the termination of the Call Off Contract for any reason; or

- (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or
 - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
 - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Contractor or any other person relating to the Contractor (whether or not known to you); or
 - (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor.
6. Any payment under this Bond shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.
 7. This Bond is irrevocable.
 8. Terms defined in the Call Off Contract and not otherwise defined in this Bond shall have the same meaning in this Bond.
 9. This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.
 10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
 11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.
 12. Any demand or other notice made by you under this Bond shall be duly made if sent by first class recorded delivery post to us.

[For non-UK resident banks with only a branch or office in the UK :

10. For the purposes of this Bond we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by)	_____
[Bank])	Director
acting by a Director and the)	
Secretary or by two Directors)	_____
		Director/Secretary

The common seal of *[Bank]*
was affixed to this Deed in
the presence of

)
)
)
)

Director

Director/Secretary

Annex 1

Form of Demand from the Employer to [the Bank]

Dear Sirs

Call Off Contract No [] in respect of services for []

We refer to the Bond given by you to us dated []. We enclose a copy of a letter from us to [insert name of Contractor] ("**the Contractor**") which was sent to the Contractor by first class recorded post on [] which is more than 14 days before the date of this demand.

The Contractor has not taken steps which we consider adequate to remedy the breaches.

[INSERT DATE OR PERIOD] has not been reached.

We hereby demand from you the sum of £[] under your Bond. Please make payment by your cheque in sterling payable to [insert name of Employer].

Yours faithfully

On behalf of [insert name of Employer]

Annex 2

Form of letter from the Employer to the Contractor

To be sent by first class recorded delivery post

Dear Sirs

Call-Off Contract No [] in respect of services for []

As explained in [previous letters to you/our letter dated to you] you are in breach of your obligations under Call-Off Contract No. [], and you have neither remedied nor implemented sufficient steps to remedy, those breaches.

This letter therefore notifies you that unless within 14 days from the date of this letter you take steps which we consider adequate to remedy the breaches we shall be entitled without further notice to you to call for payment under the Bond given on your behalf by [*name of bank*] dated [DATE].

Yours faithfully

On behalf of [*insert name of Employer*]

Annex 3

Alternative form of demand from the Employer to [the Bank]

Dear Sirs

Call Off Contract No [] in respect of services for []

We refer to the Bond given by you to us dated [].

An event has occurred of a type described in Clause 90 of the Call Off Contract which entitles us (inter alia) to terminate the Call Off Contract in accordance with that Clause.

[INSERT DATE OR PERIOD] has not been reached.

We hereby demand payment from you of the sum of £[] under your Bond. Please make payment by your cheque in sterling payable to *[insert name of Employer]*.

Yours faithfully

On behalf of *[insert name of Employer]*

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APPENDIX 6

COST CAPTURE DATA STRUCTURE

Introduction

1. The *Contractor* is required to capture the cost of delivering activities under this contract. Costs should be captured and reported in accordance with this appendix.
2. The purpose of this requirement for cost capture is to enable the *Employer* to understand the *Contractor's* and his key Subcontractors' costs of delivering activities and sub-activities. This information will be used for benchmarking, monitoring continuous improvement and identifying opportunities within the supply chain for efficiencies to be made.
3. Cost capture and reporting on a similar basis to that set out in this appendix shall be a contractual requirement between the *Contractor* and his key Subcontractors.
4. All *Contractors* and key Subcontractors costs are to be recorded and accessible for inspection by the *Employer* on an open book basis. The methodology described below for capturing costs will enable accurate calculation of Defined Costs and provide information on individual activity costs to the *Employer*.
5. The cost capture requirements included in the appendix do not preclude the *Employer* from instructing any other separate requirements that may be needed as part of the *Employer's* current budgeting and payment processes.

Minimum System Requirements

6. The *Contractor* is required to implement a cost capture system which:
 - Collect costs on a daily, weekly, monthly and annual basis throughout the *service period*.
 - Categorise costs into the seven components listed in Table 2.
 - Captures and records key Subcontractors costs against each of the seven components listed in Table 2.
 - Produces reports in accordance with Table 1 when instructed by the *Service Manager*. Reports will not be requested more frequency than monthly for cyclic activities and weekly for Task Orders.
 - Holds Labour operatives records per individual including daily man hours allocated by gang and by trade, and including any incentive payments made.
 - Holds quantity data for key measures estimated, earned, used and forecasted.

- Holds plant and equipment “on hire/ off hire” dates, charge out rates and, where relevant, hourly records.
- Holds staff records – mobilisation and leaving dates, days/ hours worked and charge out rates.
- Deals with cost allocation from Employer supply sources.
- Allows payment applications to be produced easily in a standardised template and be easily assessed by the Employer.
- Archives data on a weekly basis in a manner which allows future auditing.
- Allows costs to be coded/ allocated to programme activities against a WBS.
- Allows costs to be coded/ allocated to programme activities against the Affected Property and sub contract areas, Task Sites, asset types, asset locations, routes and series items.
- Provides auditability down to a transactional level.
- Identifies inter-group and supplier discounts and rebates.
- Provides automatic data transfer to the Employer’s control system.
- Is capable of exporting data in a CSV format.

Performance Measurement

7. The *Contractor’s* system must be able to hold performance data to enable output trends to be properly analysed for both *Contractor* and key Subcontractors at work breakdown level. This involves capturing productivity measurements weekly and calculating quantities, man hours and values to be compared with used quantities, man hours and actual costs so deviations and trends can be easily identified as they occur to allow appropriate actions to be taken.

Key Requirements of Performance Measurement Systems

8. The *Contractor* must have a system capable of measurement capture that allows budget, progress to date and forecasts to be quantified by key commodity, quantity, man hours and costs (into Labour, Plant, Materials, etc) to the project WBS. As a minimum it must be able to:
 - Assign quantities, man hours and costs within a WBS to a programme activity.
 - Calculate programme activity percentage progress based on the sum of task man hours against planned at each WBS level.
 - Compare Earned Value with Actual Costs on a weekly basis and report in chart format at each WBS level.
 - Use the above to forecast anticipated final costs and future labour levels based on performance to date and judgement of the future
 - Produce unit output/cost trend reports.
 - Produce key materials utilisation and trend reports.
 - Produce reports on *Employer* capital and revenue spend.

Cost Capture

9. The *Contractor* is required to maintain and submit a report showing the *Contractor's* cumulative cost for each current year tied back to the Price for Services Provided to Date. This report should provide a summary of the *Contractor's* works activity and cost breakdown as outlined in Tables 2, 3 and 4.
10. All overhead costs should be reported against the appropriate overhead activity.
11. In addition the *Contractor* is required to maintain and report by activity the Price for Services Provided to Date outlined in Table 1. This information will be used by the *Employer* to benchmark cost across contracts.
12. The *Contractor* is required to submit reports electronically to the *Employer*. Separate reports are required for the Call-Off Contract and for each prescribed route (as set out in Table 5) and Task Site. In addition costs captured for Incident Response and Winter Maintenance are required to be maintained and allocated to prescribed route locations.
13. In addition to this level of reporting the *Contractor* may be required to provide reports to activity level when requested by the *Employer*. Activities for the *Contractor's* works are outlined in Table 3 and as work category level in Table 4. For activities identified for benchmarking, the *Contractor* is required to populate the "Activity Benchmark Sheet" (as per Table 1). The *Contractor* is required to maintain a database of this for all completed Tasks in accordance with the Service Information.
14. The *Employer* must be given open access to the *Contractor's* costing system as is necessary for the *Employer* to verify the accuracy of the data being reported.

Table 1 – Cost Capture Reports

Header	Value
Percentage of Total Value	Cumulative cost for each current year for each activity as a percentage of total value
Remaining Current Year Forecast	The remaining forecast for each current year for each activity
Current Year Total (CYT)	Cumulative cost for each current year for each activity plus the remaining forecast for each current year for each activity
Current Year Full Year Total	CYT cost for each activity divided by contract duration in year multiplied by 12

(CYFYT)	months.
£'s/lanekm	CYFYT as a cost per lane kilometre for each activity.
£'s/cwkm	CYFYT as a cost per carriageway kilometre for each activity
Alternative Attributes	<p>CYFYT as additional unit rates for specific activities:</p> <p><input type="checkbox"/> Paved Areas as a rate per 1000 square metres of paved area.</p> <p><input type="checkbox"/> Gully/ Catchpit Cleaning as a rate per number of gullies and catchpits.</p> <p><input type="checkbox"/> Structures as a rate per number of structures.</p> <p><input type="checkbox"/> Road Restraint Systems as a rate per kilometre of road restraint systems.</p> <p><input type="checkbox"/> Road Traffic Signs as a rate per number of road traffic signs.</p> <p><input type="checkbox"/> Lighting as a rate per number of road lighting units and number of lit signs.</p> <p><input type="checkbox"/> Other Soft Estate Works as a rate per hectare of soft estate works</p>
Total Value	Overall costs to be tied back to total Payment Application value. This should include the value of the application to the <i>Employer</i> plus other related value for example income from third party damage

COST CAPTURE DIAGRAM – ILLUSTRATING COST CAPTURE AND REPORTING REQUIREMENTS

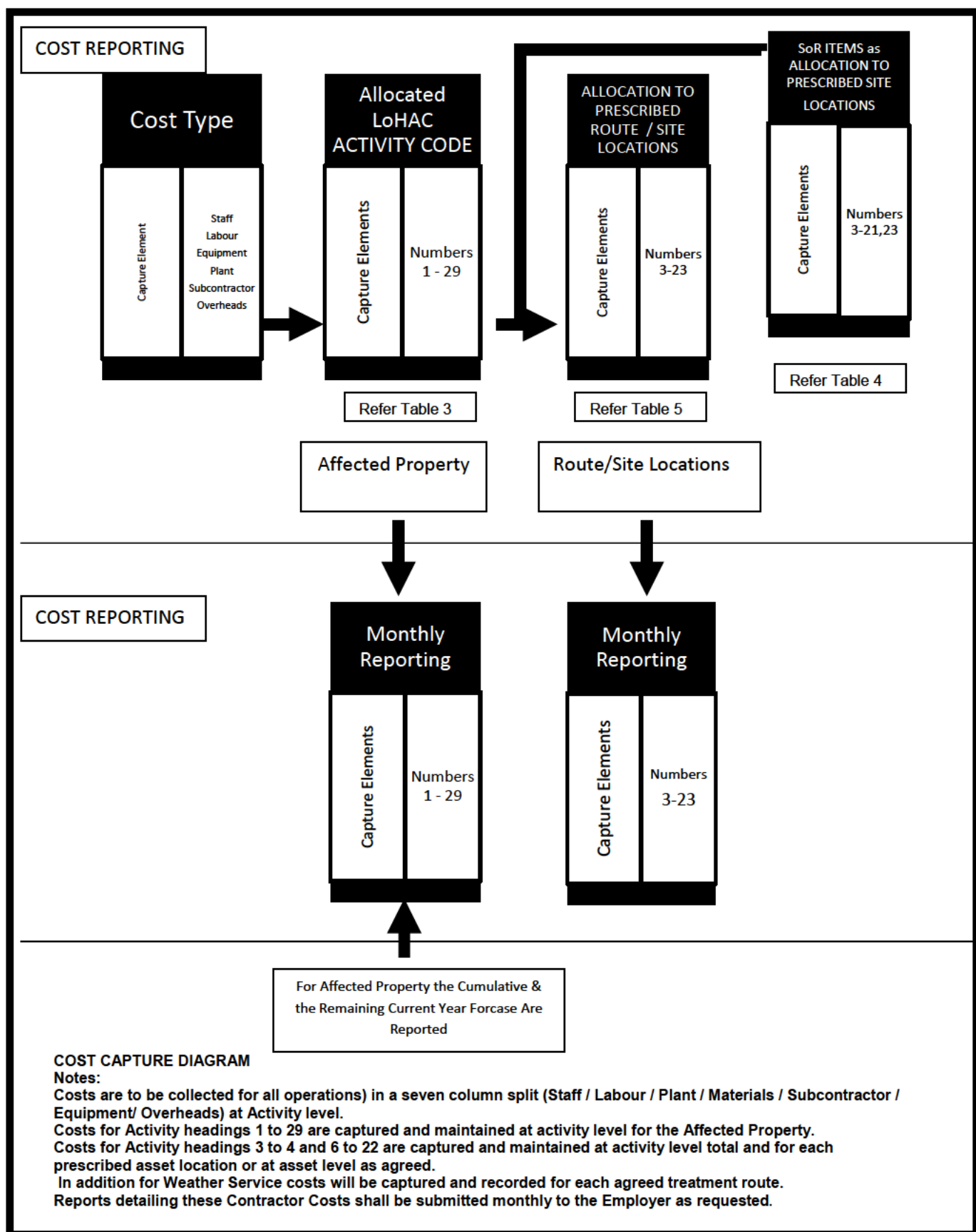


Table 2 - Cost Components

	Staff	Labour	Plant	Material	Equipment	Subcontractor	Overheads
The below are for guidance only and are not consider exhaustive. If in doubt refer to Call-Off Conditions of Contract for descriptions of each category and the <i>Service Manager</i> for clarification of which heading a cost should be recorded under.							
People							
Split between Staff and labour directly working on the Service being provided including but not exclusively:							
Wages and salaries	X	X					
Bonuses and incentives, overtime, working in special circumstances, special allowances, absence due to sickness and holidays, travel	X	X					
Protective clothing, Position related vehicle; safety training specific to Providing the Services in the Area, vetting in accordance with the Service Information, except CRB checks	X	X					
National Insurance contributions, meeting the requirements of the law Pensions	X	X					
Plant							
Plant covers items intended to be included in the Affected Property, for example Contractor's plant, vehicles, accommodation components including compound depot costs, cabins and other site facilities required to provide the Service			X				
Materials							
All materials used in the provision of the Service which the Service Information requires to be included in the Affected Property				X			
Equipment							
Equipment covers such things as Contractor's consumables, small tools, site setting out and site surveying equipment which the Service Information does not required to be included in the Affected Property.					X		
Subcontractor							
Person or organisation who has a contract with the Contractor to, provide a part of the service						X	
Supply's plant and materials which the person or organisation has wholly or partly designed specifically for the service						X	
Overheads							
Payments for provision and use in the Service including but not exclusively:							
Water, gas and electricity							X
Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the Services							X
Payments for royalties, inspection certificates, charges for access to the Working Areas Advertising, leaflet drops and the like in connection with the Services specialist services consumables and equipment provided by the accommodation (in respect of Provider's Premises)							X
Equipment, supplies and services (in all premises within the Working Areas) catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, postal and electronic mail, radio and CCTV, Prestart meeting, site, surveying and setting out, computing							X

The charge includes an appropriate proportion of the cost of accommodation, depreciation and maintenance of equipment, heating, sanitation, power, lighting and water, supplies and consumable stores, depreciation and maintenance of furnishings and fittings cleaning								X
Insurance Premiums, Entertainment, Rents, Rates, Services and Servicing, Publicity, Marketing, Sales, Exhibitions.								X
The amount of any excess borne by the Contractor in respect of any insurance claims								X

Table 3 - Activity Level Schedule

Ref	Service	Activity		Doc Ref VOLUME 1 SERVICE INFORMATION (COMMON) Ref
1	Safety Inspections	Cyclic Activity	N/A	2.1
1b	Safety Inspections	N/A	Reactive Activity	2.1
2	Service Inspections	Cyclic Activity	N/A	2.2
2b	Service Inspections	N/A	Reactive Activity	2.2
3	Inspection of Highway Structures	N/A	N/A	2.3
4	Site Investigations and Surveys	N/A	Reactive Activity	2.4
5	Design Services	N/A	N/A	2.5
6	Road Pavements (including minor repairs and resurfacing)	N/A	Reactive Activity	2.6
7	Kerbs, Footways and Paved Areas	N/A	Reactive Activity	2.7
8	Traffic Signs	Cyclic Activity	N/A	2.8
8b	Traffic Signs	N/A	Reactive Activity	2.8
9	Road Markings	Cyclic Activity	N/A	2.9
9b	Road Markings		Reactive Activity	2.9
10	Lighting (including electrical work for signs, etc)	Cyclic Activity	N/A	2.10
10b	Lighting (including electrical work for signs, etc)	N/A	Reactive Activity	2.10
11	Fencing	N/A	Reactive Activity	2.11

12	Road Restraint Systems (including pedestrian guardrailing)	Cyclic Activity	N/A	2.12
	Road Restraint Systems (including pedestrian guardrailing)	N/A	Reactive Activity	2.12
13	Drainage (excluding gulley cleansing)	Cyclic Activity	N/A	2.13
13b	Drainage (excluding gulley cleansing)	N/A	Reactive Activity	2.13
14	Earthworks	N/A	Reactive Activity	2.14
15	Horticulture, Arboriculture, Landscaping and Ecology	Cyclic Activity	N/A	2.15
15b	Horticulture, Arboriculture, Landscaping and Ecology	N/A	Reactive Activity	2.15
16	Street Cleaning (sweeping and litter picking)	Cyclic Activity	N/A	2.16
16b	Street Cleaning (sweeping and litter picking)	N/A	Reactive Activity	2.16
17	Street Cleaning (including gulley cleansing; excluding sweeping and litter picking)	Cyclic Activity	N/A	2.17
17b	Street Cleaning (including gulley cleansing; excluding sweeping and litter picking)	N/A	Reactive Activity	2.17
18	Bridges and other Structures	Cyclic Activity	N/A	2.18
18b	Bridges and other Structures	N/A	Reactive Activity	2.18
19	Tunnels	Cyclic Activity	N/A	2.19
19b	Tunnels	N/A	Reactive Activity	2.19
20	Street Furniture (excluding signs, lighting columns and pedestrian guardrailing)	N/A	Reactive Activity	2.2
21	Winter Service	N/A	Reactive Activity	2.21
22	Emergency Call-Out Service	N/A	Reactive Activity	2.22
23	Civil Engineering Support Works for Traffic Signals and Control Equipment	N/A	Reactive Activity	2.23
25	Updating of Employers Asset Management systems with Maintenance Activities undertaken under	Cyclic Activity	N/A	2.24

