

TRA 1367

TRAFFORD BOROUGH COUNCIL

AMEY LG LIMITED

PARTNERSHIP AGREEMENT

VOLUME 8 OF 9

Containing:

- Schedule 3 – Method Statements
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Trafford Borough Council
Amey LG Limited



7 May 2015

Scy 3

SCHEDULE 3
METHOD STATEMENTS
PART 1 – ENVIRONMENTAL SERVICES

8
9
ADDLESHAW
GODDARD

Lot 1A

99 ADDLESHAW
GODDARD

Lot 2A

METHOD STATEMENTS
PART 2 – HIGHWAYS SERVICES

METHOD STATEMENTS
PART 3 - STREET LIGHTING SERVICES

ADDLESHAW
GODDARD

Lot 2B

A large circle is drawn on the page. Inside this circle, at the top, are the words "ADDLESHAW" and "GODDARD" stacked vertically. To the left of these words are two small circles, one above the other. In the center of the large circle is a smaller circle. At the bottom of the large circle, the text "Lot 3" is written.

ADDLESHAW
GODDARD

Lot 3

METHOD STATEMENTS
PART 4 – TECHNICAL SERVICES

METHOD STATEMENTS
PART 5 – GENERAL METHOD STATEMENTS

 **ADDLESHAW
GODDARD**

All Lots

SCM #

SCM #

SCHEDULE 4

NOT USED



Sch 5

Sch 5

SCHEDULE 5

SPECIAL CONDITIONS -- ENVIRONMENTAL SERVICES

SCHEDULE 5

SPECIAL CONDITIONS – ENVIRONMENTAL SERVICES

Part 1 - Definitions

1 Definitions

- 1.1 In these Environmental Services Special Conditions, words and expressions shall have the meaning given in Schedule 1 of this Agreement or in the Environmental Services Specification

Part 2 - Mobilisation

2 Mobilisation

2.1 Subject to paragraph 2.3, the Service Provider shall notify to the Council, in writing, not later than seven (7) Business Days prior to the Service Commencement Date (or such later date as specified in the Mobilisation Plan) that all of the following have been effected:

- (a) all statutory notifications have been made and Necessary Consents obtained, to the extent required by law, to enable the Service Provider to commence or procure the commencement of the Environmental Services;
- (b) the Service Provider has demonstrated to the Council's reasonable satisfaction that its Contact Centre is fully integrated with the CRM System;
- (c) the Contact Centre which the Service Provider is required to operate and maintain and the Management Information System are operational and capable of performing the functions required of them pursuant to the Environmental Services Specification (to the extent necessary for the Service Provider to properly commence performance of the Environmental Services);
- (d) there are sufficient vehicles, Equipment, plant, stock, personnel, office space and storage space including as set out in the Method Statements to permit the Service Provider to comply with the Service Provider's obligations under this Agreement (to the extent necessary for the Service Provider to properly commence performance of the Environmental Services); and
- (e) the requirements in paragraph 2.2 have been met.

2.2 Subject to paragraph 2.3, prior to the Service Commencement Date (or such later date as specified in the Mobilisation Plan) the Service Provider shall have:

- (a) established an office within the Council Area;
- (b) provided the Council with the Assets and Equipment Register;
- (c) entered into its sub-contracts with all Key Sub-Contractors to the extent not entered into by the Agreement Date and provided the Council with an executed Collateral Warranty in relation to each Key Sub-Contractor;
- (d) appointed the Key Staff (who shall have shadowed their equivalent Council counterparts for a sufficient period to ensure appropriate knowledge transfer) and notified the Council of the same;
- (e) taken all steps necessary to prepare for taking possession of the Depot on the Service Commencement Date;
- (f) made all statutory notifications and obtained all Necessary Consents, to the extent required by Law, so that the Service Provider is able to commence or procure the commencement of the Environmental Services;
- (g) ensured that all Transferring Employees have received appropriate induction training;

- (h) established an operational Contact Centre that is capable of performing the functions set out in the Environmental Services Specification so that the Service Provider is properly able to commence the performance of the Environmental Services;
- (i) appointed those persons who are to be the representatives of the Service Provider on the Partnership Board and notified the Council of the same, and
- (j) taken delivery of the Initial Transferring Assets and stock from the Council, and
- (k) made arrangements to take custody of all keys, security fobs, security codes and equipment to allow access to provide the Waste Collection Services, as described in the Environmental Services Specification