	Lump Sums.			
26	Undertaking of administration services on behalf of the Employer	Cyclic Activity	N/A	N/A
27	Provision of Employer Equipment, Cars and Office Space for Employer	Cyclic Activity	N/A	N/A
28	Provision of a performance bond.	Cyclic Activity	N/A	N/A
29	TUPE	Cyclic Activity	N/A	N/A

Table 4 - Works Categories

Work Categories are based on the Employers Schedule of Rates Supporting Information	
	<ul style="list-style-type: none"> 100 – Preliminaries (temp' accommodation, traffic management etc) 200 – Site Clearance 300 – Fencing 400 – Road Restraint Systems (vehicle & pedestrian) 500 – Drainage & Service Ducts 600 – Earthworks 700 – Pavements 1100 – Kerbs, Footways and Paved Areas 1200 – Traffic Signs and Road markings 1300 – Road Lighting Columns and Brackets 1400 – Electrical Work for Road Lighting and Traffic Signs 1600 - Piling 1700 – Structural Concrete 1900 - Protection of Steelwork 2000 – Waterproofing for Concrete Structures 2200 – Inspection of Highway Structures 2300 – Bridge Expansion Joints and Sealing of Gaps 2400 – Brickwork, Blockwork and Stonework 2600 – Miscellaneous 2800 - Winter Service 2900 – Cyclic and Reactive Maintenance of Structures 3000 – Landscape & Ecology 3100 - Highway Cleaning and clearance 3300 – Investigation and Surveys 3400 – Tunnel Maintenance 3500 - Civil Engineering 4000 – Street Furniture 5000 – Maintenance Painting of Steel Work

Table 5 - Prescribed Route/ Asset Locations

To be agreed with the <i>Service Manager</i> during contract mobilisation.
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Reporting Format

15. The format of the reports is to be agreed with the *Service Manager* during contract mobilisation.

SCHEDULE 8

INSURANCE TABLE

INSURANCE AGAINST	WHICH PARTY PROVIDES	MINIMUM AMOUNT OF COVER OR MINIMUM LEVEL OF INDEMNITY
All risks of loss or damage (not excluded by the terms and conditions of the policy) to permanent works and materials or equipment for incorporation therein, any temporary works (i.e. other works erected or constructed for the purpose of making possible the erection or installation of permanent works) constructional plant and equipment temporary buildings and other property owned by or supplied by an Employer	Contractor	
All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property obstruction loss of amenities trespass nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Framework Agreement and each Call-Off Contract	Contractor	
Liability for death of or bodily injury or illness sustained by employees of the Contractor arising out of or in the course of their employment in connection with the Framework Agreement and each Call-Off Contract	Contractor	
Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the Contractor	Contractor	
Professional Indemnity Insurance Negligence omission or default in respect of the design for which the Contractor is responsible	Contractor	

The Contractor ensures that each insurance is in place and provides cover from the date of the Framework Agreement until the date of completion by the Contractor of its obligations under each Call-Off Contract and in respect of Professional Indemnity Insurance until the date 12 years after the date of completion by the Contractor of its obligations under each Call-Off Contract.

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SCHEDULE 9

GOVERNANCE, MEETINGS & REPORTING

Proposed Governance Structure

A central strategic contract management board ("Strategic Board") will be established which will take an overview of the four area wide contracts. This board will be responsible for agreeing variations which alter principles of the Framework Agreement, monitoring overall performance and engendering a philosophy of continuous improvement and partnership working. Below this central board, four area contract management boards ("Area Boards") are to be established. These boards will manage and monitor the contract performance regime, drive continuous improvement activities and ensure smooth delivery of the contract.



THE PARTNERING MANAGER

The Strategic Board will agree the appointment of an independent Partnering Manager(s) whose role(s) is to establish and maintain a partnering process between the members of the Strategic Board and support a culture of continuing improvement.

The contractor delivering the Central Area Framework will be responsible for facilitating the employment and subsequently employing the Partnering Manager(s).

This independent role will be jointly funded by TfL and each of the four Framework contractors. The Contractor shall pay 20% of the annual cost of engagement of the Partnering Manager(s) to the Central Area Framework contractor.

The role of the Partnering Manager is to:

- Support a culture of continuing improvement by acting in an independent manner without bias or favour to any party represented on the Strategic Board.
- Support the Area Boards in a similar fashion to that provided to the Strategic Board.
- Provide a link between all four areas and ensure consistency of approach.

MEETINGS

STRATEGIC BOARD

The Strategic Board will be made up of:

- Director of Roads, TfL

- Chairs of Area Boards
- Contractor Managers/ Managing Directors
- Partnering Manager
- Those invited by mutual agreement

Objectives of the Strategic Board

The overall objectives of the Strategic Board are as follows:

- To provide leadership, commitment and motivation for a successful collaborative approach and to create and maintain a partnering process and team culture.
- To give direction to the management to the four areas and ensure that the wider strategic and longer term issues are properly considered ensuring that all decisions support best value.
- To ensure a consistent approach in the delivery of the Services in all four areas.
- To publicise the benefits of the London Highways Alliance across London and work to encourage new Employers to enter into Call-Off Contracts.
- To reduce bureaucracy and duplication of effort and enhance efficiency and economy by resolving issues that are common to all areas
- To ratify individual Area Board decisions that may impact on the other areas.
- To monitor the performance across all areas.
- To promote partnership thinking and working (imbuing “leadership” and “ownership”).
- To promote positive outcomes, including performance regimes for contractors and clients.

Outputs of the Strategic Board

- Decisions made on items escalated from the Area Boards.
- Changes to the Primary Performance Indicators to be implemented across all four areas.
- Agreement on any variations to be made to the Framework Agreement or variations to be made to **ALL** Call-Off Contracts.
- Implementation of actions arising from Strategic Board meetings.

Methodology of the Strategic Board

- Appointment of a Chair - The Chair can only be a representative of an Employer, and will be voted on annually, at the first meeting the date of the Framework Agreement and on each proceeding anniversary, only by the Framework Employer and those Employers who have entered into a Call-Off Contract.
- The Strategic Board operates by consensus.
- The Chair provides secretarial support to take and distribute minutes.
- Meetings shall be held quarterly unless otherwise agreed at a location decided by the Strategic Board.
- The meetings will be quorate when at least one third of the Board are in attendance and with at least the Framework Employer and one representative from an Employer who has entered into a Call-Off Contract in attendance.
- The agenda at each meeting shall be agreed by those present.
- The Strategic Board may set up working groups, sub-groups or special interest groups as it sees fit.
- The Strategic Board may consider the use of sharing resources, particularly areas of specialism, between suppliers.

Scheme of Delegation

- Minutes of the Strategic Board meetings and resolutions may be a matter of public record under the Freedom of Information Act 2000.
- Progress reports will be provided to the Strategic Board by the Chairs of the Area Boards one week before the Strategic Board meeting date.

- Where it is impracticable to wait for a meeting of the Strategic Board, decisions concerning contract matters of principle will be delegated to the Chair of the Strategic Board in consultation with the Chairs of the Area Boards.
- All such decisions, with the appropriate rationale, will be presented to the next available routine meeting of the Strategic Board.

AREA BOARDS

An Area Board will be established for each of the four areas and membership shall be:

- Partnering Manager
- Contract Manager(s)
- Named TfL Service Manager
- Named TfL representative
- Named Service Manager of other Employers who have entered into a Call-Off Contract
- Named representative of other Employers who have entered into a Call-Off Contract
- Those invited by mutual agreement.

Designated representatives will be accepted.

Objectives of the Area Boards

The Area Board discusses any matter relating to the performance of works or services and any contractual requirements involved in Providing the Service. It is anticipated agenda items will include:

- Review of reports relating to each Call-Off Contract and submitted by the Contractor.
- Commercial issues consistent across all Employers within the area.
- Performance Indicator results.
- Items escalated by Employers.
- Considering Performance Indicator results and where necessary agreeing changes to targets.

The following matters are also within the remit of the Area Board:

Contract Documentation

- Without prejudice to any contract provisions, considering and producing recommendations to resolve any local ambiguities in this the Framework Agreement or any Call-Of Contract or inconsistencies between the instructions of any Employer and such contracts.
- Considering and subsequently recommending changes to the Strategic Board about the Framework Agreement and considering any implications (financial or otherwise) which flow from such changes.

Resource Constraint

- Resolving any conflicts between Employers and the Contractor in the event of a resource constraint situation.

Budgets/Investments Issues

- Considering and providing recommendations on research and development issues, where there is a mutual interest.

Contract Evolution – Transfer to and from Lump Sums

- Considering proposals for the transfer of items of work to Lump Sum

Activities from being work paid for by reference to the Schedule of Rates and vice versa.

Contract Evolution – Transfer to Target Cost

- Considering proposals for the transfer of items of work to Target
- Cost activities from being work paid for by reference to Lump Sums or Schedule of Rates etc. and vice versa.

Contract Evolution – Transfer to Performance Specification

- Considering proposals to transfer activities within the specification from a method based system to a performance specification (and vice versa) with appropriate measurement and payment arrangements. Producing recommendations with regard to the same.

Certification/Audit

- Review [service delivery audits] undertaken as per the [Contract Performance Regime]
- Commissioning audits where there are performance or contractual compliance concerns.

Contract Performance Regime

- Monitoring the achievement of performance management regime.
- Reviewing, adding, deleting and or improving contract performance indicators.
- Taking benchmarking advice from audit authorities in establishing future targets.
- Benchmarking with the other contract areas.

Innovation

- Considering all issues related to innovation, agreeing recommendations regarding implementation and monitoring of improvement as a result of any innovation.

Outputs of the Area Boards

- Decisions made on items escalated by Employers.
- An updated area risk register based on the risk registers submitted to the Board by each Employer.
- Items for escalation to the Strategic Board.
- Implementation of actions arising from Board meetings.

Methodology of the Area Board

- The Area Board operates by consensus.
- Appointment of a Chair - The Chair can only be a representative of an Employer, and will be voted on annually, at the first meeting after the date of the Framework Agreement and on each proceeding anniversary, only by the Framework Employer and those Employers who have entered into a Call-Off Contract.
- The Chair provides secretarial support to take and distribute minutes.
- The meeting will be quorate when one third of members are in attendance and with at least the Framework Employer and one representative from an Employer who has entered into a Call-Off Contract in attendance.
- Meetings shall be held monthly unless otherwise agreed at a location decided by the Area Board.
- The agenda at each meeting shall be agreed by those present with input and support from the Partnering Manager as required.

- The Area Board may set up working groups, sub-groups or special interest groups as it agrees.

PARTNERING FORUM

The Partnering Forum will be made up of:

- Partnering Manager
- Senior Managers from Employers who have entered into a Call-Off Contract
- The relevant Contractor Manager from each Call-Off Contract
- Those invited by mutual agreement

Objectives of the Partnering Forum

The objectives of the Partnering Forum are as follows:

- To discuss matters relating to any area of the contract which would benefit from greater collaboration between all parties.
- To consider pan-London initiatives which would lead to continuous improvement or best practice.
- Sharing of best practice.

Outputs of the Partnering Forum

- Action plans for implementing best practice in all areas.
- Increased collaboration between all parties.
- Employer or Contractor lead initiatives drawing on the knowledge and experience of all involved.

Methodology of the Partnering Forum

- The Partnering Manager is the Chair and coordinates all meetings.
- Meetings are held monthly at a location decided by the Partnering Manager.
- Members rotate minute taking duties.

REPORTING

Reporting Schedule

All reports are to be made available electronically, and only provided in hard copy to an Employer if requested. However, all electronic documents that are distributed must be done so in a printable format and subject to sufficient document control.

Performance Indicators will be reported either monthly or quarterly and submitted to the Area Board for review. Part of the Area Board's responsibility will be to review improvement action plans proposed by the Contractor and to facilitate benchmarking across the four Area Contracts.

The following table details reports which are required under the Framework Agreement.

Report	Purpose	Frequency
Quality Plan	To monitor the Contractor's performance in delivering the aims, intent and quality of the Contract.	At Contract commencement

LoHAC Strategic Board Report	To provide an update to Strategic Boards on: Operational matters Performance Financial & Commercial issues Business & Relationship (Partnering)	Quarterly
LoHAC Area Board Report	To provide a summary to the Area Board on : Operational matters Performance Financial & Commercial issues including cost capture report required by Call-Off Contract Business & Relationship (Partnering)	Monthly
H&S Incident Report	To provide an update on incidents, near misses and other dangerous occurrences relating to health and safety	Monthly
Performance Indicators	Provide a monthly summary of performance for each performance indicator	Monthly
Health & Safety Action Plan	To monitor the Contractor's performance in delivering the agreed H&S objectives.	As required
Innovation Report	To monitor the Contractor's performance in delivering the agreed Continual Improvement objectives	6 Monthly
Environmental Action Plan	To monitor the Contractor's performance in delivering the agreed environmental objectives.	As required
Equality & Diversity Action Plan	To monitor the Contractor's performance in delivering the agreed E&D objectives.	As required
Report of Proposals for Improvement to Contractor's Organisation	To monitor the Contractor's performance in improving the delivery of the aims, intent and quality of the Contract.	As required

SCHEDULE 10
FORM OF PARENT COMPANY GUARANTEE

Parent Company Guarantee
between

[PARENT COMPANY]
and
TRANSPORT FOR LONDON

Relating to the
London Highways Alliance Framework (South Area)

(Letterhead of Parent Company)

To: [insert name and address of the Framework Employer]

Date:

Dear Sir/Madam

We, [insert name of Guarantor] ("**the Guarantor**"), understand that you have agreed to enter into a Framework Agreement reference number [INSERT] ("**the Framework Agreement**") with [insert name of Contractor] ("**the Contractor**") under which the Contractor has agreed to provide works or services in accordance with the terms and conditions of the Framework Agreement and call off contracts ("**Call Off Contracts**") issued pursuant to the Framework Agreement on the condition that the obligations of the Contractor under the Framework Agreement and all Call Off Contracts be guaranteed by a Guarantor.

We are [recite the relationship of the Guarantor to the Contractor], and we warrant to you that this description of our relationship with/to the Contractor is true and accurate in all material respects.

Terms defined in the Framework Agreement have the same meanings in this Guarantee unless otherwise defined in this Guarantee.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee to you and to each Employer who enters into a Call Off Contract on demand:
 - (i) the proper, complete and punctual performance by the Contractor of any and all its obligations, undertakings and responsibilities under the Framework Agreement and any and all Call Off Contracts and we shall forthwith make good any default thereunder on the part of the Contractor;
 - (ii) the due and punctual payment by the Contractor of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable under or arising out of the Framework Agreement and any and all Call Off Contracts in accordance with their terms or otherwise by reason or in consequence of any such default on the part of the Contractor

when and as the same shall become due for performance or payment (as the case may be).

- (b) As a separate and primary obligation we unconditionally guarantee to you and to each Employer who enters into a Call Off Contract that in the case of default by the Contractor in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in paragraph (a) above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Contractor were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Contractor under or arising out of the Framework Agreement and any and all Call Off Contracts have been duly and completely performed and observed and the Contractor shall have ceased to be under any actual or contingent liability thereunder.
- (d) Any demand or other notice made under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) This Guarantee may be enforced without first notifying the Contractor of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Contractor or any other person or taking any action to enforce any other security, bond or guarantee or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Contractor or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you or any Employer, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.
- (g) All Call Off Contracts issued pursuant to the Framework Agreement are within the scope of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Framework Agreement or relevant Call Off Contract if we had been named as the Contractor in the Framework Agreement or relevant Call Off Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Framework Agreement or any Call Off Contract made by agreement between you (or the relevant Employer under a Call Off Contract) and the Contractor (including, without limitation, any increase in the Contractor's obligations under the Framework Agreement or any Call Off Contract or any alteration in the extent or nature or sequence or method or timing of the works or services to be carried out under the Framework Agreement or any Call Off Contract) or any novation of the Framework Agreement or any Call Off Contract (in whole or in part); or
 - (b) any time being given to the Contractor or any other indulgence, waiver, concession, forbearance or forgiveness to the Contractor (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Framework Agreement or any Call Off Contract; or
 - (c) any other bond, security or guarantee now or hereafter given for all or any part of the obligations of the Contractor under the Framework Agreement or any Call Off Contract; or

- (d) the release or waiver of any such bond, security or guarantee referred to in paragraph 2(c) above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Contractor; or
 - (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Contractor; or
 - (g) any legal limitation, disability or incapacity relating to the Contractor or discharge by operation of law or any change in the constitution, name or style of the Contractor or any other person (whether or not known to you or any Employer); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Contractor under the Framework Agreement or any Call Off Contract; or
 - (i) the termination or partial termination of the Framework Agreement or any Call Off Contract or the cessation of any works or services for any reason or the making of any variation to the works or services in accordance with the Framework Agreement or any Call Off Contract; or
 - (j) any claim or enforcement of payment from the Contractor or any other person; or
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Contractor in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Contractor in competition for any sums or liabilities owing or incurred to us by the Contractor in respect of any such payment by or recovery from us or take or hold any security from the Contractor in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you or the relevant Employer under the Call Off Contract (as the case may be).
 4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provisions of this Guarantee.
 5. This Guarantee is irrevocable.
 6. Save that any Employer who has entered into a Call-Off Contract with the Contractor has the right to enforce the terms of this Guarantee in accordance with the Contracts (Rights of Third

Parties) Act 1999 ("Third Party Act"), the parties do not intend that any of the terms of this Guarantee are enforceable by virtue of the Third Party Act by any person not a party to it.

7. Notwithstanding clause 6, the parties are entitled to vary or rescind this Guarantee without the consent of any or all Employers (other than you).
8. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you and (where relevant) any Employer have the right in your/their absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

9. For the purposes of this Guarantee we hereby appoint of (to be a London address) to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.]
10. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
11. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
<i>[Parent Company]</i>) Director
acting by a Director and the) _____
Secretary or by two Directors) _____
	Director/Secretary

OR

The common seal of) _____
<i>[Parent Company]</i>) Director
was affixed in the presence of:) _____
) _____
	Director/Secretary

Form of Legal Opinion for use with Guarantee (Framework Agreement)

To: [insert name and address of the Framework Employer]

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the "Guarantee") dated made between (the "Guarantor") and Transport for London ("the Employer"). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in on as a [company with limited liability] and validly exists under the laws of as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby; and
 - (c) The entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened;
 - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;

- (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of
- (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) The Employer will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the Courts;
- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
- (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
- (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee;

(o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.