2.3 Notwithstanding the provisions of paragraphs 2.1 and 2.2, in relation to activities which are not required under the Mobilisation Plan to be completed prior to the Service Commencement Date, the Service Provider shall complete all actions required by the Mobilisation Plan by the date specified in the Mobilisation Plan

Part 3 - Waste Collection Service

3 Volume and Composition of Contract Waste

- 3.1 The Council shall in no circumstances be liable to the Service Provider for any consequential, economic or financial loss of any kind whatsoever which the Service Provider sustains in consequence of any failure on the Council's part to make available for Collection the volume of waste anticipated by the Service Provider or in any failure by the Service Provider to generate its anticipated level of remuneration under this Agreement.
- 3.2 The Council gives no warranty or undertaking as to the volume or composition of Contract Waste, and nor shall the Council be liable to the Service Provider in respect of any Hazardous or other materials contained in Contract Waste.

4 Re-sale of material

The Service Provider shall ensure that no Personnel or any person connected with the Service removes material from the Contract Waste for the purpose of resale or their own use.

5 Ownership and risk in relation to Contract Waste

- 5.1 As between the Service Provider and the Council, all Contract Waste collected by the Service Provider shall thereupon become and be deemed to be acquired by and in the ownership and at the risk of the Service Provider who shall take full responsibility for it and shall handle and dispose of such Contract Waste in accordance with the terms of this Agreement.

6 Households

- 6.1 The Service Provider shall during the Service Period collect Contract Waste from all Households and Service Users, and accept Contract Waste otherwise made available to it, in each case pursuant to this Agreement, which for the avoidance of doubt shall include any Contract Waste in, at or on the Environmental Depot at the Service Commencement Date.
- 6.2 The Service Provider shall provide the Household Waste Collection Services in relation to all Households regardless of any change in the number of Households during the Service Period, and the Change Control Procedure shall not apply to any such changes.

7 Regulations and Duty of Care

- 7.1 The Service Provider shall provide the Waste Collection Services in a manner which enables the Council to comply with the requirements of:
- (a) the Waste (England and Wales) Regulations 2011;
 - (b) the Waste (England and Wales)(Amendment) Regulations 2012;
 - (c) section 34 of the Environmental Protection Act 1990; and
 - (d) section 45 of the Environmental Protection Act 1990.
- 7.2 In providing the Environmental Services, the Service Provider shall comply with the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991.

8 **Commercial Waste Collection Service**

8.1 The Service Provider shall

- (a) provide the Commercial Waste Collection Service in accordance with any instructions the Council gives in relation to:
 - (i) the minimum fee which Commercial Waste Customers may be charged (but only where necessary to ensure that the Council's waste disposal costs are covered by the charges); and
 - (ii) any matter where the Council considers the instructions are necessary because the Service Provider is in breach of its obligations or is behaving in a manner which may bring the Commercial Waste Business into disrepute,
- (b) be responsible for arranging (at its own cost) for disposal of Recyclable Materials derived from Commercial Waste,
- (c) only provide the Commercial Waste Collection Services to Commercial Waste Customers approved by the Council;
- (d) provide the Commercial Waste Collection Service to Commercial Waste Customers only on terms which are the same or substantially the same as the standard terms and conditions approved in writing by the Council from time to time;
- (e) take all necessary steps to ensure that in providing the Commercial Waste Collection Service the Service Provider enables the Council to meet all of its obligations under each contract with a Commercial Waste Customer;
- (f) comply with invoicing and accounting procedures as required by the Council;
- (g) not offer credit to customers without the prior written consent of the Council,
- (h) maintain sufficient stocks, vehicles and Equipment to meet all demand from Commercial Waste Customers;
- (i) pay all third party suppliers promptly in accordance with the terms of supply agreed with them and not enter into any arrangement or agreement to factor, charge or otherwise deal with the debts of the Commercial Waste Business without the prior written consent of the Council;
- (j) not license any other person to operate the Commercial Waste Business,
- (k) without delay, inform the Council of any improvement or modification to the Commercial Waste Business or business opportunity which comes to its attention,
- (l) promptly give the Council any information that the Service Provider may obtain in relation to potential sales inside or outside the Council Area or any matter of which it is aware that could affect sales favourably or unfavourably inside or outside the Council Area,
- (m) supply the Council with such information relating to the Commercial Waste Business in such form and at such times as the Council may from time to time reasonably require;

- (n) introduce any improvements or modifications into the Commercial Waste Business when requested by the Council;
- (o) attach any notices that the Council requires to stationery, products and packaging;
- (p) use only signs and packaging in connection with the Commercial Waste Business as have been approved by the Council;
- (q) give such notices in such places as required by law and as the Council may require to the effect that the Service Provider is operating the Commercial Waste Business under licence from the Council; and
- (r) not solicit or attempt to solicit or entice any Commercial Waste Customer away from the Commercial Waste Business to a business of the Service Provider or an Affiliate of the Service Provider or otherwise prior to the date which is six (6) months following the end of the Service Period.

9 Accounting Record

9.1 The Service Provider shall:

- (a) maintain records of all sales and receipts and submit to the Council a statement of them as part of each Monthly Report. Such records and statement shall be in the form approved by the Council;
- (b) keep and maintain at the Premises complete and accurate accounts and records relating to the Commercial Waste Business in a form approved by the Council. If required by the Council, the Service Provider shall have them audited by qualified auditors nominated by the Council;
- (c) supply to the Council copies of all VAT returns and any other financial and fiscal information relating to the Commercial Waste Business which the Council may reasonably request.

10 Marketing

- 10.1 In promoting and advertising the Commercial Waste Business the Service Provider shall only use marketing material which has been approved in writing by the Council in advance (the Council's approval not to be unreasonably withheld).

11 Telephones

- 11.1 In the course of the Commercial Waste Business, the Service Provider shall use only telephone numbers specified by the Council (**Telephone Numbers**) and shall not use the Telephone Numbers for any purpose other than the Commercial Waste Business.
- 11.2 The Service Provider shall immediately discontinue use of the Telephone Numbers on termination or expiry of this agreement.
- 11.3 The Service Provider shall use the Telephone Numbers and no others in marketing, advertising and promotional material relating to the Commercial Waste Business.

12 Rights in relation to the Commercial Waste Business

- 12.1 The Service Provider shall:

- (a) not take any steps to (or purport to) sell, transfer or otherwise dispose of part or all of the Commercial Waste Business to a third party, and
- (b) take all steps necessary to ensure that the Council's rights as owner of the Commercial Waste Business are secured against any lien, encumbrance or other possible claims by third parties, and ensure that the Council's interests and rights are protected

13 Step-In

13.1 Without prejudice to the Council's rights under Clause 38 (Council Step-In) and any other provisions of this Agreement, the Council may, if it considers that a breach by the Service Provider of its obligations in relation to the Commercial Waste Collection Service has resulted in, or may result in, a material issue in the standard of service received by Commercial Waste Customers generally, which the Service Provider has not remedied having been required to do so in accordance with the Corrective Action Procedure, the Council may give the Service Provider instructions in accordance with paragraph 13.2

13.2 Where paragraph 13.1 applies, the Council may give the Service Provider such instructions as it sees fit in relation to the operation of the Commercial Waste Collection Service and the running of the Commercial Waste Business, including requiring a change in the management of the Commercial Waste Business and the Service Provider shall comply with such instructions, and give the Council all reasonable assistance in relation to any action the Council (or its nominee) takes itself.

14 Annual Residual Waste Tonnage Level

14.1 The Service Provider shall as reasonably requested by the Council during each Agreement Year, reflecting the requirements of the GMWDA, notify the Council of the total tonnage of Contract Waste and tonnage of each of the waste types listed in paragraph 14.2 which it expects to collect in the following Agreement Year (and for future Agreement Years), and shall meet all reporting deadlines and information requirements imposed by the GMWDA

14.2 In respect of each Agreement Year, the tonnage will be set by the GMWDA using the most up to date figures provided by the Council at the relevant time, and the tonnage of Residual Waste reflecting these figures shall be the **Annual Residual Waste Tonnage Level** for the purposes of this Agreement. Data will be provided to the GMWDA by reference to the following waste types

- (a) Residual Waste;
- (b) Bio Waste;
- (c) Co-mingled Recyclable Materials,
- (d) Pulpables, and
- (e) Commercial Waste

14.3 In respect of the Agreement Year commencing on the Service Commencement Date, the Annual Residual Waste Tonnage Level shall be as specified in Appendix 1 to these Environmental Services Special Conditions

14.4 At the same time as submitting the tonnage data, the Service Provider shall provide the Council with its proposed methodology for achieving the tonnages and rates of Recycling and Composting.

14.5 No later than twelve months prior to the start of each Agreement Year, the Service Provider shall notify the Council of any proposed changes to the Environmental Services (without prejudice to the Change Control Procedure) that will impact on waste tonnages.