3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

.....

Signed

SCHEDULE 11

FORM OF COLLATERAL WARRANTY FROM CONTRACTOR

Contractor Warranty

between

[CONTRACTOR]

and

[BENEFICIARY]

and

[EMPLOYER]

relating to [PROJECT]

THIS DEED is made on

20[]

BETWEEN:

- (1) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor");
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Beneficiary" which expression includes its permitted successors in title and assigns); and
- (3) [EMPLOYER] of [Address] [OR] [Transport for London a statutory corporation established under the Greater London Authority Act 1999 of Windsor House, 42-50 Victoria Street, London SW1H 0TL] ("the Employer").

BACKGROUND:

- (A) [Transport for London/The Employer] has entered into a framework agreement with the Contractor dated [date] enabling the Employer, from time to time, to enter into a call-off contract with the Contractor for the provision of highways maintenance and other works or services ("the Framework Agreement").
- (B) By a contract dated [date] ("the Call-Off Contract") the Employer has appointed the Contractor for the provision of the *service* as defined in the Call-Off Contract ("the Service").
- (C) Pursuant to the Call-Off Contract the Employer may instruct the Contractor to undertake Tasks (as defined in the Call-Off Contract).
- (D) [The Beneficiary is [the/a] [purchaser][tenant] of [description of part of the site] [provider of finance in connection with [DESCRIBE] [member of the TfL Group (as defined in the Call-Off Contract)][developer] or [DESCRIBE AS APPROPRIATE].
- (E) The Contractor is obliged under the Call-Off Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor receipt of which the Contractor acknowledges.

2. CONTRACTOR'S WARRANTIES

- 2.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Call-Off Contract in accordance with the Call-Off Contract.
- 2.2 The Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Call-Off Contract imposes a higher

standard in which case such higher standard will apply) in relation to the following (so far as the Contractor is responsible for them):

2.2.1 design of the Service;

2.2.2 the selection of goods, materials, equipment or plant for the Service; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Service.

3. INTELLECTUAL PROPERTY RIGHTS

3.1 Subject to the following provisions of this Deed, all IPR (as defined in the Call-Off Contract) in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the Contractor in the course of performing its obligations under the Call-Off Contract ("the Documents") will remain vested in the Employer and all Background IPR (as defined in the Call-Off Contract) will remain vested in the Contractor.

3.2 To the extent that it is able to do so, the Employer (in respect of the IPR) and the Contractor (in respect of the Background IPR) grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

3.3 The Employer will not be liable for any use the Beneficiary may make of the IPR or the Documents.

4. PROFESSIONAL INDEMNITY INSURANCE

4.1 The Contractor by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers carrying on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim, in relation to the Service and each Task provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Service until no less than 12 years after the expiry of the *service period* or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Call-Off Contract); and

4.1.2 if such insurance is not available to the Contractor (and/or contractors engaged in services of a similar, size nature and complexity as those required by the Call-Off Contract) at commercially reasonable rates and terms

(excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Beneficiary will meet and the Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

- 4.2 The Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

[Without prejudice to the provisions of clause 9,] the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two occasions only. The Beneficiary will give the Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. **OTHER RIGHTS AND REMEDIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including, without limitation, any remedies in negligence.

8. **NO APPROVAL**

The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

CLAUSE 9 TO BE USED IN FINANCIER/TFL GROUP WARRANTY

9. STEP-IN RIGHTS

9.1 Subject to clause 9.7, the Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Call-Off Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Call-Off Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Contractor's grounds for terminating or treating as terminated or repudiated the Call-Off Contract or its employment under it or discontinuing or suspending its performance of the Call-Off Contract and stating the amount (if any) of monies outstanding under the Call-Off Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the employer under the Call-Off Contract to the exclusion of the Employer and, upon giving such notice, that will be the case and the Call-Off Contract will be and remain in full force and effect notwithstanding any of the grounds in the Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Employer; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Contractor under the Call-Off Contract and for the observance and performance of all of the other duties and obligations on the part of the employer to be observed and performed under the Call-Off Contract accruing due after the service of such Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Employer under the Call-Off Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Contractor the Beneficiary will not be under any obligation to the Contractor nor will the Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Contractor under either clause 9.1.1 or clause 9.3.

- 9.3 The Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Service and any relevant Tasks upon the terms and conditions of the Call-Off Contract. The Beneficiary shall then become the employer under the Call-Off Contract to the exclusion of the Employer and the Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Employer under the Call-Off Contract.
- 9.4 [Where the Contractor has given rights in relation to the Call-Off Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Employer acknowledges that the Contractor will be entitled to rely on a notice given to the Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Call-Off Contract has for any reason been terminated prior to receipt by the Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Contractor shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Call-Off Contract to continue the Service and any relevant Tasks in all respects as if the Call-Off Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

10. **LIMITATION**

- 10.1 The Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Call-Off Contract as joint employer provided that the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Contractor from the Employer.
- 10.2 The Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Call-Off Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Call-Off Contract as joint employer.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the

service period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Call-Off Contract).

11. **GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

12. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

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SCHEDULE 12
FORMS OF COLLATERAL WARRANTY FROM SUB-CONTRACTOR
PART A – WARRANTY IN FAVOUR OF THE EMPLOYER

Sub-Contractor Warranty

between

[SUB-CONTRACTOR]

and

[EMPLOYER]

and

[CONTRACTOR]

relating to [PROJECT]

THIS DEED is made on

20[]

BETWEEN:

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Sub-Contractor");
- (2) [EMPLOYER] [(registered number [no.]) whose registered office is] [of] [Address] ("the Employer" which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor"); and

BACKGROUND:

- (A) [Transport for London/The Employer]¹ has entered into a framework agreement with the Contractor dated [date] enabling the Employer, from time to time, to enter into a call-off contract with the Contractor for the provision of highways maintenance and other works or services ("the Framework Agreement").
- (B) By a contract dated [date] ("the Call-Off Contract") the Employer has appointed the Contractor for the provision of the *service* as defined in the Call-Off Contract ("the Service").
- (C) Pursuant to the Call-Off Contract the Employer may instruct the Contractor to undertake Tasks (as defined in the Call-Off Contract).
- (D) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] ("the Sub-Contract") to provide part of the Service as specified in the Sub-Contract ("the Sub-Contract Service").
- (E) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Employer.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Employer to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

2. SUB-CONTRACTOR'S WARRANTIES

- 2.1 The Sub-Contractor warrants to the Employer that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.
- 2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Sub-Contract imposes a higher standard in

¹

Delete as appropriate depending on whether Transport for London is the Employer.

which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):

2.2.1 design of the Service;

2.2.2 the selection of goods, materials, equipment or plant for the Service; and

2.2.3 the satisfaction of any performance requirement or specification of or for the Service.

3. **INTELLECTUAL PROPERTY RIGHTS**

3.1 The parties acknowledge that all IPR (as defined in the Call-Off Contract) in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract ("the Documents") will remain vested in the Employer and all relevant Background IPR (as defined in the Call-Off Contract) will remain vested in the Sub-Contractor.

3.2 In respect of the Background IPR, the Sub-Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Employer, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

4. **INSURANCE**

4.1 The Sub-Contractor by this Deed covenants with the Employer that it has effected [professional indemnity] insurance with reputable insurers carrying on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim in relation to the Sub-Contract Service provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Service until no less than 12 years after the expiry of the *service period* or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Call-Off Contract); and

4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors engaged in services of a similar size, nature and complexity as those required by the Sub-Contract) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Employer will meet and the Sub-Contractor will outline the steps he

intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Employer, the parties shall agree an alternative method of managing such risk.

4.2 The Sub-Contractor will provide the Employer with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. NOTICES

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. ASSIGNMENT

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Employer under this Deed may be assigned without the consent of the Sub- Contractor on two occasions only. The Employer will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

8. NO APPROVAL

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Employer may make or procure to be made for the Employer's benefit or on its behalf.

9. STEP-IN RIGHTS

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Employer not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Employer may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Employer shall become the employer under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Employer has given notice under clause 9.1.1 or under clause 9.3, the Employer will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Employer has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Employer has given notice under clause 9.3 then from the date of the Employer's notice,

the Employer will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Employer's notice (as applicable) but the Employer will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Employer to the Sub-Contractor the Employer will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Employer unless and until the Employer has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.

9.3 The Sub-Contractor further covenants with the Employer that if requested by the Employer by written notice expressly confirming the Employer's intention to

comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Employer to the exclusion of the Contractor in respect of the Sub-Contract Service upon the terms and conditions of the Sub-Contract. The Employer shall then become the employer under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Employer for the Contractor under the Sub-Contract.

- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Employer and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Employer shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Employer under clause 9.3 as conclusive evidence that the Employer is entitled to serve such notice.
- 9.6 The Employer may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Employer remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Employer served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Employer enter into a new Sub-Contract with the Employer on the same terms as the Sub-Contract to continue the Sub-Contract Service in all respects as if the Sub-Contract had been transferred to the Employer in accordance with the provisions of this clause 9.

10. **LIMITATION**

- 10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Employer had been a party to the Sub-Contract as joint employer provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Employer under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
- 10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Employer under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Employer if, in lieu of this Deed, the Employer had been a party to the Sub-Contract as joint employer.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the

service period or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Call-Off Contract).

11. **PARTNERSHIP**

[Where the Sub-Contractor is a partnership references in this Deed to “the Sub- Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.]

12. **GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

13. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

THIS DOCUMENT is executed as a Deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE AS A DEED]

SCHEDULE 12

FORMS OF COLLATERAL WARRANTY FROM SUB-CONTRACTOR

PART B – WARRANTY IN FAVOUR OF BENEFICIARIES OTHER THAN THE EMPLOYER

Sub-Contractor Warranty

between

[SUB-CONTRACTOR]

and

[BENEFICIARY]

and

[CONTRACTOR]

relating to [PROJECT]



BETWEEN:

- (1) [SUB-CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Sub-Contractor");
- (2) [BENEFICIARY] [(registered number [no.]) whose registered office is] [of] [Address] ("the Beneficiary" which expression includes its permitted successors in title and assigns);
- (3) [CONTRACTOR] [(registered number [no.]) whose registered office is] [of] [Address] ("the Contractor");² and
- (4) [[EMPLOYER] of [Address] ("the Employer")]³.

BACKGROUND:

- (A) [The Employer/Transport for London] has entered into a framework agreement with [the Contractor] [NAME ("the Contractor")] dated [date] enabling the Employer, from time to time, to enter into a call-off contract with the Contractor for the provision of highways maintenance and other works or services ("the Framework Agreement").
- (B) By a contract dated [date] ("the Call-Off Contract") the Employer has appointed the Contractor for the provision of the service as defined in the Call-Off Contract ("the Service").
- (C) Pursuant to the Call-Off Contract the Employer may instruct the Contractor to undertake Tasks (as defined in the Call-Off Contract).
- (D) The Sub-Contractor has been appointed by the Contractor under a sub-contract dated [date] ("the Sub-Contract") to provide part of the Service as specified in the Sub-Contract ("the Sub-Contract Service").
- (E) [The Beneficiary is [the/a] [purchaser][tenant] of [description of part of the site] [provider of finance in connection with the [DESCRIBE] [member of the TfL Group (as defined in the Call-Off Contract)] [developer] or [DESCRIBE AS APPROPRIATE].
- (F) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Sub-Contractor receipt of which the Sub-Contractor acknowledges.

² Only required where step-in rights are given.

³ The Employer should be a party to this deed for the purposes of clause 3 (Intellectual Property Rights).

2. SUB-CONTRACTOR'S WARRANTIES

- 2.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract.
- 2.2 The Sub-Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Sub-Contract imposes a higher standard in which case such higher standard will apply) in relation to the following (so far as the Sub-Contractor is responsible for them):
 - 2.2.1 design of the Service;
 - 2.2.2 the selection of goods, materials, equipment or plant for the Service; and
 - 2.2.3 the satisfaction of any performance requirement or specification of or for the Service.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 The parties acknowledge that all IPR (as defined in the Call-Off Contract) in all documents, drawings, materials, computer software, any other material or works prepared or developed by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract ("the Documents") will remain vested in the Employer and all relevant Background IPR (as defined in the Call-Off Contract) will remain vested in the Sub-Contractor.
- 3.2 To the extent that it is able to do so, the Employer (in respect of the IPR) and the Sub-Contractor (in respect of the Background IPR) grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the intellectual property not yet in existence with effect from the creation of such intellectual property, an irrevocable, royalty-free, non-exclusive licence to use the relevant intellectual property and to reproduce all Documents for any purpose whatsoever connected with the Service or any relevant Task including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Service. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.3 The Employer will not be liable for any use the Beneficiary may make of the IPR or the Documents.

4. INSURANCE

- 4.1 The Sub-Contractor by this Deed covenants with the Beneficiary that it has effected professional indemnity insurance with reputable insurers carrying on business in the United Kingdom with a limit of indemnity of not less than £[figures] ([words] million pounds) for each and every claim in relation to the Sub-Contract Service provided always that:

- 4.1.1 such insurance shall be in place from the date of commencement of the Sub-Contract Service until no less than 12 years after the expiry of the *service period* or (if later) the date of Task Completion of the last Task to be completed (in each case defined in the Call-Off Contract); and
 - 4.1.2 if such insurance is not available to the Sub-Contractor (and/or sub-contractors engaged in services of a similar size, nature and complexity as those required by the Sub-Contract) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Sub-Contractor), the Sub-Contractor and the Beneficiary will meet and the Sub-Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Sub-Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.
- 4.2 The Sub-Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. **NOTICES**

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. **ASSIGNMENT**

Without prejudice to the provisions of clause 9, the benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Sub- Contractor on two occasions only. The Beneficiary will give the Sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including, without limitation, any remedies in negligence.

8. NO APPROVAL

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

CLAUSE 9 TO BE USED IN FINANCIER WARRANTY

9. STEP-IN RIGHTS

9.1 Subject to clause 9.7, the Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations under the Sub-Contract, without first giving to the Beneficiary not less than twenty-eight days' prior written notice specifying the Sub-Contractor's grounds for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance of the Sub-Contract and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Sub-Contractor expressly confirming its intention to comply with clause 9.1.3 and that the Beneficiary shall become the employer under the Sub-Contract to the exclusion of the Contractor and, upon giving such notice, that will be the case and the Sub-Contract will be and remain in full force and effect notwithstanding any of the grounds in the Sub-Contractor's notice under clause 9.1; and

9.1.2 if the Beneficiary has given notice under clause 9.1.1 or under clause 9.3, the Beneficiary will then as soon as practicable remedy any outstanding breach by the Contractor; and

9.1.3 if:

9.1.3.1 the Beneficiary has given such notice under clause 9.1.1 then from the date of the Sub-Contractor's notice; or

9.1.3.2 the Beneficiary has given notice under clause 9.3 then from the date of the Beneficiary's notice,

the Beneficiary will, by clause 9.1.1, become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract and for the observance and performance of all of the other duties and obligations on the part of the

Contractor to be observed and performed under the Sub-Contract accruing due after the service of such Sub-Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Sub-Contract.

- 9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor under either clause 9.1.1 or clause 9.3.
- 9.3 The Sub-Contractor further covenants with the Beneficiary that if requested by the Beneficiary by written notice expressly confirming the Beneficiary's intention to comply with clause 9.1.3 and subject to clause 9.1.2 and clause 9.1.3, it will accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Sub-Contract Service upon the terms and conditions of the Sub-Contract. The Beneficiary shall then become the employer under the Sub-Contract to the exclusion of the Contractor; and the Sub-Contractor will, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Contractor under the Sub-Contract.
- 9.4 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.1 or clause 9.3 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail] [not prevail over any notice served by [Name] but prevail over any notice served by any other person]].
- 9.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 9.3 as conclusive evidence that the Beneficiary is entitled to serve such notice.
- 9.6 The Beneficiary may by written notice to the Sub-Contractor appoint another person to exercise its rights under this clause 9 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 9.7 Notwithstanding the other provisions of this clause 9, if the Sub-Contract has for any reason been terminated prior to receipt by the Sub-Contractor of a notice from the Beneficiary served under clause 9.1.1 or clause 9.1.3, the Sub-Contractor shall on receipt of any such notice from the Beneficiary enter into a new Sub-Contract with the Beneficiary on the same terms as the Sub-Contract to continue the Sub-Contract Service in all respects as if the Sub-Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 9.

10. **LIMITATION**

- 10.1 The Sub-Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Sub-Contract as joint employer provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.
- 10.2 The Sub-Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint employer.
- 10.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being 12 years after the date of expiry of the *service period* or (if later) 12 years after the date of Task Completion of the last Task to be completed (in each case as defined in the Call-Off Contract).

11. **PARTNERSHIP**

[Where the Sub-Contractor is a partnership references in this Deed to “the Sub- Contractor” will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.]

12. **GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

13. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

THIS DOCUMENT is executed as a Deed and delivered on the date stated at the beginning of this Deed.

[ALL PARTIES TO EXECUTE AS A DEED]

SCHEDULE 13

PERFORMANCE MANAGEMENT AND PERFORMANCE INDICATORS

1. Purpose

- 1.1 The Performance Indicators available for this Framework Agreement and each Call-Off Contract are set out in Annex A to this Schedule.
- 1.2 The Performance Indicators have been selected to provide an overall assessment of Contractor performance. There are two types of Performance Indicator – Primary and Secondary.
- 1.3 Primary Performance Indicators have been selected to represent the strategic measures that demonstrate the Contractor's performance in delivering key contractual requirements. Secondary Performance Indicators focus on operational measures. Performance Indicators will be used to identify areas for improvement and demonstrate the Contractor's performance in meeting both contractual requirements and the strategic aims and objectives of the Employer.

2. Employer Performance Indicator Selection

Each Employer specifies in its Service Information the Performance Indicators from Annex A which will apply to its Call-Off Contract ("the Call-Off Performance Indicators").