15 Service Provider Termination Events

15.1 For the purposes of Clause 46.1.22 of this Agreement each of the following shall constitute a Service Provider Termination Event (each being a **Commercial Waste Termination Event**):

- (a) if the percentage of Contract Waste sent for disposal as Residual Waste is greater than or less than Annual Residual Waste Tonnage Level:
 - (i) by more than ten per-cent in any two (2) Agreement Years in any rolling period of three (3) Agreement Years following the Service Commencement Date; or
 - (ii) by more than fifteen per-cent in any one Agreement Year following the Service Commencement Date;
- (b) if the tonnage of Contract Waste sent for Recycling and Composting in each Contract Year is less than the Target Service Level specified in KPI 2:
 - (i) by more than ten per-cent in any two (2) Agreement Years in any rolling period of three (3) Agreement Years following the Service Commencement Date; or
 - (ii) by more than fifteen per-cent in any one Agreement Year following the Service Commencement Date;
- (c) a material failure by the Service Provider to comply with the requirements of paragraph 7 of these Environmental Services Special Conditions in relation to the Household Waste Collection Service;
- (d) a material breach by the Service Provider of its obligations which materially and adversely affects the performance of the Commercial Waste Collection Service and/or the Commercial Waste Business, including but not limited to a material failure to comply with the requirements of paragraph 7 of these Environmental Services Special Conditions in relation to the Commercial Waste Collection Service.



Part 4 Enforcement Regime

16 Fixed Penalty Notices

- 16.1 The Service Provider shall provide assistance to the Council's enforcement service in dealing with a range of environmental issues (including but not limited to; dog fouling, littering, fly-tipping, etc.). This shall involve but not limited to educating and raising the awareness of residents and businesses to promote a shared responsibility for the environment and a respect for local neighbourhoods. This approach replaces a more traditional approach that relied almost entirely on the use of fixed penalty notices or other enforcement methods. The Service Provide shall not be required to enforce environmental regulations, but instead they will positively engage and challenge anti-social behaviour when they see it as they go about their day to day duties and encourage citizens to be responsible.

Part 5 Business Continuity Planning

17 Business Continuity Plan

17.1 The Service Provider shall keep the Business Continuity Plan up to date in accordance with Clause 17 of the Agreement so as to ensure that it corresponds and responds to developments and/or changes in risks and circumstances, including, but not limited to, the following.

- (a) Exceptionally Inclement Weather (including heavy snow, flooding and high winds),
- (b) the loss of access to premises and Delivery Sites, and
- (c) failure of technologies including Collection Vehicles and Equipment.

17.2 Weather conditions shall not relieve the Service Provider from its obligations to provide the Environmental Services

17.3 In the event of an Emergency or Exceptionally Inclement Weather in the whole or part of the Council Area or where the event directly impacts on all reasonable routes to the Delivery Sites, the Service Provider may, after advising the Council of the decision, suspend the Services, or any part thereof, for a day or part of a day, then

- (a) the Service Provider must continue to make Waste Collections where it is safe to do so;
- (b) the Service Provider shall immediately notify the Council of Collections being suspended and provide a list of any areas where Collections will still be attempted, and
- (c) in relation only to Exceptionally Inclement Weather this shall be treated as an Excusing Cause, subject to the terms of the Agreement.

17.4 On resuming the performance of the Services following Exceptionally Inclement Weather or an Emergency in the whole or part of the Council Area the Service Provider shall be required to carry out the Collection of all Contract Waste that accumulated during the period of the suspension as soon as reasonably practicable, provided that

- (a) such rectification of Missed Collections during the suspension must not result in further Missed Collections, except where prior written approval is given by the Council,
- (b) the Service Provider must utilise all Collection teams on Saturdays until all affected Households have been serviced and the Collection schedule is reinstated; and
- (c) no additional payments shall be made to the Service Provider in respect of any additional expenses that may be incurred in carrying out the Collection of Waste as a result of Services being suspended

Appendix 1: Annual Residual Waste Tonnage Level

The Annual Residual Waste Tonnage Level for the Agreement Year commencing on the Service Commencement Date is 25,500 tonnes

Sch 6

Sch 6

SCHEDULE 6

SPECIAL CONDITIONS – HIGHWAYS SERVICES

SCHEDULE 6

SPECIAL CONDITIONS – HIGHWAYS SERVICES

Part 1 - Definitions

1 Definitions

1.1 In these Highways Services Special Conditions, words and expressions shall have the meaning given in Schedule 1 of this Agreement or in the Highways Services Specification unless defined below, or as the context otherwise requires:

1999 Order means the Local Authorities (Contracting Out of Highway Functions) Order 1999

2009 Order means the Contracting Out (Highway Functions) Order 2009

Accrual and De-Accrual Process means the procedure set out in part 5 of the Highways Services Special Conditions

Accrued means a proposed Accrual Highway Network Part which has become the responsibility of the Service Provider pursuant to this Agreement by reason of a Change in accordance with the Change Control Procedure or the application of the provisions of Accrual and De-Accrual Process and **Accrual** and **Accrue** shall be construed accordingly

Additional Works means any New Build Works and Third Party Works

affected or **affecting** shall be regarded as including the meaning given to **affected** in section 105(4) of NRSWA

Apparatus Licence shall have the meaning given in paragraph 15.3 (Terms of the Apparatus Licence)

Attachment(s) means all or any Council Attachments and/or Third Party Attachments

Authorised Functions means the statutory functions set out in Annex 2 (Authorised Highways Functions and Services)

Bridge means any structure designed and used for pedestrians and/or vehicular passage over across or around any Highway Network Part

Change in Highway Standards means any change in the Highway Standards whether by way of amendment, replacement, withdrawal, revocation or the publication of additional Highway Standards

Completion means confirmation of the finalisation of the relevant Capital Works (Highways) or Milestone on the issue of a Compliance Certificate

Completion Date(s) means the date on which Completion occurs

Compliant means the relevant Compliance Criteria have been met in relation to an installation of replacement or other works carried out by the Service Provider

Compliance Certificate means a certificate issued by the Service Provider pursuant to paragraph 25.8 (Certificate of Compliance)

Compliance Criteria means that the relevant item meets those requirements of the Highways Services Specification and Highways Services Special Conditions, which are to be met by the Service Provider in order to obtain a Compliance Certificate

Council Attachment(s) means any Council owned street or traffic signs or sign plate or notices or other equipment and items of Apparatus authorised by the Council to be attached to other items (including Apparatus) including (but not limited to):

- (a) any street or traffic sign;
- (b) dog fouling notices;
- (c) litter prevention notices;
- (d) notices required pursuant to Law;
- (e) information notices;
- (f) any environmental monitoring equipment;
- (g) alcohol prohibition and other by-law signs;
- (h) privilege direction signs;
- (i) general and local political signage; and
- (j) Council advertising;

and, for the avoidance of doubt, including Existing Attachments

Council Work End Date shall have the meaning given in paragraph 36.1(b)(i) (Notice by Council)

Council Work Start Date shall have the meaning given in paragraph 36.1(b)(ii) (Notice by Council)

Data Set(s) means the minimum data set to be included in the Management Information System, full details of which are set out paragraph 3.2 of the Highways Services Specification

De-Accrued means, when applied to any item of Highway Network Part, a Highway Network Part which is no longer the responsibility of the Service Provider pursuant to this Agreement by reason of a Change pursuant to the Change Control Procedure or the application of the Accrual and De-Accrual Process, and the term **De-Accrual** shall be construed accordingly

Defect means any defect in any Highway Network Part, or anything installed on, adjoining to or under any part of the Highway Network which is attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials plant or machinery used in the performance of the Capital Works (Highways) having regard to Good Industry Practice and to appropriate British or European Union standards and codes of practice current at the date of the performance of the Capital Works (Highways);

- (c) the use of materials in the construction of any Highway Network Part which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of the Highway Network Part,
- (d) defective installation of anything on or to any Highway Network Part,
- (e) defective preparation of the area of the Highway Network on which any Capital Works (Highways) are performed

Defects Liability Period means in relation to any Capital Works (Highways), the period commencing on the Completion of the Capital Works (Highways) and ending twelve (12) months following the Completion of the Capital Works (Highways) unless otherwise specified by the Council (acting reasonably) in any draft Capital Programme (Highways)

Delegated Obligations means the obligations owed by third parties under the Third Party Undertakings other than the Retained Obligations

Delegated Rights means the obligations owed to the Council by third parties under the Third Party Undertakings

Department means the Department for Transport and any predecessor or successor department with responsibility for transport issues

Design Consultative Services means providing support to any other service provider who is providing a design service to the Council. Such support shall include, but not be limited to:

- (a) the provision of any information in respect of the Highways Network which forms part of the Data Sets;
- (b) access to the Highway Network where reasonably requested, and
- (c) objective review of and comment on any proposed design,

provided that the Service Provider shall not be required to incur any material expenditure