3. Targets

- 3.1 Targets are set in Annex A for the Primary Performance Indicators for each Framework Year of the Framework Term.
- 3.2 Targets are set in Annex A for the Secondary Performance Indicators for the first Framework Year of the Framework Term and may be amended annually within the last quarter of each Framework Year, following agreement at the Area Board for implementation in the following Framework Year
- 3.3 Each Performance Indicator has its own assessment sheet which contains targets for a Red, Amber and Green level. Green shows that the Contractor's performance is at or greater than target, Amber shows that the Contractor's performance is just below target and Red shows that the Contractor's performance is worse than the determined Amber level.

4. Performance Monitoring & Reporting

- 4.1 The Contractor collects, collates and reports performance data against the Performance Indicators in accordance with the following:
 - 4.1.1 Scores against each Call-Off Performance Indicator are reported to the relevant Employer monthly or quarterly (as stated in Annex A to this Schedule) using the template provided by the Framework Employer.

- 4.1.2 Consolidated scores against each of the Performance Indicators are reported to the Area Board monthly or quarterly (as stated in Annex A to this Schedule and using the template provided by the Framework Employer) in relation to each of the Call-Off Contracts issued under the Framework Agreement. The consolidated scores are calculated using the raw data from each Call-Off Contract and not as an average of the scores under each Call-Off Contract. For example, if the Contractor fails to meet the target for 1 out of 2 Performance Indicators for Call-Off A and for 1 out of 1000 for Call-Off B this is consolidated to show the Contractor failing to meet target for 2 out of 1002 across both Call-Off Contracts.
- 4.2 For any Performance Indicator that the Contractor fails to achieve Green status, or if there is mutual benefit in doing so, the Employer may request that the Contractor:
- 4.2.1 provides additional performance data against the Performance Indicators;
- 4.2.2 provides further information to back up the performance data reported in accordance with clause 4.1;
- 4.2.3 sub-divides the performance data reported in accordance with clause 4.1,
- using the template provided by the Framework Employer.
- 4.3 The Contractor develops an Action Plan for any Performance Indicator that meets any of the following criteria:
- Any Performance Indicator in Red status
- Any Performance Indicator in Amber status for 3 consecutive reporting periods
- Any Performance Indicator in Amber status for 3 out of 5 reporting periods.
- 4.4 The Contractor's Action Plan details what the Contractor will do to improve performance up to the target level. The Contractor develops the Action Plan in consultation with the relevant Employer. Action Plans include timescales for implementation and require sign off by the Employer before implementation and should be copied to the Area Board.
- 4.5 The Performance Indicator dashboard is reported to the Area Board who may forward onto the Strategic Board. One of the Strategic Board's responsibilities is to benchmark assessment of Performance Indicators across each of the four areas.
5. **PI Definition and Target Review**
- 5.1 The Secondary Performance Indicators may be reviewed and altered by mutual agreement during the mobilisation period.
- 5.2 Each Employer and the Contractor review the Secondary Performance Indicators within the last quarter of each Framework Year and may propose amendments to any of the Performance Indicators for implementation in the following Framework Year to reflect

changes in objectives, outcomes or targets. Before any new or modified Secondary Performance Indicator is implemented it must be agreed in writing by the Employer and ratified by the Area Board.

6. **Contractor's Internal Performance Indicators**

The Contractor within monthly Performance Indicator reports includes the results of any internal indicators that the Contractor uses to measure the performance of its obligations under each Call-Off Contract.

ANNEX A

ANNEX A: Performance Indicators

Total 26															
PPI / SPI	Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome	Definitions	Methodology	Reporting Frequency	Unit	Formula	Target 2013/14	Target 2014/15	Target 2015/16	Target 2016/17	Target 2017/18	Target 2018/19 onwards
PPI	1	Public and Workforce kept Safe	Percentage of Cat 1 defects repaired on time	Ensure the network is safe for all forms of traffic.	<p>The full definition and terminology used in this indicator is defined in the Vol 2 Service Information (Common), section 2.0.4 Reactive works in response to defects and 2.1 Safety Inspections. The following additional definitions support the calculation of this Performance Indicator.</p> <p>Cat 1 (ECO) - The initial response to a Cat1(ECO) is not included in this indicator (as it is measured under PPI5) however the completion of the resulting defect is included; the same time constraints as a Cat 1 apply.</p> <p>Repair - To return an asset to an acceptable condition by the renewal, replacement or mending of worn, damaged or degraded part(s). (BS 6100–1:2004 Building and civil engineering - Vocabulary - Part 1: General terms cause 7.1.51)</p> <p>Permanent Repair - The permanent removal of the defect through a repair.</p> <p>Temporary Repair - A temporary repair must be capable of remaining safe for at least 28 days or until the permanent repair is carried out.</p>	<p>There are two elements to this indicator:</p> <p>PPI1a: 24hr Response: The Contractor monitors the total number of Cat 1 defects due to be made safe and repaired within 24 hours within the reporting period and also monitors the actual number of Cat 1 defects made safe and repaired within 24 hours in the reporting period. This calculation should include Cat 1 defects that have been permanently repaired within the first 24 hours. (Vol. 1, Schedule 13, Annex A) There are no extensions to timescales for the 24 hours response requirement for a Cat 1 defect.</p> <p>PPI1b: 28day Response: The Contractor monitors the total number of Cat 1 defects due to be permanently repaired within 28 calendar days within the reporting period and also monitors the actual number of Cat 1 defects permanently repaired within 28 calendar days in the reporting period. This calculation should include Cat 1 defects that had been repaired permanently within 24hours. (Vol. 1, Schedule 13, Annex A) Extensions of timescales may be permissible for the 28 day response requirement if agreed by the Employer.</p>	Monthly	%	<p>A = Total number of Cat 1 defects that were repaired within required time frame in the reporting month</p> <p>B = Total number of Cat 1 defects that were due to be repaired in the reporting month</p> <p>PPI Calculation = (A / B) x 100</p>	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%
SPI	2	Public and Workforce kept Safe	Percentage of Cat 2 defects repaired on time	Ensure the network is safe for all forms of traffic.	<p>The full definition and terminology used in this indicator is defined in the Vol 2 Service Information (Common), section 2.1 Safety Inspections. The following additional definitions support the calculation of this Performance Indicator.</p> <p>This PI is only concerned with Cat 2H and Cat 2M defects; which are those defects that have a risk factor of 3 to 6, inclusive.</p> <p>Repair - To return an asset to an acceptable condition by the renewal, replacement or mending of worn, damaged or degraded part(s). (BS 6100–1:2004 Building and civil engineering - Vocabulary - Part 1: General terms cause 7.1.51)</p> <p>Permanent Repair - The permanent removal of the defect through a repair.</p>	<p>There are two elements to this indicator:</p> <p>SPI2a – Cat 2H: The Contractor monitors the number of Cat 2H defects due to be made safe and repaired within 7 days within the reporting month and monitors the actual number of Cat 2H defects made safe and repaired within 7 days in the reporting month.</p> <p>SPI2b – Cat 2M: The Contractor monitors the number of Cat 2M defects due to be permanently repaired within the reporting month and monitors the actual number of Cat 2M defects permanently repaired within 28 days in the reporting month.</p> <p>Extensions of timescales for both Cat 2H and Cat 2M may be permissible if agreed by the Employer.</p>	Monthly	%	<p>A = Total number of Cat 2 defects that were permanently repaired within required time frame in the reporting month</p> <p>B = Total number of Cat 2 defects that were due to be permanently repaired in the reporting month</p> <p>SPI Calculation = (A / B) x 100</p>	98% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	3	Public and Workforce kept Safe	Percentage of safety inspections completed on time	Ensure safety defects are identified and appropriately categorised.	<p>The full definition and terminology used in this indicator is defined in the Vol 2 Service Information (Common), section 2.1 Safety Inspections. The following additional definitions support the calculation of this Performance Indicator.</p> <p>No additional definitions</p>	<p>The Contractor monitors the number of Safety Inspections due to be carried out in the reporting month for each cyclical frequency (i.e. weekly, monthly, etc) and reports them against the total number of Safety Inspections that were due to be carried out in the reporting month. The Performance Indicator is shown a percentage of completed safety inspections.</p>	Monthly	%	<p>A = Number of Safety Inspections completed on time</p> <p>B = Total number of Safety Inspections completed</p> <p>SPI Calculation = (A /B) x 100</p>	100% Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	4	Public and Workforce kept Safe	Reduction in Injuries	To demonstrate the effectiveness of the Contractor's safety culture and processes by monitoring the AFR, AIR and other safety related metrics.	<p>The full definition and terminology used in this indicator is defined in Vol.2 Service Information (Common), Annex A, 124SR Health & Safety. The following additional definitions support the calculation of this Performance Indicator:</p> <p>- R DDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (R DDOR). The full definition of what is included with RIDDOR is available from the HSE's website</p> <p>- Recordable Incidents - Any incident that results in injury, ill-health, fatality, damage to property or equipment.</p> <p>- Environmental Incident - Any incident that causes environmental harm.</p> <p>- Service/Utility Strike - Any incident that caused damage or disruption to the provision of a 3rd party service e.g. water, energy, communications etc.</p> <p>- Near Miss - An incident that didn't lead to death, injury, ill-health or damage but which had the potential to do so.</p> <p>- Unsafe Act - An observation of a behaviour or activity of a person that deviates from normal accepted safe practice.</p> <p>- Unsafe Condition - An observation of a physical condition of the workplace which render it unsafe.</p> <p>- Staff - All staff involved in Contract operations or activities, including subcontractors and head office staff directly employed on LoHAC business. Employer staff should not be included as they are recorded in the Employer's reporting process.</p> <p>- Road Users - Any third party and/or member of the public who uses the public Highway and its associated structures.</p> <p>- Hours Worked - Total hours worked by staff per month, including breaks and lunch hours. The working hours of third parties and/or Road Users will not be monitored.</p> <p>- Employer Work Sites - Includes any part of the Network where Contract activities are being undertaken including work sites, offices, compounds and depots relating to the Contract. Include specific sites relating to framework and tendered schemes if overseen by Contractor.</p>	<p>This Performance Indicator will measure both the Accident Incidence Rate (AIR) and the Accident Frequency Rate (AFR) for injuries to Contractors (or Road Users, if known) that take place at sites within the Affected Property at which the Contractor is providing the service over a rolling 12 months compared to a baseline and apply a 5% year over year reduction.</p> <p>AIR - The Accident Incidence Rate is based on the total number of R DDOR reportable incidents and injuries at sites within the Affected Property under control and/or supervision of the Contractor per 100,000 employees over 12 consecutive reporting months.</p> <p>AFR - The Accident Frequency Rate is based on the total number of Contractor incidents and injuries at sites within the Affected Property under control and/or supervision of the Contractor per 100,000 hours worked over 12 consecutive reporting months.</p> <p>The baseline information must be provided during the mobilisation period and will be jointly agreed between the Contractor and the Employer prior to service commencement.</p> <p>The Contractor will also be expected to report on, but not be measured against, numbers of Near Misses/Safety Observations and Service/Utility Strikes.</p>	Monthly	%	<p>A R</p> <p>A = Total Number of R DDOR reportable(s) over 12 months</p> <p>B = Average number of staff over 12 months</p> <p>A R = (A / B) x 100,000 = Number of RIDDOR reportable incidents per 100,000 employees</p> <p>AFR</p> <p>C = Total Number of Recordable Injuries over 12 months</p> <p>D = Average number of hours worked over 12 months</p> <p>ARF = (C / D) x 100,000 = Number of injuries per 100,000 hours worked</p> <p>SPI Calculation = Min((1-(AIR YTD))/(A R Baseline)),(1-(AFR YTD))/(ARF Baseline)) }</p>	A 5 % year over year reduction against baseline figure to be determined during mobilisation period.					
PPI	5	Reduced Disruption on the Network	Percentage of ECO's attended and appropriate action taken on time.	Reduce disruption through appropriate choice of action in response to Cat 1 (ECO) defects.	<p>The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common), sections 2.1 Safety Inspections, 2.22 (ECO Service) and Series 3200. The following additional definitions support the calculation of this Performance Indicator.</p> <p>Emergency Response Time - The actual time elapsed (in minutes) from notification of the initial incident to the Contractor to the time of notification of arrival on site by the Contractor response unit at the emergency incident</p> <p>Average Response Time The total time taken (in minutes) to respond to all emergency call outs divided by the total number of emergency call outs.</p> <p>Response Time Sub-groups The individual ECO response will be subdivided in 'aging' sub-groups. This sub-grouping allows the Contractor and Employer to analyse the efficiency of the ECO response timeliness.</p> <p>Time to clear - The time elapsed (in minutes) from arrival on site to the time at which the Contractor leaves site, having dealt appropriately with the Emergency Call Out.</p> <p>Average time to clear site - The total time taken (in minutes) to clear site for all emergency call outs divided by the total number of emergency call outs.</p>	<p>There are two elements to this Performance Indicator:</p> <p>1. Timeliness of response to an ECO and is the LoHAC Framework Performance Indicator that contributes towards the Contract Reduction Mechanism. The number of emergency response callouts attended within the contractual response time divided by the total amount of emergency callouts for the period.</p> <p>2. The choice of, and ability to, commence appropriate action and will be assessed through Employer Audit. A sample of records will be checked at regular intervals to determine if the Contractor has chosen appropriate action for the ECO's sampled. The results of which will be discussed at monthly progress meetings to help understand and share best practice or make improvements to the service provided.</p> <p>Extensions of timescales are not permissible for this indicator; however exclusions may be granted by the Employer in exceptional circumstances.</p> <p>If it is subsequently assessed that the ECO was not an emergency, it is nonetheless included in the indicator value.</p>	Monthly	%	<p>A = Total number of emergency call outs attended within required response time</p> <p>B = Total number of emergency call outs</p> <p>PPI Calculation = (A / B) x 100</p>	98.0%	99.0%	99.0%	99.0%	99.0%	99.0%
SPI	6	Reduced Disruption on the Network	Percentage of precautionary salt treatments completed within required time	Safe carriageways, footways and cycleways free of winter weather related hazards.	<p>The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common), section 2.21 Winter Service and Series 2800. The following additional definitions support the calculation of this Performance Indicator.</p> <p>Precautionary Treatment Route - A single route identified for salting which is capable of being completed within the required contractual treatment time. All routes should be defined in the Contractor's Winter Maintenance Service Plan which is to be agreed by the Employer before the start of the winter service season.</p>	<p>The total number of occurrences during the reporting period when a carriageway, footway and/or cycleway precautionary treatment route is completed within the contractual response time expressed as a percentage of the total number of occurrences during the period when a carriageway, footway and/or cycleway precautionary treatment route was instructed.</p> <p>The Contractor may be instructed to treat between one and all of the different footway types or a combination of footway types and specific sections of footway identified in the Winter Maintenance Service Plan. Therefore the indicator will reflect the successful achievement of individual treatment zones.</p>	Monthly	%	<p>A = number of route treatments completed within the required time scale within the reporting month</p> <p>B = number of precautionary route treatments instructed in the reporting month</p> <p>SPI Calculation = (A / B) x 100</p>	98% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	7	Reduced Disruption on the Network	Percentage of works complying with the TMA requirements	Ensure the Employer meets their Network Management Duty	<p>The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common), Annex A Clause 155 AR. The following additional definitions support the calculation of this Performance Indicator.</p> <p>The Contractor is responsible for sending all Traffic Management Plans (TMP), Works activity Footprints (WAF's), TMAN Notifications, ETON Notifications (NRSWA and Permit Applications) to the relevant Highway Authority.</p> <p>Highway Authorities have powers under the TMA Act 2004 to issue fixed penalty notices to Promoters who commit offences. Failure to cooperate with the Act or Regulations may lead to charges imposed on the Contractor in line with the fines associated with the relevant legislation.</p>	<p>To measure the Contractor's effectiveness at complying with the TMA requirements and thereby ensuring the Employer meets their Network Management Duty</p> <p>The full methodology of this indicator will be developed during mobilisation and will not exceed the legislative requirements already in place</p>	Monthly	%	<p>For Example:</p> <p>A = Number of works complying with TMA requirements</p> <p>B = Total number of works undertaken</p> <p>SPI calculation = (A /B) x 100</p>	Target to be set by Strategic Board after obtaining baseline data during the first year					