Design Data means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data, used, prepared or to be prepared by, or on behalf of, the Service Provider (and/or any Service Provider Related Party) or the Council relating to the Highways Services, or to any Change or the operation, maintenance or improvement of the Highway Network

Design Manual for Roads and Bridges or DMRB means the Design Manual for Roads and Bridges, published by The Stationery Office

Design Quality Plan means a quality plan to be prepared by the Service Provider prior to the Service Commencement Date

Diversionsary Works means works involving the diversion, change in level, protection or removal of Apparatus or other works in relation to Apparatus which are necessary to facilitate the execution of the Highways Services

Excusing Cause shall mean any of the following events

- (a) a study or trial referred to in paragraph 7.2 (Access for Council),

- (b) a Special Event Closure as set out in paragraph 9 (Special Event Closures);
- (c) where the Service Provider requires access to land off the highway which is outside the control of the Council for the performance of the Highways Services and the Service Provider has complied with its obligations under paragraph 14.1 (Service Provider to Secure Access) and paragraph 14.2 (Notification) provided that the Excusing Cause shall only be for the period set out in paragraph 14.4 (Failure to Secure Access);
- (d) where a Necessary Consent to fix Apparatus to a structure is not obtained and the Service Provider has complied with its obligations under paragraph 18.1 (Necessary Consents for fixing Apparatus) and paragraph 18.2 (Process to be followed where consent not obtained) provided that the Excusing Cause shall only be for the period specified in paragraph 14.4 (Failure to Secure Access);
- (e) the acts (or presence) of gypsies and travellers on the Highway Network, save to the extent arising (or persisting) by reason of the Service Provider's failure to take such steps in relation to the gypsies or travellers as are required by paragraph 19.6 (Gypsies and Travellers);
- (f) refusal by or delay in the Council exercising its discretion to exercise a statutory power when requested by the Service Provider pursuant to paragraph 30 (Exercise of Statutory Powers by the Council);
- (g) the carrying out or management of works by the Council pursuant to paragraph 36 (Highways Works Authority) which prevents the Service Provider from carrying out any part of the Highways Services

Existing Apparatus means Apparatus which:

- (a) exists and which has been installed and commissioned as at the Service Commencement Date; and
- (b) is owned and maintained by the Council or its sub-contractors at the Service Commencement Date

Final Surveys means the Highway Network Survey and the Management Information System Survey to be carried out eighteen (18) months prior to the Expiry Date

Grampian Planning Condition means a restriction placed on a development permitted under Section 72 of the TCPA 1990 such that the development may not take place until certain works on land under the control of a person other than the developer or applicant have taken place

Guidance means any applicable guidance or direction with which the Service Provider is bound to comply including any Codes of Practice and including the Highway Standards and the Relevant Lighting Standards

HA 1980 means the Highway Act 1980

Highways Authority means the Highway Authority and or Lighting Authority responsible for the functions under the HA 1980

Highway Network means:

- (a) roads,
- (b) highway structures (including Structures, Bridges and Tunnels, subways and underpasses),
- (c) amenities (including grassed areas, landscape areas, hedges, trees, shrubs, embankments, cuttings, lay bys within the highway boundary),
- (d) walking and cycling route section lengths (including footpaths and cycle tracks),
- (e) Apparatus; and
- (f) communications installations

within the Council Area as varied or amended from time to time in accordance with this Agreement

Highway Network Part means any part of the Highway Network and **Highway Network Parts** shall be construed accordingly

Highway Network Survey shall have the meaning given in paragraph 40 1(a) (Final Surveys)

Highways Equipment means all Equipment used exclusively for the purposes of providing the Highways Services

Highway Standards means all standards, specifications and codes of practice issued by the Secretary of State for Transport and/or the Department from time to time in respect of the design, construction, operation or maintenance of highways, including without limitation the following

- (a) the Design Manual for Roads and Bridges including all Department Technical Advice Notes and Technical Design Notes;
- (b) the Specification for Highway Works,
- (c) Trunk Roads Maintenance Manual,
- (d) the Notes for Guidance to the Trunk Roads Maintenance Manual,
- (e) Highway Construction Details,
- (f) Roads Circulars issued by the Department,
- (g) the Traffic Signs Manual (to the extent applicable);
- (h) Delivering Best Value in Highway Maintenance - Code of Practice for Maintenance Management,
- (i) Transport in the Urban Environment,
- (j) Well Lit Highways. Code of Practice for Highway Lighting Management,
- (k) Management of Highway Structures A Code of Practice; and
- (l) the Manual of Contract Documents for Highways Works,