ANNEX A: Performance Indicators

PPI / SPI	Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome	Definitions	Methodology	Reporting Frequency	Unit	Formula	Target 2013/14	Target 2014/15	Target 2015/16	Target 2016/17	Target 2017/18	Target 2018/19 onwards
PPI	8	Preventative Maintenance is Effective	Delivery of Cyclic Activities to programme	Increased availability of the network through preventative maintenance.	<p>The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, Vol 2 Service Information (Common) section 2 Services and Annex A. The following additional definitions support the calculation of this Performance Indicator:</p> <p>Contractor's Accepted Plan - The Contractor's Plan contains the requirements for planning the Core Service Cyclic Activities including the order and timing for the next 12 month period of each Core Service activity. For the purposes of this PPI we will refer to the applicable element(s) of the Contractor's Plan as the Annual Maintenance Programme.</p> <p>Monthly Maintenance Programme - A summarised version of the Annual Maintenance Programme, detailing any revisions from last publication, a backward look at works completed during the last reporting month and a forward look at works planned for the next reporting month, should be reviewed and changes agreed at the monthly progress review meetings.</p> <p>Cyclic Activities (CA) - Cyclic activities are required to be carried out at set frequencies. Such activities shall be evenly spaced unless agreed otherwise with the Employer.</p> <p>NOTE: Safety Inspections and Winter Service will be covered by this PPI in addition to having their own separate SPI. The inclusion of these two CAs in this PPI ensure that these critical services are included in the Contract Reduction Mechanism methodology and also shown in their own right, as SPI's, and can be acted upon individually.</p>	<p>As part of the Annual Maintenance Programme the Contractor will plan to complete a set amount of work for each CA per month. This is agreed with the Employer prior to the commencement of each financial year.</p> <p>At the relevant performance meeting the Employer and Contractor will review the work completed in the last reporting period, to verify the reported data, and review the forthcoming month(s) planned work to ensure that progress towards achieving the Annual Maintenance Programme remains on plan.</p> <p>Each reporting month the Contractor will report how much work was completed within the prior reporting month versus how much was planned to be completed in the prior reporting month for each of the CAs selected by the employer.</p> <p>The final PPI will be calculated to remove skewing of data due to large or small volumes and therefore is the average of each CAs performance. This ensures that each CA has equivalent weighting.</p>	Monthly	%	<p>A = Number of Cyclic Activities programmed in month</p> <p>B = Number of Cyclic Activities actually completed in month</p> <p>CA_i = A/B</p> <p>n = the number of CAs undertaken as part of the Contract</p> <p>PPI Calculation = ((CA₁+...CA_n)/n)*100</p>	90 0%	91.0%	92 0%	93.0%	94 0%	95.0%
SPI	9	Preventative Maintenance is Effective	Percentage Revenue Works completed on time	To demonstrate effective planning and programming of works.	<p>The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, sections 11 and 29 and in Vol.2 Service Information (Common) section 2 Services. The following additional definitions support the calculation of this Performance Indicator:</p> <p>Revenue Works - All Tasks instructed by the Employer from their revenue budget . This does not include works under Lump Sum. Furthermore, for the purposes of this SPI, any instructed Cat 2H or Cat 2M defects will not be included as these are captured under SPI 2. However, Cat 2L defects will be included.</p> <p>Physical Completion - When the Contractor has completed all the physical site works or services which the Task Order states and corrected notified Defects which would have prevented the Employer or Others from using the Task and Others from doing their work.</p> <p>For the purposes of the PPI this is taken as the Task Completion Date minus 14 days.</p> <p>Completion timescales - Revenue works, unless otherwise agreed by the Employer, have a default duration of 28 days to complete , starting from the date of instruction.</p> <p>On time - Any revenue works that has been completed before or on the agreed Task Completion date is deemed to be 'on time'.</p>	<p>This indicator will review the number of Tasks under the contract that fall into the Revenue Works category and assess in terms of a percentage how many were completed on time.</p> <p>Extension of time will be permissible on this indicator if agreed by the Employer prior to the current agreed due date being exceeded.</p>	Monthly	%	<p>A = Total number of Revenue Works that were completed within agreed timescales in the reporting month.</p> <p>B = Total number of Revenue Works that were due to be completed in the reporting month.</p> <p>SPI Calculation = (A / B) x 100</p>	95% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	10	Preventative Maintenance is Effective	Average number of days to repair Lighting Defects.	Well maintained lighting	<p>The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) section 2.10 Lighting. The following additional definitions support the calculation of this Performance Indicator:</p> <p>Contractual Timescales - The Contractor is required to rectify outages of road and sign lighting units caused by any defect(s) as described within the Contract references within 3 calendar days or 7 calendar days if a permit is required; unless otherwise specified or agreed by the Employer.</p> <p>Average number of days - The average number of days is calculated by using the following two elements:</p> <p>1. The total number of calendar days (attributable to the Contractor) for which all outages rectified in the reporting year were open (for each fault, number of days open should be calculated from point the fault was identified, irrespective of contract year).</p> <p>2. The total number of calendar days that all lighting outages remaining open at the end of the reporting month have been open for (from point of fault identification to end of reporting month).</p> <p>The sum of both the above is divided by the sum of the total of number of outages that were rectified year to date and the total number of lighting faults that remain open at the end of the reporting period.</p> <p>Permissible Exclusions - The Contractor will be allowed to put forward a request to exclude one or more open faults from the indicator where it is deemed that reasons beyond the Contractors control prevent rectification in a timely manner.</p> <p>DNO - Distribution Network Operator, the licensed operator of the electricity supply network in the area. Outages attributable to the DNO will be excluded (DNO - Distribution Network Operator, the licensed operator of the electricity supply network in the area).</p> <p>Included lights - The following should be included: highway lights, street lights mounted on other</p>	<p>At the end of each reporting period, the contractor will calculate the total number of calendar days that all outages were open for (addition of outages repaired duration and outages open duration for all faults) and divide by the total number of outages rectified and remaining open in the reporting month.</p> <p>The SPI will be calculated on a cumulative year to date basis.</p> <p>All outages agreed as 'Excluded' will not be included in the SPI calculation.</p>	Monthly	No	<p>For both Targets</p> <p>N = (a + b) / c = Number of days</p> <p>a = total number of calendar days taken to rectify faults, contract start to date (applicable to all faults rectified year to date)</p> <p>b = total number of calendar days for faults remaining open, contract start to end of reporting month</p> <p>c = total number of faults rectified year to date and remaining open at the end of the reporting month.</p>	SPI10a = 3 days SPI10b = 7 days					
SPI	11	Preventative Maintenance is Effective	Availability of Employer defined Tunnel Assets	Well maintained Tunnels	<p>The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) section 2.19 Tunnels. The following additional definitions support the calculation of this Performance Indicator:</p> <p>The Contractor shall maintain the ventilation equipment, environmental monitors, tunnel pumps (where installed and/or available) so that a minimum defined level of availability is achieved.</p> <p>The SCADA Alarm will be investigated and actioned immediately following acknowledgement of the alarm.</p> <p>Acknowledgement, investigation and action timings are to be recorded and reported by the Contractor.</p>	<p>Percentage of Construction and Demolition waste (excavated and non-excavated) reused and recycled based on the overall Construction and Demolition waste generated.</p> <p>The Contractor should update and submit the TfL proforma – SPI submission worksheet for SPI 14 on a quarterly basis.</p>	Monthly	%	<p>SPI is the overall percentage availability of the tunnels assets</p>	Ventilation equipment (where installed) ≥ 75% is available at any time. Environmental monitors (where installed) ≥ 50% per bore is available at any time. Tunnel pumps (where available) ≥ 50% of capacity is available at any time. The SCADA alarm acknowledgement indicator (where installed): • Immediately for Blackwall and Rotherhithe Tunnels,					
SPI	12	Preventative Maintenance is Effective	Percentage of Principal and General Inspection reports delivered and accepted on time for Bridges and Other Structures	Ensure timely and accurate reporting of Inspection Information	<p>The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) section 2.18 and Annex A Series 2200 Bridges and other Structures The following additional definitions support the calculation of this Performance Indicator:</p> <p>PI - Principle Inspection</p> <p>GI - General Inspection</p> <p>On Time - within 4 weeks of the date of inspection</p> <p>Accepted 1st Time - the inspection report must meet the requirements as laid out in clause 2200</p>	<p>% of inspection reports delivered and accepted on time (70/30 split for PI/GI weighting).</p> <p>This indicator will measure two aspects of inspection reports:</p> <p>1. Percentage of inspection reports delivered on time to the Employer</p> <p>2. Percentage of inspection reports accepted on 1st review by the Employer</p> <p>The indicator also puts more emphasis on quality of submission over timeliness to a factor of (75/25).</p>	Monthly	%	<p>1. Timeliness - two figures will be calculated for PIs and GIs on time.</p> <p>A = Number of reports received within required timescales.</p> <p>B = Total number of reports due to be submitted in reporting month</p> <p>DP /GI = (A/B)*100</p> <p>E = 0.7*DPi+0.3DGI</p> <p>Accepted 1st Time - two figures will be calculated for PI and GI acceptance.</p> <p>C = Number of reports accepted on 1st review</p> <p>F = Total number of reports reviewed within the reporting month</p> <p>GP /GI = (C/F)*100</p> <p>H = 0.7*GPI+0.3GGI</p> <p>SPI Calculation = (E+3*H)/4</p>	90% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					

ANNEX A: Performance Indicators

PPI / SPI	Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome	Definitions	Methodology	Reporting Frequency	Unit	Formula	Target 2013/14	Target 2014/15	Target 2015/16	Target 2016/17	Target 2017/18	Target 2018/19 onwards
SPI	13	Responsible Procurement	Percentage Construction and Demolition waste reused or recycled	Successful management of construction and demolition waste in order to reduce the use of raw materials, encourage recycling and reuse and minimise the waste taken to landfill sites to offer both environmental and economic benefits.	The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) Annex A 164AR. The following additional definitions support the calculation of this Performance Indicator: Construction & Demolition waste - Own waste generated from the construction, repair, maintenance & demolition of buildings, structures & roads. 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. [Ref: Mayor's Responsible Procurement Code] Reuse - Involves multiple use of a product in its original form, with or without reconditioning, for its original or alternative purpose e.g. refilling plastic bottles or recharging batteries [Ref: Mayor's Responsible Procurement Code]	Percentage of tonnage of Construction and Demolition waste material reused and recycled based on the overall tonnage of waste material generated. (excavated and non - excavated materials). (See Clause 164AR Environmental Management of Series 100). The inverse value of this SPI is assumed to be the amount of construction and demolition excavated waste material sent to landfill.	Quarterly	%	A = Tonnage of Construction & Demolition waste material recycled B = Tonnage of Construction & Demolition waste material reused C = Total tonnage of Construction & Demolition waste material generated SPI Calculation = (A+B) / C x 100	95% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	14	Responsible Procurement	Percentage recycled and/or green products procured	Reduce consumption of new resources by procuring recycled and green construction materials and following the principles of sustainable procurement	The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) Annex A 164AR. The following additional definitions support the calculation of this Performance Indicator: Green product - A product that is certified for its sustainable life-cycle properties, for example wood certified by Forest Stewardship Council (FSC) Recycled product - Product either consisting of 100% recycled material or that has recycled content	Total tonnage of recycled and/or green construction products procured expressed as a percentage of the total tonnage of construction material procured. The Contractor is expected to report the volume and value of material purchased, split by virgin and recycled/green totals per 'product' purchased. The Contractor should update and submit the SPI submission worksheet for SPI 14 on a quarterly basis.	Quarterly	%	A = Tonnage of Construction Material procured that is recycled or green in nature. B = Total tonnage of Construction Material procured SPI Calculation = (A / B) x 100	14% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	15	Responsible Procurement	Percentage of Contractor vehicles which meet the required Euro Standards	Reducing the environmental impact of the vehicle fleet.	The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) Annex A 164AR. The following additional definitions support the calculation of this Performance Indicator: none	Total number of newly purchased or leased core fleet vehicles meeting specified Euro Emission standards and CO2 Emission Limits expressed as a percentage of the total number of core fleet vehicles. There are two elements to this indicator: SPI 15a: Euro Standards The total number of newly purchased or leased core fleet vehicles meeting specified Euro Emission standards expressed as a percentage of the total number of core fleet vehicles. SPI 15b: CO2 Emission Limits The total number of newly purchased or leased core fleet vehicles meeting specified CO2 Emission Limits expressed as a percentage of the total number of core fleet vehicles subject to CO2 Emission Limits. The final SPI is calculate as the mean average of SPI 15a and SPI5b.	Quarterly	%	A = Number of vehicles owned or leased which comply with the required Euro Standard B = Total number of vehicles owned or leased SPI Calculation = (A /B) x 100	100%					
PPI	16	Scheme Delivery is Effective	Percentage Capital Works completed on time	To demonstrate effective planning and programming of works.	The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, sections 11 and 29 and in Vol.2 Service Information (Common) section 2 Services. The following additional definitions support the calculation of this Performance Indicator: Capital Works - All Tasks instructed by the Employer from their Capital budget This does not include works under Lump Sum. Physical Completion - When the Contractor has completed all the physical site works or services which the Task Order states and corrected notified Defects which would have prevented the Employer or Others from using the Task and Others from doing their work. For the purposes of the PPI this is taken as the Task Completion Date minus 14 days. Completion timescales - Revenue works, unless otherwise agreed by the Employer, have a default duration of 28 days to complete , starting from the date of instruction. On time - Any revenue works that has been completed before or on the agreed Task Completion date is deemed to be 'on time'.	This indicator will review the number of Tasks under the contract that fall into the Capital Works category and assess in terms of a percentage how many were completed on time. Extension of time will be permissible on this indicator if agreed by the Employer prior to the current agreed due date being exceeded.	Monthly	%	A = Total number of Scheme Task Orders completed on or before the programmed completion date over the last 12 months (or YTD in Year 1) B = Total number of Scheme Task Orders that were expected to have been completed over the last 12 months (or YTD in Year 1) PPI Calculation = (A / B) x 100	95%	96%	97%	98%	99%	99%
SPI	17	Scheme Delivery is Effective	Percentage of Capital Works where defects were rectified within required time	Minimum impact on the customer after scheme completion.	The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, sections 11, 29, 40-43 and in Vol.2 Service Information (Common) section 2.4.5 Reactive works and schemes - general. The following additional definitions support the calculation of this Performance Indicator: Completion on time - Achievement of rectifying notified defects on or before the Defect Correction Period.	Report the percentage of Scheme Task Orders where any Defects identified prior to or at Completion have been corrected within the Defect Correction Period, this should also include Scheme Task Orders where zero defects were notified.	Monthly	%	A = Total number of capital works YTD where all Defects notified before or at Completion have been rectified within the Defect Correction Period or are agreed Defect free at Completion B = Total number of capital works YTD that have passed their Defect Correction Period, or are agreed Defect free at Completion. SPI Calculation = (A / B) x 100	98% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	18	Scheme Delivery is Effective	Percentage of acceptable H&S files received within 14 days of physical completion of a Notifiable Scheme Task.	Enable the Employer to fulfil its legislative requirement under CDM Regulations 2007.	The full definition and terminology used in this indicator is defined in Vol 2 Service Information (Common) Annex A 124AR. The following additional definitions support the calculation of this Performance Indicator: Health & Safety File - The health and safety file contains the information needed to allow future construction work, including cleaning, maintenance, alterations, refurbishment and demolition to be carried out safely. Information in the file should alert those carrying out such work to risks, and should help them to decide how to work safely. Information on duties, file content and storage requirements are found within the CDM ACOP. Health & Safety File submission timeframe - The LoHAC Framework allows the Contractor 14 days from the Task Completion Date to update the H&S File. Notifiable - Any Scheme Task lasting more that 30 days or involving more than 500 person days of construction work. Acceptable Quality - The Contractor must update the H&S File information that is of acceptable quality. Acceptance or rejection of the H&S file information will be confirmed back to the LoHAC by TfL's CDM-C within 2 weeks of receipt. Additional Legislative References: - Construction (Design and Management) Regulations 2007 (CDM) - Managing health and safety in construction Approved Code of Practice (CDM ACOP)	To report the number of schemes where the H&S file information of acceptable quality is submitted within 14 days of the Task Completion Date. This will be monitored as the number of notifiable schemes where the H&S file information was received within 14 days and subsequently accepted, as a percentage of the total number of H&S files due to be submitted in the reporting month. Note: If the H&S file is submitted within 14 days and confirmation of acceptance / rejection is not provided by TfL within the 2 week period following submission, for purposes of the SPI the H&S file will be deemed to have been accepted. However it may later be rejected and require re-submission – this will not affect future SPI scores.	Monthly	%	A = Total No. of Schemes where the H&S file submission has fallen due and the subsequent TfL acceptance / rejection period has lapsed (i.e. Scheme Task Completion Date + 28 days) and falls within current reporting year B = Total No. of Schemes where the H&S file information was submitted within 14 days of the Task Completion Date and was accepted within further 2 weeks (accepted) C = Total No. of Schemes where the H&S file information was submitted within 14 days of the Task Completion Date and acceptance / rejection was not communicated to LoHAC within the further 2 weeks (deemed as accepted for purposes of SPI) = 5 ∴ SPI 17 = ((B+C)/A)*100	100% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	19	Scheme Delivery is Effective	Average absolute variance between the Contractor's Task Response price and the price stated in the issued Scheme Task Order.	Efficient and accurate pricing of Scheme Tasks	The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, sections 11 and 29 and in Vol.2 Service Information (Common) section 2 0.5 Reactive works and schemes - general. The following additional definitions support the calculation of this Performance Indicator: Task Response Price - The price included within the Scheme Task Response. Task Order Price - The price included within the Scheme Task Order. Absolute Variance Accuracy - The absolute difference in value between the Task Response price for a proposed Scheme and the Scheme Task Order price for that Scheme represented as a % of the Scheme Task Order price for that Scheme.	Scheme Task Order pricing accuracy % (Average absolute variance between the Contractor's Price given on their Task Response and the Price stated in the issued Scheme Task Order). Record the Prices in the Contractor's Task Response and the associated Scheme Task Order. Prices from Contractor's Task Responses which do not become issued Scheme Task Orders are not included in this calculation.	Monthly	%	A = Total of all Prices in Contractor's Task Response B = Total of all Prices in Scheme Task Orders SPI Calculation = (A /B) x 100	90% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					

ANNEX A: Performance Indicators

PPI / SPI	Indicator Number	Performance Theme (Outcome)	PI Title	Indicator Outcome	Definitions	Methodology	Reporting Frequency	Unit	Formula	Target 2013/14	Target 2014/15	Target 2015/16	Target 2016/17	Target 2017/18	Target 2018/19 onwards
PPI	20	Contract Requirements fulfilled	Percentage of Task Orders where the final account was submitted on time	Timely and efficient processing of financial payments upon completion of all Task Orders.	<p>The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, sections 11 and 29 and in Vol.2 Service Information (Common) section 2 0.5 Reactive works and schemes - general. The following additional definitions support the calculation of this Performance Indicator:</p> <p>Physical Completion - When the Contractor has done all the work or services which the Task Order states he is to do and corrected notified Defects which would have prevented the Employer or Others from using the Task and Others from doing their work. For simplicity this is taken as the Task Completion Date minus 14 days.</p> <p>Capital Works - All Tasks instructed by the Employer from their Capital budget . This does not include works under Lump Sum</p> <p>Revenue Works - All Tasks instructed by the Employer from their Revenue budget This does not include works under Lump Sum.</p> <p>Final Account due date - The Final Account due date is 6 weeks after the Task Completion Date (i e. for simplicity 8 weeks after the Physical Completion Date). The Employer may grant at his absolute discretion, due to exceptional circumstances, an extension of time to submit the final account.</p>	<p>Report the number of Final Accounts for Task Orders that were submitted within 6 weeks of the Task Completion Date or as otherwise agreed vs. the number of Final Accounts for Task Orders that were due to be submitted within 6 weeks of the Task Completion Date or as otherwise agreed within the reporting period.</p> <p>This PPI will be split by Revenue and Capital Tasks and the total PPI score will be an equally weighted average of the two elements.</p>	Monthly	%	<p>A = Total number of On Time Final Account Applications that have been submitted.</p> <p>B = Total number of Task Orders for which Task Completion has been certified.</p> <p>PPI calculation = A / B x 100</p>	95%	96%	97%	98%	99%	99%
SPI	21	Contract Requirements fulfilled	Percentage compliance in updating the Employer's Asset Management System within the required timescales	Employer's Asset Management System is updated promptly and accurately.	<p>The full definition and terminology used in this indicator is defined in the Vol 2 Service Information (Common), section 2 25 Updating Employer's Asset Management System. The following additional definitions support the calculation of this Performance Indicator.</p> <p>Suitable resources, (numbers and quality) processes and procedures are put in place to ensure that the Employers Asset Management System is updated promptly and accurately.</p> <p>Employer Asset Management System - The Employer Asset Management System is the system used by the Employer for recording Highway asset data.</p>	<p>To ensure that the Asset Management System is effective as a tool to support the efficient operation of the network, investment decision making and contract compliance and Contractor performance management.</p> <p>% of updates to the Employer's Asset Management System completed accurately within required timescales.</p> <p>Details of how this SPI shall be measured and the method of calculating results will be prescribed in the relevant Employer's Service Information.</p>	Monthly	%	<p>A = Number of accurate asset management system updates within the agreed timescales</p> <p>B = Number of asset management system updates required</p> <p>SPI Calculation = (A /B) x 100</p>	95% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	22	Contract Requirements fulfilled	Percentage compliance to updating Employer asset inventory systems accurately	Update the inventory within the Employer's Asset Management System accurately after works.	<p>The full definition and terminology used in this indicator is defined in the Vol 2 Service Information (Common), section 2 25 Updating Employer's Asset Management System. The following additional definitions support the calculation of this Performance Indicator.</p> <p>Suitable resources, (numbers and quality) processes and procedures are put in place to ensure that the Employer's Asset Management System is updated promptly and accurately.</p> <p>Employer's Asset Management System - The Employer's Asset Management System is the system used by the Employer for recording highway asset data.</p>	<p>To ensure that the Employer's inventory is kept up to date with changes made to the design, status and asset data associated with the Employer's network and or assets as a result of any Core Services or Task Orders undertaken by the Contractor.</p> <p>% of updates to the inventory within the Employer's Asset Management System completed accurately after undertaking Core Services or Task Orders within the required timescales.</p> <p>Details of how this SPI shall be measured and the method of calculating results will be prescribed in the relevant Employer's Service Information.</p>	Monthly	%	<p>A = Number of accurate inventory updates following scheme/maintenance works within the agreed timescales</p> <p>B = Number of updates required</p> <p>SPI Calculation = (A /B) x 101</p>	95% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	23	Contract Requirements fulfilled	Percentage of Task Responses within the required timescales	Ensure timely and efficient processing of instructed works.	<p>The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, sections 11 and 29 and in Vol.2 Service Information (Common) section 2 0.5 Reactive works and schemes - general. The following additional definitions support the calculation of this Performance Indicator:</p> <p>Accepted - The Service Manager will assess whether they have been provided with all the information required in the Task Request to enable them to make a decision regarding issuing a Task Order. Where the Contractor is instructed to submit a revised Task Response on the terms of the original Task Request, the Task Response is deemed not accepted. If acceptance or rejection is not communicated back to the Contractor by the Service manager then for the purposes of the SPI only the Task Response is deemed Accepted.</p> <p>Number of late Task Responses - The number of Task Responses that have not been delivered or within the Task Response Time or other agreed timeframe.</p> <p>Number of rejected Task Responses - The number of Task Responses that have been delivered but rejected within the Task Response Time or other agreed timeframe.</p> <p>Number of Task Responses Due - The total number of Task Responses that were due to be returned to the Service Manager within the reporting period.</p>	<p>To report the number of Minor or Scheme Task Responses received and accepted within Task Response Time or other agreed date by monitoring Task Responses that were rejected or received and late or are still outstanding as a percentage of the number of Task Responses that are due.</p>	Monthly	%	<p>A = Number of Task Responses submitted to the Employer within the required timescales</p> <p>B = Total number of Task Responses submitted</p> <p>SPI Calculation = (A /B) x 100</p>	95% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	24	Contract Requirements fulfilled	Timely response to Early Warnings and Compensation Events	Effective partnering and collaboration through timely communications	<p>The full definition and terminology used in this indicator is defined in Vol.1 Schedule 7 Conformed Call-Off Conditions of Contract, part 6 Compensation Events. The following additional definitions support the calculation of this Performance Indicator:</p> <p>none</p>	<p>% of Early Warning Notices and Compensation Events responded to within contractual timescales.</p> <p>The Contractor monitors the total numbers of Early Warning Notices and Compensation Events issued and the numbers responded to within the required timescales.</p>	Monthly	%	<p>A = Number of Early Warning Notices and Compensation Events responded to/ issued on time</p> <p>B = Total number of Early Warning Notices & Compensation Events received/ issued</p>	100% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	25	Improved Customer Satisfaction	Response to complaints and information requests requiring Contractor action within contractual timescales	Improved public perception of the services provided.	<p>This indicator supports the guidance as detailed in the Well Maintained Highways Code of Practice and is assessing the Contractor's response in cases where they are required to take action as a result of a formal complaint or request. That complaint or request must be with respect to activities delivered under the contract and could originate from any number of sources e g. freedom of information requests, data access requests, complaints, V P correspondence and telephone answering services.</p> <p>The Contractor will be contacted by the Employer if they are deemed required to provide a response or take action as a result of the complaint or request. That action may be in the form of providing data, a letter of explanation, preparation of an estimate if work are required other agreed response.</p> <p>Complaint - A complaint is any formally communicated expression of public discontent over a service provided by the Contractor.</p> <p>On Time - In this indicator the Contractor will be required to take the appropriate required action with 5 working days, unless otherwise agreed by the Employer. The timeframe should only be extend where the action required would normally take longer than 5 working days.</p>	<p>Percentage of Complaints/ requests actioned on time</p> <p>The Contractor monitors the number of complaints/ requests received where action is required and the number where the action is taken within the contractual timescales.</p>	Quarterly	%	<p>A = number of complaints actioned on time</p> <p>B = Total number of complaints submitted</p> <p>SPI Calculation = (A /B) x 100</p>	100% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					
SPI	26	Improved Customer Satisfaction	Third Party Claims against the Employer or the Contractor	Effective assistance in defence of 3rd party claims.	<p>As defined in the Service Information (common) section 5 Clause 182AR</p> <p>Third Party Claim - A Third Party Claim is a claim made by a person or body independent of the Employer or Contractor</p> <p>Timescales:</p> <ul style="list-style-type: none">• 20 days member of public direct (the specified days are for claims from the public that have no legal representation). Contractor is to compile highways report along with supporting documents and send back to claims handler.• 20 days legally represented claimant (the specified times are for all claims to be returned back to claims handler with supporting documents).	<p>Monitor the provision of supporting information to the Employer's claims handler to enable the Employer to defend 3rd party claims</p>	Monthly	No	<p>A = number of claims due to be responded to within the month</p> <p>B = Total number of claims responded to on time submitted</p> <p>SPI Calculation = (A /B) x 100</p>	100% for first year. Target for future years to be agreed with the Employer and ratified by the Area Board.					

SCHEDULE 14

STRATEGIC LABOUR NEEDS AND TRAINING

1. Introduction

1.1 This Schedule 14 including the Appendices sets out the Contractor's obligations in respect of:

1.1.1 supporting Employers in the implementation of the Skills and Employment Strategy; and

1.1.2 ensuring that the Contractor attracts, develops and retains personnel with the skills necessary to:

1.1.2.1 design, install, operate and maintain the unique systems and asset base that make up London's transport network; and

1.1.2.2 deliver any Services, throughout the Framework Term and the term of any Call-Off Contract.

1.2 In this Schedule 14, the following terms shall have the corresponding meanings:

Agreed SLNT Plan" means the Contractor's strategic labour needs and training plan set out at Appendix 1 (Outline/Agreed SLNT Plan) to be prepared in accordance with the SLNT Plan Template and approved by the Framework Employer.

Apprentice Apprentice means a member of the Contractor's personnel who is registered as an apprentice with an industry recognised body.

Outline SLNT Plan means the initial strategic labour needs and training plan set out at Appendix 1 (Outline/Agreed SLNT Plan), submitted by the Contractor as part of his tender and to be agreed between the Parties in accordance with paragraph 2.1 below.

Monthly SLNT Monitoring Report means the report to be prepared by the Contractor in the form set out at Appendix 2 (Monthly SLNT Monitoring Report Template) and submitted to the Area Board in accordance with paragraph 2.5 below.

Relevant Employment Vacancy means an employment vacancy within the Contractor's organisation relating to the Services.

Skills and Employment Strategy means the TfL Group's ten (10) year skills and employment strategy, as amended from time to time. A copy of the Skills and Employment Strategy can be obtained from:

<http://www.tfl.gov.uk/assets/downloads/corporate/skills-and-employment->

strategy-march09.pdf.

SLNT Co-ordinator	is the person nominated pursuant to paragraph 2.2.1 below.
SLNT Infraction	means any breach by the Contractor of any of its obligations under paragraph 2 below.
SLNT Output	means the minimum number of Apprentice positions or equivalent to be delivered by the Contractor (either directly through its own personnel and the personnel of its Subcontractors) under this contract, as identified and agreed in the Agreed SLNT Plan.
Supplier Skills Manager	the Framework Employer has appointed a team of Supplier Skills Managers ("SSM") to act as a central co-ordination point for Contractor. The SSM will work to support the Contractor by helping to co-ordinate the various agencies and organisations (including Sector Skills councils, Learning and Skills Council and the London Development Agency) that offer skills or employment funding, into one integrated programme for the Contractor.
Trainee	means a member of the Contractor's personnel who is registered at a trainee with an industry recognised body.
Training Plan (SLNT)	is the plan prepared pursuant to paragraph 2.3 below.

2. Strategic Labour Needs and Training

2.1 *Agreed SLNT Plan*

- 2.1.1 Based on the Outline SLNT Plan submitted by the Contractor at Tender, the Contractor
- further develops the Outline SLNT Plan to reflect the comments and requirements of the Framework Employer, and
 - submits a revised copy of the Outline SLNT Plan to the Framework Employer for approval within twenty (20) Business Days of the Framework Agreement award date.
- 2.1.2 If the Outline SLNT Plan is
- approved, it shall be adopted immediately and become the Agreed SLNT Plan, or
 - not approved, the Contractor amends the Outline SLNT Plan and re-submits it to the Framework Employer for approval within the time period agreed in writing between the Parties. If the Framework Employer does not approve the Outline SLNT Plan following its resubmission, the matters preventing

such approval are resolved in accordance with clause 46 of the Framework Agreement.

2.1.3 Without limiting any other provision of the Framework Agreement, the Contractor

- complies with provisions of the Agreed SLNT Plan, and
- at no additional cost to the Framework Employer or any other Employer and subject to the provisions of paragraph 2.1.4 below, reviews and amends the Agreed SLNT Plan every twelve (12) months following the Framework Agreement Service Commencement Date or at other times requested by the Framework Employer, to reflect
 - good industry practice,
 - any changes to the nature of the Services, and
 - any amendments proposed by the Framework Employer.

2.1.4 Any changes or amendments to the Agreed SLNT Plan are not implemented until approved in writing by the Framework Employer.

2.2 *SLNT Co-ordinator*

2.2.1 Within twenty (20) Business Days of the Framework Agreement award date, the Contractor nominates a member of its personnel with the necessary skills and authority to

- ensure that the SLNT requirements are met,
- act as single point of contact for the Framework Employer and the Supplier Skills Manager for all matters relating to the Agreed SLNT Plan,
- secure appropriate training provision for employees/ trainees/ apprentices and manage subcontractor/ subconsultant compliance,
- collect and present the monitoring information including the Monthly SLNT Monitoring Report, and
- be responsible for the implementation and on-going development and maintenance of the Agreed SLNT Plan.

2.3 *Training of Trainees and/or Apprentices*

2.3.1 The Contractor

- reviews and updates Training Plans for all Trainees and/or Apprentices regularly, and

- makes copies of completed and up to date Training Plans available to the Framework Employer for its inspection, when requested.

2.4 *Local Community Relations*

- 2.4.1 The Contractor acknowledges and accepts that the Framework Employer works closely with third party organisations to implement the Skills and Employment Strategy.
- 2.4.2 Accordingly, the Contractor, where appropriate, makes attempts to recruit from within the Framework Area.

2.5 *Monitoring and Reporting*

- 2.5.1 Subject to paragraph 2.5.2 below, the Contractor provides the Framework Employer with a quarterly SLNT Monitoring Report detailing the Contractor's performance against the Agreed SLNT Plan. The quarterly SLNT Monitoring Report is delivered on the final Friday of each quarter.
- 2.5.2 The Contractor ensures at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the
- development and maintenance of Training Plans, and
 - collection and reporting of the information to the Framework Employer pursuant to paragraph 2.5.1 above.

2.6 *SLNT Infractions*

- 2.6.1 Failure to
- ensure that each SLNT Output for the monitoring period is delivered in accordance with Agreed SLNT Plan, and/or
 - review the Agreed SLNT Plan in accordance with paragraph 2.1.3
- shall be recorded and discussed at the next Area Board.

2.7 *SLNT Audit*

- 2.7.1 The Framework Employer may from time to time undertake any audit or check of any and all information regarding the Contractor's compliance with the provisions of this Schedule.
- 2.7.2 The Contractor maintains and retains records relating to the Agreed SLNT Plan and its compliance with the provisions of this Schedule for a minimum of seven (7) years.
- 2.7.3 The Framework Employer uses reasonable endeavours to co-ordinate such audits and to manage the number, scope, timing and method of undertaking

audits so as to ensure that the Contractor is not, without due cause, disrupted or delayed in the performance of the Contractor's obligations under the Framework Agreement.

2.7.4 The Contractor promptly provides all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance

- granting or procuring the grant of access to any
 - premises used in the Contractor's performance of the Framework Agreement and each Call-Off Contract, whether the Contractor's own premises or otherwise,
 - equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Contractor's obligations under this Schedule, wherever situated and whether the Contractor's own equipment or otherwise, and
- complying with the Framework Employer's reasonable requests for access to senior personnel engaged in the Contractor's performance of the Framework Agreement and each Call-Off Contract.

APPENDIX 1

Agreed SLNT Plan

See Volume 5

APPENDIX 2

Monthly SLNT Monitoring Report Template

SLNT Monitoring Form

Organisation: _____

Date: _____

TfL Period: _____

SLNT Category	TfL Priority	Numbers				Additional Detail/ Information
		Annual Target	Annual Forecast	Outputs this Month	Outputs To Date	
Worklessness						
- Apprentices (FTE)	Y					
- Job Starts (FTE)	Y					
- Placement Positions (Nos)	Y					
New Entrants						
- Apprentices (FTE)	Y					
- Job Starts (FTE)						
- Graduates (FTE)						
Trainee's						
- Placement Positions (Nos)						
- Taster Positions (Nos)						
Current Workforce						
- Adult Apprentices (FTE)	Y					
- Workforce Skills (Days)						
Educational Activities (Days)						
Output Summary						
Highlights						
Issues/ Concerns						

SLNT Monitoring Form

Organisation:

Date:

TfL Period:

SLNT Category	TfL Priority	Numbers				Additional Detail/ Information
		Annual Target	Annual Forecast	Outputs this Month	Outputs To Date	
Worklessness						
- Apprentices (FTE)	Y					
- Job Starts (FTE)	Y					
- Placement Positions (Nos)	Y					
New Entrants						
- Apprentices (FTE)	Y					
- Job Starts (FTE)						
- Graduates (FTE)						
Trainee's						
- Placement Positions (Nos)						
- Taster Positions (Nos)						
Current Workforce						
- Adult Apprentices (FTE)	Y					
- Workforce Skills (Days)						
Educational Activities (Days)						
Output Summary						
Highlights						
Issues/ Concerns						

SLNT Monitoring Form

Organisation:

Date:

TFL Period:

SLNT Category	TfL Priority	Numbers				Additional Detail/ Information
		Annual Target	Annual Forecast	Outputs this Month	Outputs To Date	
Worklessness						
- Apprentices (FTE)	Y					
- Job Starts (FTE)	Y					
- Placement Positions (Nos)	Y					
New Entrants						
- Apprentices (FTE)	Y					
- Job Starts (FTE)						
- Graduates (FTE)						
Trainee's						
- Placement Positions (Nos)						
- Taster Positions (Nos)						
Current Workforce						
- Adult Apprentices (FTE)	Y					
- Workforce Skills (Days)						
Educational Activities (Days)						
Output Summary						
Highlights						
Issues/ Concerns						

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SCHEDULE 15

EQUALITY AND SUPPLIER DIVERSITY

1. A list of Equality and Supplier Diversity definitions can be found in Appendix 1.

2. **Equality & Diversity**

2.1 Strategic Equality & Diversity Plan

2.1.1 For the duration of the Framework Agreement and each Call-Off Contract, the Contractor shall comply with the Agreed Strategic Equality & Diversity Plan and shall procure that each of its Subcontractors:

- adopts and implements; and
- in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement,

a strategic equality and diversity plan in respect of their respective employees engaged in the performance of the Framework Agreement and each Call-Off Contract which is at least as extensive in scope as that agreed with the Framework Employer and set out in the Agreed Strategic Equality & Diversity Plan.

For the purposes of the Framework Agreement and each Call-Off Contract the expression "Agreed Strategic Equality & Diversity Plan" means the Strategic Equality & Diversity Plan as negotiated and agreed and attached to this Schedule 15 at Appendix 2.

2.1.2 Where any Subcontractor has, pursuant to paragraph 2.1.1 or otherwise, adopted a Strategic Equality & Diversity Plan, the Contractor shall procure that each Subcontractor:

- provides; and
- in respect of Indirect Subcontractors, use reasonable endeavours to procure that those Indirect Subcontractors provide,

a copy of its Strategic Equality & Diversity Plan (and any amendments thereto) to the Framework Employer or its nominee as soon as reasonably practicable.

2.2 **Diversity Training**

2.2.1 For the duration of the Framework Agreement and each Call-Off Contract, the Contractor shall comply with the "Agreed Training Plan" in relation to all of its employees engaged in the performance of each Call-Off Contract. For the purposes of the Framework Agreement and each Call-Off Contract the expression "Agreed Training Plan" means the diversity training plan set out as agreed and attached to this Schedule 15 at Appendix 3. The Contractor shall procure that each of its Subcontractors:

- adopts and implements; and
- in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement, a diversity training plan in respect of their respective employees engaged in the performance of the Framework Agreement and each Call-Off Contract which is at least as extensive in scope as the requirement of paragraph 2.2.3.

2.2.2 Where a Subcontractor has, pursuant to paragraph 2.2.1 or otherwise, adopted a diversity training plan, the Contractor shall procure that each of its Subcontractors:

- provides; and
- in respect of Indirect Subcontractors, use reasonable endeavours to procure that those Indirect Subcontractors provide;

a copy of its diversity training plan (and any amendments thereto) to the Framework Employer or its nominee as soon as reasonably practicable.

2.2.3 The Contractor ensures that all of its employees engaged in the performance of the Framework Agreement and each Call-Off Contract receives equality and diversity training annually and that new employees receive an equality and diversity induction within 3 months of starting. Equality and diversity training will consist of an awareness workshop, toolbox talk or refresher course delivered with an emphasis on equality and diversity.

2.3 **Supplier Diversity**

2.3.1 For the duration of the Framework Agreement and each Call-Off Contract the Contractor shall at all times comply with the "Agreed Supplier Diversity Plan". For the purposes of the Framework Agreement each Call-Off Contract the expression "Agreed Supplier Diversity Plan" means the supplier diversity plan set out as agreed and attached to this Schedule 15 at Appendix 4. The Contractor shall procure that each of its Subcontractors:

- adopts and implements; and
- in respect of Indirect Subcontractors uses reasonable endeavours to procure that those Indirect Subcontractors adopt and implement,

a supplier diversity plan in relation to the performance of the Framework Agreement and each Call-Off Contract which is at least as extensive as the Agreed Supplier Diversity Plan.

2.3.2 Where a Subcontractor has, pursuant to paragraph 2.3.1 or otherwise, adopted a supplier diversity plan, the Contractor shall procure that each of its Subcontractors:

- provides; and

- in respect of Indirect Subcontractors, use reasonable endeavours to procure that those Indirect Subcontractors provide;

a copy of its supplier diversity plan (and any amendments thereto) to the Framework Employer or its nominee as soon as reasonably practicable.

2.4 **Communications Plan**

- 2.4.1 For the duration of the Framework Agreement and each Call-Off Contract and in all dealings with the Local Community, the Contractor shall comply with the Agreed Communications Plan. For the purposes of the Framework Agreement and each Call-Off Contract the expression "Agreed Communications Plan" means the communications plan agreed and attached to this Schedule 15 at Appendix 5 and the expression "Local Community" means those areas of London affected by the works or services from time to time.

2.5 **Monitoring and Reporting**

- 2.5.1 Subject to paragraph 2.5.2, the Contractor shall use reasonable endeavours to provide the Framework Employer on the date of this Framework Agreement and subsequently every 12 months from the date or such other frequency as the Framework Employer may reasonably request of this Framework Agreement with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in paragraphs 2.1 to 2.4. The annual report should set out:

- the performance of the Contractor over the past 12 months in relation to the Agreed Strategic Equality and Diversity Plan, the Agreed Training Plan, the Agreed Supplier Diversity Plan and the Agreed Communications Plan and/or the action plan submitted for the previous 12 months in accordance with the forth bullet point below
- the proportion of its employees engaged in the performance of the Framework Agreement and each Call-Off Contract and, to the extent reasonably possible, the employees of its Subcontractors or Indirect Subcontractors engaged pursuant to the terms of the relevant subcontracts in the performance of the Framework Agreement and each Call-Off Contract who are:
 - female;
 - of non-white British origin or who classify themselves as being non-white British;
 - from the Local Community;
 - disabled
- a statement broken down by activity and material type of how they have used and how much has been spent with:

- Small and Medium Enterprises
 - Black, Asian and Minority Ethnic businesses
 - Suppliers from other under-represented or protected groups
 - Suppliers demonstrating a diverse workforce composition
- under each Call-Off Contract.
- The Contractor's Annual Equality and Diversity Action Plan containing actions which:
 - support the equality and diversity requirement within this equality and diversity compliance schedule;
 - have realistic target dates assigned and be challenging but achievable;
 - have been presented to and agreed by the Framework Employer before the Framework Agreement Service Commencement Date or during the month preceeding the next Framework Anniversary.

Progress and approval (where due) of actions will be monitored via 4 weekly (or as otherwise agreed) progress meetings with the Framework Employer. The Contractor shall provide a written update prior to the progress meetings and should request additional meetings (if necessary) with the Employer to discuss progress or seek sign-off for completed actions.

2.5.2 The Contractor shall ensure at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Framework Employer pursuant to paragraph 2.5.1.

2.5.3 The Contractor's Equality and Diversity Manager shall attend the Equality and Diversity Managers Meeting with the Framework Employer and, if appropriate, Others, on a quarterly basis to discuss:

- Equality and diversity legislation, Mayor of London strategies and Employer policies
- Performance & benchmarking
- Innovations & efficiencies
- Training

Meetings will be hosted at venues agreed by the attendees. The meetings will be chaired by the Framework Employer.

2.6 **Equality and Diversity Infractions**

2.6.1 If the Contractor or any of its Subcontractors commits an Equality & Diversity Infraction, the Framework Employer shall be entitled (but not obliged) to act as follows:

- (A) if an Equality & Diversity Infraction is committed by the Contractor then the Framework Employer may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Contractor shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within 30 days of receipt of such notice (or such longer period as may be specified in the notice); or
- (B) if the Equality & Diversity Infraction is committed by a Subcontractor of the Contractor, the Framework Employer may serve written notice upon the Contractor identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Contractor shall procure that the Subcontractor ceases committing and remedies, at its own cost, the Equality & Diversity Infraction within 30 days of receipt by the Contractor of such notice (or such longer period as may be specified in the notice). If the Contractor fails to procure the remedy of the Diversity Infraction, the Framework Employer may serve a further written notice upon the Contractor and within 30 days of receipt of such further notice (or such longer period as may be specified in the notice), the Contractor shall terminate, at its own cost, the relevant subcontract with its Subcontractor and procure performance of the affected works or services by another person which also complies with the obligations specified in paragraphs 2.1 to 2.5 of this Schedule 15.

2.6.2 It shall be a fundamental term and condition of the Framework Agreement and each Call-Off Contract that the Contractor complies with its obligations under paragraphs 2.6.1 (A) and (B). Where, following receipt of a notice given pursuant to paragraph 2.6.1 (A) or (B), the Contractor fails to remedy a Diversity Infraction to the satisfaction of the Framework Employer or in the case of paragraph 2.6.1 (B) fails to terminate the subcontract with a defaulting Subcontractor and procure performance by another person on the terms specified in paragraph 2.6.1 (B), the Contractor will be in breach of the Framework Agreement and each relevant Call-Off Contract and the Framework Employer shall be entitled (but not obliged) to terminate the Framework Agreement, without further notice to the Contractor, in accordance with clause 32 of the Framework Agreement.

2.6.3 For the purposes of this paragraph 2.6 "Equality & Diversity Infraction" means any breach by the Contractor of its obligations specified in paragraphs 2.1 to 2.5 of this Schedule 15 and/or any failure by a Subcontractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in paragraphs 2.1 to 2.3 of this Schedule 15.

2.7 Equality and Diversity Audit

2.7.1 The Framework Employer or its nominee may from time to time undertake any audit or check of any and all information regarding the Contractor's compliance with paragraphs 2.1 to 2.5. The Framework Employer's rights pursuant to this

paragraph shall include any and all documents and records of the Contractor and its Subcontractors and, where applicable, subject to the provisions of paragraphs 2.1 to 2.3, Indirect Subcontractors and shall include the Minimum Records.

2.7.2 The Contractor shall, maintain and retain the Minimum Records for a minimum of 6 years from the termination or expiry of the Framework Agreement and each Call-Off Contract (whichever is the later) with respect to all matters in respect of the performance of and compliance with paragraphs 2.1 to 2.5. The Contractor shall procure that each of its Subcontractors and, where applicable subject to the provisions of paragraphs 2.1 to 2.3, Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of 6 years from the termination or expiry of the Framework Agreement and each Call-Off Contract (whichever is the later) with respect to all matters in respect of the performance of and compliance with paragraphs 2.1 to 2.5. The Contractor shall procure that each subcontract between it and its Subcontractors and, where applicable, subject to the provisions of paragraphs 2.1 to 2.3, each subcontract between its Subcontractors and any Indirect Subcontractors of the Contractor shall contain rights of audit in favour of and enforceable by the Framework Employer substantially equivalent to those granted by the Contractor pursuant to paragraph 2.7.1.

2.7.3 The Framework Employer shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Contractor and each Subcontractor is not, without due cause, disrupted or delayed in the performance of its obligations under each Call-Off Contract and/or relevant subcontract (as the case may be).

2.7.4 The Contractor shall promptly provide, and procure that its Subcontractors and, where applicable subject to the provisions of paragraphs 2.1 to 2.3, Indirect Subcontractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

- granting or procuring the grant of access to any premises used in the Contractor's performance of the Framework Agreement and each Call-Off Contract or in the relevant Subcontractor or Indirect Subcontractor's performance of its subcontract, whether the Contractor's own premises or otherwise;
- granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Contractor's or the relevant Subcontractor or Indirect Subcontractor's obligations specified in paragraphs 2.1 to 2.5, wherever situated and whether the Contractor's own equipment or otherwise; and
- complying with the Framework Employer's reasonable requests for access to senior personnel engaged in the Contractor's

performance of the Framework Agreement and each Call-Off Contract or the relevant Subcontractor or Indirect Subcontractor's performance of its subcontract.

- 2.7.5 For the purposes of this paragraph 2.7 the expression Minimum Records means all information relating to the Contractor's performance of and compliance with paragraphs 2.1 to 2.5 and the adoption and implementation of a Strategic Equality and Diversity Plan, an Agreed Training Plan and an Agreed Supplier Diversity Plan by each Subcontractor and, where applicable, subject to the provisions of paragraphs 2.1 to 2.3, Indirect Subcontractor of the Contractor.

Appendix 1

Equality and Supplier Diversity Definitions

General Equality and Supplier Diversity Definitions

(1) Access

The methods by which people with a range of needs find out about and apply for employment opportunities and find out about and use services and information.

(2) Black Asian and Minority Ethnic Groups

This is an inclusive term that refers to all ethnic groups who have a common experience of discrimination on the basis of their skin colour or ethnic origin.

Children and young people can be further subdivided into:

- i) Young children – those that use the transport network escorted by parents or carers.
- ii) School children – those, usually at secondary school, that use the transport network independently or with members of their peer group.

(3) Young adults – generally defined as ages 16 – 24, whether in education or employment.

(4) Consultation

Any suitable means by which advice is given or views are exchanged. Consultation involves consultees in meaningful, genuine dialogue when proposals are still in the formative stage.

(5) Disability

The Disability Discrimination Act 1995 defines disability as ‘a physical or mental impairment, which has a substantial and long-term adverse effect on a person’s ability to carry out normal day to day activities’.

(6) Discrimination

The law recognises two main types of discrimination, direct and indirect:

iii) Direct discrimination

Occurs when someone is treated less favourably than others on the basis of their race, colour, age, religion, nationality (including citizenship), marital status, sex, sexual orientation, disability, ethnic or national origin, religion or belief.

Indirect discrimination

Occurs when a provision, criterion or practice is applied which applies equally to everyone, but can be shown to put people at a much greater disadvantage than others by reason of their race, sex, disability etc where such treatment cannot be objectively justified.

(7) Diversity

The differences in the values, attitudes, cultural perspective, beliefs, ethnic background, sexuality, skills, knowledge and life experiences of each individual in any group of people. Diversity is essentially

the acknowledgement and respect of differences within and between groups of people and or organisations. The primary differences that are recognised legislatively are age, disability, ethnicity, faith, gender and sexual orientation. However, TfL accepts that our society is diverse in numerous other ways including employment and general social condition.

(8) Equalities

A term used to refer to all work addressing issues of discrimination and disadvantage, particularly as it relates to age, disability, faith, gender, race or sexual orientation.

(9) Equality

The vision or aim of creating a society (or aspects of society) where power and quality of life is shared equally and both individuals and groups are able to live their lives free from discrimination and oppression. The definition of equality that has been adopted by the GLA/TfL is that “An equal society protects and promotes equal, real freedom and the opportunity to live in the way people value and would choose, so that everyone can flourish. An equal society recognises people’s different needs, situations and goals, and removes the barriers that limit what people can do and be.” This is further explained as: “It is about what we can do to create a fairer society and recognises that equality is an issue for us all. We don’t all start from the same place and to create a fairer society we need to recognise different needs. This focuses on promoting equality for those groups who enjoy legal protection against discrimination, but also for other groups who may face discrimination and disadvantage – for example, due to class or income - whose needs have often been ignored.”

This is the definition adopted by the GLA/TfL in ‘Equal Life Chances for All’ and is designed to ensure that all Londoners are able to access opportunities in all spheres without impediments.

(10) Equality and Supplier Diversity

Equality and Supplier Diversity is the terminology that will be used in TfL to relate to what has previously been defined as the ‘supplier diversity’ agenda. It is all embracing and reflects TfL’s approach to this aspect of Responsible Procurement and the delivery of the Mayor’s Equal Life Chances for All agenda. This term will be used to replace “supplier diversity” in all aspects of procurement other than when it is being used to refer to specific supply chain areas activities and the supplier diversity plan. For TfL the principles of equality and diversity underpin all that we do and all that our contractors do on our behalf. It is about recognising differences but at the same time recognising that equality and diversity are issues for us all.

(11) Equality Impact Assessments (EqIA)

An EqIA is a means to ensure that what TfL does as a service provider and an employer meets the needs of all customers and staff. It is an exercise to test thinking and assumptions and to build in best practice at the design stage of a project. EqIA’s are a statutory requirement for public sector organisations. EqIA’s are used to ensure that the organisation does not discriminate and that equality is promoted whenever possible. This requires project managers to assess projects at the earliest possible stage of development to determine what if any impact the project is likely to have on the different Equality and Diversity target groups in London. For any project where the impact is likely to be either positive or negative it is likely that Equality and Diversity will be a core requirement.

(12) Ethnicity

An individual’s identification with a group sharing any or all of the following: nationality, lifestyles, religion, customs and language.

(13) Equal Opportunities

The development of practices that promote the possibility of fair and equal chances for all to develop their full potential in all aspects of life and the removal of barriers of discrimination and oppression experienced by certain groups.

(14) Exemplary Employer

An employer that is at the leading edge of good practice, that people want to work for, and that offers favourable terms and conditions to its employees.

(15) Gender

The social differences between women and men that have been learned are changeable over time and have wide variations both within and between cultures. The term is often used to differentiate from 'sex' a term referring to biological differences.

(16) Gay

This term is preferable when referring to gay men or women. The word 'homosexual' (implying a condition or illness) is usually viewed as an offensive term by gay people. The word 'gay' is normally attributed to men. However at times it can be used as an all-encompassing term for gay men, lesbians and bisexual people.

(17) Inclusion

A belief in every person's inherent right to participate fully in society. The goal of inclusion is for all people to lead productive lives as full, participating members of their communities.

(18) Mainstreaming

The integration of equalities into policy, development, implementation evaluation and review. Each part of the organisation accepts its own responsibility for promoting equality of opportunity and challenging discrimination.

(19) Medical Model of Disability

The medical model looks at disability as being caused by medical symptoms. It is the impairments that prevent the person from fully participating in society, and the disabled person should adapt to fit into a non-disabled world. If this is not possible, then the needs should be met outside of mainstream society. It focuses on the disability rather than the needs of the person.

(20) Sexual Orientation

A person's emotional, physical and/or sexual attraction, and the expression of that attraction. It is believed that (or) frequent studies have found sexual orientation is possibly something you are born with, and refers to both gay and heterosexual (or 'straight') people.

(21) Social Inclusion

The position from where someone can access and benefit from the full range of opportunities available to members of society. It aims to remove barriers for people or for groups that experience a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, poor health and family breakdown.

(22) Social Model of Disability

Disability is a social phenomenon. While many individuals have physical or sensory impairments, learning difficulties or are living with mental health, it is the way that society responds to these which creates disability and the impairment. The social model believes the 'cure' to the problem of disability lies in the restructuring of society, an achievable goal that benefits everyone.

(23) Transgendered

An acceptable term for referring to a person with a recognised medical condition known as gender dysphoria, where an individual has the desire to live and be accepted as a member of the opposite

sex. Another commonly used term is 'transsexual'. The terms 'trans man' (female to male) and 'trans women' (male to female) are also acceptable.

(24) Diverse Suppliers Definitions

For the purposes of TfL's Procurement Equality and Supplier Diversity Programme, "Diverse Suppliers" comprise the following four subsets:

Small and Medium Enterprises (SMEs)

Black, Asian and Minority Ethnic (BAME) business

Suppliers from other under-represented or protected groups

Suppliers demonstrating a diverse workforce composition

The more detailed explanations of the four above subsets are given in the sections below.

i) Small And Medium Enterprises (SMES)

a) A Small Enterprise is a business which has both the following:

- iv) 0-49 Full Time Equivalent employees;

AND EITHER

- v) Turnover per annum of no more than £5.6 million net (or £6.72 million gross) in the last financial year;

OR

- vi) Balance sheet total of no more than £2.8 million net (£3.36 million gross).

b) A Medium Enterprise is a business which has both the following:

- vii) 50-249 Full Time Equivalent employees;

AND EITHER

- viii) Turnover per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;

OR

- ix) Balance sheet total of no more than £11.4 million net (or £13.68 million gross).

c) Large Enterprise

A Large Enterprise is a business which has both the following:

- x) 250 and over Full Time Equivalent employees;

AND EITHER

- xi) Turnover per annum over £22.8 million net (or £27.36 million gross) in the last financial year;

OR

xii) Balance sheet total of over £11.4 million net (or £13.68 gross).

ii) Black, Asian And Minority Ethnic (BAME) Owned Businesses

A Black Asian and Minority Ethnic business (BAME) is a business which is 51% or more owned by members of one or more minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'white British'. The monitoring ethnic classification groups used by TfL for monitoring purposes are:

White British
Irish
Any other White background
Mixed White and Black Caribbean
White and Black African
White and Asian
Any other Mixed background
Asian or Asian British Indian
Pakistani
Bangladeshi
Any other Asian background
Black or Black British Caribbean
African
Any other Black background
Chinese or other Ethnic Group Chinese
Any other Ethnic Group

In respect of Tenderers who are based in countries other than the UK, local definitions of ethnic classification groups will be acceptable in respect of the BME definition.

iii) Suppliers From Other Under-Represented Groups Or Protected Groups

A Supplier from an under-represented group is one which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

Women (gender)

Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;

Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and

Older people (aged 60 or over), young people (aged 24 or under) (age)

A Supplier from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

iv) Suppliers Demonstrating A Diverse Workforce Composition

This relates to Full Time Equivalent employees in the supplier's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in 2.3 and 2.4 above

Appendix 2

Agreed Strategic Equality & Diversity Plan

See Volume 6

Appendix 3

Agreed Training Plan

See Volume 6

Appendix 4

Supplier Diversity Plan

See Volume 6

Appendix 5

Agreed Communications Plan

See Volume 6

SCHEDULE 16

SHORTER SCHEDULE OF COST COMPONENTS

For the purpose of this Schedule the “Working Areas” are

- any depot or office within the area the subject of the Framework used only for providing work or services under this contract and any other Call-Off Contract under the Framework Agreement and
- those parts of the Affected Property

which are necessary to Provide the Service, unless later changed in accordance with this contract.

An amount is included only in one cost component and only if it is incurred in order to Provide the Service.

People	1	The following components of the cost of <ul style="list-style-type: none">• people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Working Areas,• people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Working Areas but who are working in the Working Areas and• people who are not directly employed by the <i>Contractor</i> but are paid for by him according to the time worked while they are within the Working Areas.
	11	Amounts paid by the <i>Contractor</i> including those for meeting the requirements of the law and for pension provision.
Equipment	2	The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
	21	Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
	22	Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
	23	The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
	24	Unless the item is in the published list and the rate includes the cost component, payments for <ul style="list-style-type: none">• transporting Equipment to and from the Working Areas other than for repair and maintenance,• erecting and dismantling Equipment and• constructing, fabricating or modifying Equipment as a result of a compensation event.
	25	Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.

	26	Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
	27	Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.
Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for equipment, supplies and services for offices, drawing office, laboratories, workshops, stores and compounds, labour camps, cabins, catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying and setting out, computing, and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>service</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Service Manager's</i> office.
	45	Specialist services.
Manufacture and fabrication	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>service</i> and • manufactured or fabricated outside the Working Areas.
	51	Amounts paid by the <i>Contractor</i> .
Design	6	The following components of the cost of design of the <i>service</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.

- Insurance 7** The following are deducted from cost
- costs against which this contract required the *Contractor* to insure and
 - other costs paid to the *Contractor* by insurers.

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SCHEDULE 17

ADJUSTMENT FOR INFLATION

1. The base date for this Schedule is 1 April 2013 ("the Base Date"). No adjustment is made pursuant to this Schedule in respect of the period prior to that date.
2. The Relevant Rate for the purpose of this Schedule is the 12 month rolling average (calculated by the Framework Employer with reference to the period from January in the year that the adjustment is being made to February in the preceding year) of the relevant monthly Work Category Index within the Highways Term Maintenance Indices 2010 Series published by BCIS provided that if the BCIS shall in calculating its Work Category Indices change the weighting it uses from that set out in Table 1 then (unless the Framework Employer and the Contractor agree) the Work Category Index shall be calculated by the Framework Employer using the same weighting as set out in Table 1.
3. Items adjusted pursuant to this Schedule are applied prospectively not retrospectively.

Adjustment of Schedule of Rates and Price Lists

4. On the first anniversary of the Base Date and on each subsequent anniversary during the Framework Term rates, prices and lump sums in the Schedule of Rates and each Price List within a Call-Off Contract are adjusted by applying the Applicable Rate.
5. The Applicable Rate for this purpose is [REDACTED] of the Relevant Rate applicable by category to the relevant rate, price or lump sum by reference to Table 2.
6. Percentage adjustments stated in:
 - Contract Data,
 - Schedules,
 - Service Information,
 - Price Lists, and
 - Elsewhere within this Framework Agreement and each Call-Off Contract

are not adjusted in accordance with this Schedule unless expressly stated.

7. The adjusted Schedule of Rates and Price Lists apply to all Services performed and Task Orders issued after the relevant anniversary.

Adjustment of Volume Rebate Bands

8. On the first anniversary of the Base Date and on each subsequent anniversary during the Framework Term the Volume Rebate thresholds set out at Framework Data, Schedule 1 are adjusted by applying the Applicable Rate.

9. The Applicable Rate for this purpose is calculated as:

$$\left(\frac{A + B + C}{3} \right) \times \blacksquare$$

Where A is the Relevant Rate for Work Category Index WC10/1 Routine, Cyclic and Time Charge Works

Where B is the Relevant Rate for Work Category Index WC10/2 Renewals and Construction Work and

Where C is the Relevant Rate for Work Category Index WC6/4 Machine Surfacing.

Adjustment of Prices where Target Cost Option applies to Core Service

10. For the purposes of Schedule 7, clause 119 of the conditions of contract, Defined Cost from one year is adjusted for inflation for the following year by applying the Applicable Rate.
11. The Applicable Rate for this purpose is the Relevant Rate applicable by category to the relevant category of work by reference to Table 2.

Adjustment of other values

12. On the first anniversary of the Base Date and on each subsequent anniversary during the Framework Term any other rates, values or sums unless expressly stated not to be adjusted for inflation in the Framework Agreement and any Call-Off Contract are adjusted by applying the Applicable Rate.
13. The Applicable Rate for this purpose is \blacksquare of the Relevant Rate for Work Category Index WC10/1 Routine, Cyclic and Time Charge Works.

Table 1

No	Resource Cost Indices	Proportions for Work Category Indices								
		Routine, Cyclic and Time Charge Works	Renewals and Construction Works	Professional Services	Machine Surfacing	Hand Surfacing/ Patching	Surface Dressing	Road Markings	Street Lighting	Vehicle Maintenance
R10/1	People - Management and Administration	11.1%	11.1%	88.9%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%
R10/2	People - Labour	62.4%	35.8%		9.6%	29.1%	11.8%	29.6%	33.6%	36.3%
R10/3	Equipment - Road Vehicles	13.7%	6.3%	3.3%	0.9%	8.0%	11.4%	16.7%	12.4%	10.0%
R10/4	Equipment - Operational Plant	3.3%	9.8%		2.8%	5.1%	1.1%	0.9%	1.3%	1.1%

R10/5	Aggregates		1.2%				18.7%			
R10/6	Ready Mixed Concrete		7.4%						2.2%	
R10/7	Cast and Spun Iron Products		0.3%							
R10/8	Plastic Products		0.3%						2.2%	
R10/9	Coated Macadam and Bituminous Products				70.0%	35.7%				
R10/10	DERV Fuel	5.9%	5.7%	2.2%	0.4%	3.4%	4.9%	3.3%	2.2%	3.7%
R10/11	Gas Oil Fuel	1.4%	2.1%		1.4%	2.2%	0.4%	0.6%	0.6%	1.1%
R10/12	Metal Sections		3.8%							
R10/13	Waste Disposal		4.3%			2.2%				
R10/14	Precast Concrete		2.4%							
R10/15	Bitumen				1.6%	1.0%	38.4%			
R10/16	Thermoplastic		2.4%					35.6%		
R10/17	Electrical Supplies		4.9%						32.2%	
R10/18	ICT Costs	0.4%	0.4%	1.7%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%
R10/19	Property Maintenance	0.4%	0.4%	1.1%	0.4%	0.4%	0.4%	0.4%	0.4%	3.8%
R10/20	Insurance	1.4%	1.4%	2.8%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
R10/21	Vehicle Parts									31.1%
		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 2 – Resource Cost indices

BCIS Work Category	Applicable Schedule of Rates/Price List Items
W/C 10/1 Routine, Cyclic and Time Charge	<p>All Core Service lump sums items, Employer specific lump sum items, Employer specific Schedule of Rates items and the following Schedule of Rates series items:</p> <ul style="list-style-type: none"> Series 100: Preliminaries (except as set out below) Series 200 - Site Clearance. Series 300 - Fencing Series 1200: Traffic Signs and Road Markings (except as set out below) Series 1400: Electrical Work for Road Lighting and Traffic Signs (except as below) Series 2600: Miscellaneous Series 2800 - Winter Maintenance Series 2900 - Cyclic and Reactive Maintenance of Structures Series 3000 : Landscape & Ecology

	<ul style="list-style-type: none"> • Series 3100: Highway Cleaning • Series 3300 : Investigation and Surveys items (except as set out below) • Series 3400: Tunnel Maintenance • Series 4000 : Street Furniture • Series 5000: Maintenance Painting of Steelwork
WC 10/2 Renewals and Construction	<p>The following series items:</p> <ul style="list-style-type: none"> • Series 400: Road Restraint Systems (Vehicle and Pedestrian) • Series 500: Drainage and Service Ducts • Series 600: Earthworks • Series 1000: Concrete Materials • Series 1100: Kerbs, footways and paved areas • Series 1600: Piling • Series 1700: Structural Concrete • Series 1900 : Protection of Steelwork Against Corrosion • Series 2000: Waterproofing for Concrete Structures • Series 2300 : Bridge Expansion Joints and Sealing of Gaps • Series 2400: Brickwork, Blockwork and Stonework • Series 3100: Gully Cleansing • Series 3500: Civil Engineering Support Works for Traffic Signals and Control Equipment
WC 10/3 Professional Services	<ul style="list-style-type: none"> • Series 100: Design Services Price List Items 01.0040 to 01.0110. • Series 100: Operatives for the Employer Price List items 01.0046 to 01.0064 & 01.0074. • Series 2200: Inspection of Highway Structures • Series 3300: Investigation and Surveys items 33.0160 to 33.0230 and 33.0370 to 33.0440
WC 10/4 Machine Surfacing	<ul style="list-style-type: none"> • Series 700: (except as set out below)
WC 10/5 Hand Surfacing	<ul style="list-style-type: none"> • Series 700: Pavement item numbers 07.1100 to 07.1245 • Series 1100: Footways item numbers 11.1165 to 11.1375
WC 10/6 Surface Dressing	<ul style="list-style-type: none"> • Series 700: Pavement item numbers 07.0600 to 07.1095 • Series 1100: Footways item numbers 11.1400 to 11.1405,
WC 10/7 Road Marking	<ul style="list-style-type: none"> • Series 1200: Traffic Signs and Road Markings Series items 12.1295 to 12.2650
WC 10/8 Street Lighting	<ul style="list-style-type: none"> • Series 1200: Traffic Signs items 12.005 to 12.0065, 12.0435 to 12.0565 and 12.1075 to 12.1225 • Series 1300: Road Lighting Columns and Brackets, CCTV Masts and Cantilever Masts • Series 1400: Electrical Work for Road Lighting and Traffic Signs item 14.0090 to 14.0790

SCHEDULE 18

AUDIT & SURVEILLANCE REGIME

General

1. In order to manage and monitor compliance to contractual requirements there will be the following levels of audit:
 - Contractor's own accreditation and internal audits
 - Employer surveillance audits of works conducted under each relevant Call-Off Contract
 - Performance Improvement Audits
 - Mobilisation and De-mobilisation Audits

Contractor's own Accreditation and Internal Audits

2. The Contractor shall carry out its own programme of audits on its activities carried out pursuant to the Framework Agreement to demonstrate:
 - compliance with its own management systems;
 - the activities undertaken are performed in compliance with all contractual and statutory requirements; and
 - continuous improvement of the Contractor's processes and working practices.
3. All management system accreditation certificates shall be presented to the Area Board, within one month of receipt by the Contractor, to verify conformance to the prescribed management system. Reports and results from both external accreditation audits and internal audits shall be shared with the Area Board, within one month of receipt by the Contractor, to aid learning and the sharing of best practice over the four contract areas.
4. If accreditation to a prescribed management system is lost or a major non-conformance is identified the Contractor shall notify the Area Board within one week of such loss or identification and the Area Board may impose a Performance Improvement Audit.
5. The Contractor shall be liable for all of its costs in relation to all internal audits and its own accreditation requirements.

Employer Surveillance Audits

6. Details of the Employer Surveillance Audits are included in each Call-Off Contract.

Response to Audits

7. If any Audit identifies exemplary performance the Contractor shall, for the benefit of London's Highways network, share its best practice with all other contractors engaged on the Framework and Employers within the Framework Area.

8. If any Audit identifies areas for improvement ("Audit Concerns") the Contractor shall prepare a detailed and programmed action plan ("Action Plan") to improve performance to an agreed and acceptable level.
9. If the Contractor does not deliver improved performance to the agreed level within the agreed timescales set out in the Action Plan then the Framework Employer or relevant Employer may impose a Performance Improvement Audit.

Performance Improvement Audit

10. A Performance Improvement Audit may be initiated by the Strategic Board or Area Board in response to the Contractor losing its third party management system certification, failing to implement an Action Plan or having the Framework Term reduced pursuant to the Contract Reduction Mechanism set out in clause 11 of the Framework Agreement.
11. In all cases the Performance Improvement Audit will monitor the Contractor's ability to deliver the required levels of service through the deployment of appropriate and adequate management, resources and processes. This audit will also include, if applicable, a review of the Contractor's processes related to the capture, analysis and reporting of Performance Indicator data.
12. After the Performance Improvement Audit a report will be submitted to the Strategic Board summarising the root cause(s) and actions being taken to address the issues identified; as well as any aspects performing well and any other supporting comments or recommendations.
13. Performance Improvement Audits will generally be conducted by Employer staff who are appropriately experienced, but independent of contract delivery. In the event that suitably qualified and experienced Employer staff are not available the Employers may engage external resource to perform the Performance Improvement Audit.
14. The Contractor and all relevant Employers shall co-operate fully with the Auditors and provide input into the audit process.
15. The Contractor shall pay to the relevant Employer the full cost of the Performance Improvement Audit. The Employer shall prepare an estimate of the cost prior to commencement of the Performance Improvement Audit.

SCHEDULE 19

CONTINUAL IMPROVEMENT

General

1. This Schedule sets out the Framework Employer's minimum requirements in relation to the Contractor's obligation to deliver continual improvement of the delivery of all of the Services.
2. Continual improvement does not relate to improvement necessary for the Contractor to achieve contract compliance, although it is recognised that a similar process may be used to correct any non-compliance.
3. Continual improvement under this Schedule comprises four parts:
 - I. Purpose
 - II. Objectives
 - III. Method
 - IV. Realisation
4. The Framework Employer requires that the Contractor is prepared to work with each Employer and other contractors engaged by the Framework Employer on the Framework ("Framework Contractors") and their supply chains in the sharing of best practice and continual improvement.

Purpose

5. The purpose for undertaking continual improvement is the generation and realisation of efficiencies in delivering the Services for the benefit of the Employers and the Contractor. An additional outcome is the improvement of quality in delivering the Services, at no additional cost to any Employer.

Objectives

6. The following objectives in support of the above outcome are to be delivered by the Contractor:
 - Engagement of the Contractor's leadership to ensure these continual improvement requirements are fulfilled
 - Proactive management and engagement of the Contractor's supply chain in support of reductions in the cost of delivering the Services enabled by a reduction in the suppliers' cost charged to Employers
 - A systematic and prioritised approach to the improvement of all processes and sub-processes undertaken
 - The identification of improvement opportunities that primarily have the potential to generate reductions in the cost of delivering the Services

- Realisation of the reduction in the cost of delivering the Services by a measurable reduction in the cost of items in the Schedule of Rates/Price List including lump sum items on an annual basis
- Realisation of other benefits that result in an improvement to the quality of the Services, at no additional cost to Employers.

Method

7. The Contractor is required to adopt an appropriate methodology of continual improvement acceptable to the Framework Employer. The methodology proposed for acceptance must be as a minimum able to:

- Deliver an elimination of waste and reduce cost of delivery
- Identify customer requirements, establish and optimise the execution of value adding activity
- Support a transformation culture in their organisation
- Ensure critical interactions and interdependences are identified
- Implement a comprehensive programme of innovation/improvement initiatives and measure their impact
- Minimise travel distance or time delay for all road users
- Minimise disruption and nuisance to local residents and businesses
- Standardise processes across sites and departments
- Analyse the root cause of defects and nonconformities, implement corrective actions and update processes with lessons learned
- Continually evaluate customer/client needs with formal feedback
- Integrate planning/design/construction teams
- Ensure equipment is in a condition to contribute to quality and provide a high level of availability
- Evaluate repair/maintenance schedules in line with available capacity and ensure risk contingency
- Ensure financial/measurement systems support transformation and are readily accessible to stakeholders
- Ensure information systems are easily accessible and compatible with stakeholder communications and analysis needs
- Support the philosophy of reduce, reuse and recycle of resources where possible
- Minimise any negative environmental impact

8. In carrying out the above the Contractor shall assist and enable its supply chain in the adoption of suitable methodologies and approaches, and engage in improvement projects.

Realisation

9. The Contractor shall:

- Record and measure the benefits realised from the introduction of the continual improvement process
- Capture and record the reductions in cost of delivery of the Services

- Identify and classify efficiencies under cashable and non-cashable headings
- Ensure results are recorded showing general details about the improvement, planned/targeted benefits, and actual/realised benefits with supporting calculations
- Review and report on performance on a monthly basis in a format agreed with the Framework Employer
- Make available to other Framework Contractors on a like for like basis the results of their own continuous improvement activities
- Share these improvement at the Partnering Forum and Area and Strategic Boards as set out in Schedule 9 Governance, Meetings and Reporting

10. The Contractor shall adjust its delivery of continual improvement process based on lessons learned from the measurement of its performance and other Framework Contractors.

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SCHEDULE 20
QUALITY SUBMISSION

See Volume 3