(m) the suite of documents produced by the Highways Maintenance Efficiency Programme (HMEP)

save to the extent that the same are inconsistent with the Highways Services Specification in which case the Highways Services Specification shall take precedence

Highway Works Authority or HWA means the Council when undertaking works in any of the following capacities:

- (a) as a Highway Authority;
- (b) as a Street Authority;
- (c) as a Bridge Authority;
- (d) as a Traffic Authority; or
- (e) an authority under the 1980 Act

HWA Works Response shall have the meaning given in paragraph 36.2 (Response to HWA Works Notice)

Incident means an occurrence necessitating traffic control measures either by the Service Provider or the police or affecting or potentially affecting safety, the environment or the structural integrity of the Highway Network

Independent Certifier means the certifier as may be appointed by the Service Provider and the Authority for the time being in respect of Capital Works (Highways).

Inspections means those inspections detailed in part 8 of the Highways Services Specification

Judicial Review means any application for judicial review (including any application for permission) made under Part 8 or Part 54 of the Civil Procedure Rules 1998 seeking review of any determination, decision, order or omission of the Council or any application for a declaration (not made pursuant to Part 8) which concerns the legality of any determination, decision, order or omission of the Council, or any statutory challenge, action or appeal which proceeds on similar principles to judicial review

Land Rights means any right over or in respect of or otherwise relating in any way to land, whether temporary, revocable, legal, equitable or otherwise of whatever nature

Lump Sum Payment means the payment of any amounts due to the Service Provider from the Council under paragraph 21 (Capital Works (Highways)) in one payment due following the issue of a Compliance Certificate of the relevant Capital Works (Highways)

Management Information System Survey shall have the meaning given in paragraph 40.1(b) (Final Surveys)

Major Highway Works means both major highway works as defined in Section 86(3) of NRSWA and major bridge works as defined in Section 88 (2) of NRSWA

Manual of Contract Documents for Highway Works means the manual for contract documents for highway works published by The Stationery Office

Milestone Completion Date means those Completion Dates specified in the relevant Proposal relating to any Capital Works (Highways) developed in accordance with the terms set out in paragraph 21 5

Milestone Payment(s) means the payment of any amounts due to the Service Provider from the Council under paragraph 21 (Capital Works (Highways)) in a series of payments by reference to the Milestone Payment Schedule due on the issue of a Compliance Certificate in respect of each Milestone

Milestone Payment Schedule means the schedule setting out the details of the Milestones and the payments due on Completion of each Milestone as identified in the relevant Proposal approved and agreed in accordance with paragraph 22 between the parties

Milestone(s) means one or more milestones denoting Completion of a section of the Capital Works (Highways) in respect of a Highway Network Part

New Apparatus means the Apparatus but excluding the Existing Apparatus

New Build Works means works carried out or procured to be carried out by the Council in its capacity as a Highway Authority

Outstanding Works shall have the meaning given in paragraph 40.5 (Rectification Works)

Owner means as defined in Section 45(9) of the Public Health Act 1961

Proposal means a proposal submitted by the Service Provider pursuant to paragraph 21 5 in relation to the carrying out of Capital Works (Highways)

Protester or Trespasser means any person engaged in protest action or who wilfully obstructs the Service Provider from providing any part of the Highways Services

Provider Direct Agreement means the direct agreement to be entered into between the Service Provider, the Council and an incoming Technical Services Provider in respect of the duty of care owed by the Technical Services Provider substantially in the form set out at Annex 4

Quality Documentation means the quality manuals, quality plans, quality procedures, inspection and test plans, work instructions or like documentation, as appropriate, which describe and define a Quality Management System

Quality Management System means the organisational structure, procedures, processes and resources for determining and implementing quality policy

Quality Manager means such person appointed pursuant to paragraph 37 5 (Quality Manager)

Quality Plans means,

- (a) the Design Quality Plan, and
- (b) the Service Quality Plan, and
- (c) other quality plans required pursuant to paragraph 37 (Quality Management and Safety), or one or more of them, as the context may require

Quarter means a period of three calendar months beginning on 1 February, 1 May, 1 August and 1 November

Regulations means regulations issued pursuant to Part III of NRSWA

Relevant Action means any of the following actions of the Council:

- (a) the Council (in its capacity as Highways Authority under the HA 1980):
 - (i) entering into a Section 38 Agreement
 - (ii) entering into a Section 278 Agreement
- (b) the Council (in its capacity as Planning Authority under the TCPA 1990):
 - (i) entering into a Section 106 Agreement
 - (ii) imposing a Grampian Planning Condition
- (c) any other requirements or actions of the Council taken within its statutory powers

Retained Obligations means:

- (a) any obligations of the Council under the Third Party Undertakings which are listed as being expressly excluded from being transferred or novated or from becoming the responsibility of the Service Provider; and
- (b) any obligation under the Third Party Undertakings or any other agreement undertaking or commitment between the Council and any Third Party, to acquire or not acquire, any estate or interest in land, or to pay compensation for the acquisition of such land

Retained Rights means the rights and powers of the Council under the Third Party Undertakings which:

- (a) are not Delegated Rights; or
- (b) are listed as being expressly excluded from being transferred or novated to, or from becoming the responsibility of, the Service Provider; or
- (c) confer any right to acquire land or an estate or interest in land

Retention Fund Account shall have the meaning given in paragraph 40.1(c) (Final Surveys)

Road Closure Schedule means the schedule for the first Agreement Year to be provided by the Council prior to the Service Commencement Date and the schedule for each subsequent Agreement Year agreed in accordance with the Review Procedure and as may be revised in accordance with paragraph 27.2 (Revision of Road Closure Schedule)

Road Section Length means the individual lengths of the Highway Network between consecutive nodes as identified in the Highway Network Model

Sample Inspections has the meaning given in the Code of Practice entitled "*Code of Practice for Inspections*"

Schedule of Rates means a pricing mechanism agreed between the Parties in respect of the delivery of the Highways Services which individually prices items of works. Such items shall then be used to "work up" a proposal to deliver the required works on the relevant scheme and to calculate the cost of such works, using any appropriate industry guidance or standards available at the time

Section 38 Agreement means a contract between a developer and the Council under which the Council agrees, pursuant to Section 38 of the HA 1980, to adopt highways which are maintainable at public expense

Section 106 Agreement means a contract between a developer and the Council which, pursuant to Section 106 of the Town and Country Planning Act 1990, restricts or regulates the development of land

Section 278 Agreement means a contract between a developer and the Council under which the Council agrees, pursuant to Section 278 of the HA 1980, to the execution of highways works

Service Quality Plan means quality plan to be prepared by the Service Provider prior to the Service Commencement Date (or such later date identified in the Mobilisation Plan)

Small HWA Works means those works undertaken by the Council acting in its capacity as Highway Works Authority that do not constitute either Major HWA Works or Standard HWA Works or Street Cleansing and have a planned duration which does not exceed three days

Snagging Items means minor defects, deficiencies or omissions which do not prevent or affect proper and normal use of the affected Highway Network Part

Snagging List means a list of Snagging Items provided by the Independent Certifier or the Service Provider or the Council as the case may be

Special Event means the legitimate public use of the Highway Network for the purposes of events, festivals, fairs, sports, demonstrations or other legitimate uses of the highway or other similar events

Special Event Closure shall have the meaning given in paragraph 9 2 (Agreement of Special Events)

Specification for Highway Works or SHW means the Specification for Highway Works, published by The Stationery Office as Volume 1 of the Manual of Contract Documents for Highway Works

Specified Period shall have the meaning given in paragraph 40 4(b) (Results of Final Surveys)

Statutory Undertaker means an undertaker for the purposes of Part III of NRSWA as defined in section 48(4) of that Act

Street Authority shall have the meaning given in section 49(1) of NRSWA

Street Works Licences shall have the meaning given in section 50(1) of NRSWA

Street Works Register means the register referred to in section 53(1) of NRSWA

Structure means any (temporary or permanent) structure forming part of the Highway Network and includes any:

- (a) Bridge, Tunnel or culvert having an individual span of three (3) metres or more or (in respect of a multi-span structure) a cumulative span of five (5) metres or more;
- (b) Bridge, Tunnel or culvert (other than of corrugated metal) having a span of one point eight (1.8) metres or more and where the cover to the road surface is less than one (1) metre;
- (c) corrugated metal bridge or culvert having a span of point nine (0.9) metres or more (irrespective of cover to the road surface);
- (d) pedestrian, equestrian or cycle subway (irrespective of span and cover to the road surface);
- (e) retaining wall, including without limitation reinforced earth, anchored earth and cribwall systems with slope between 70° and 90° to the horizontal, where the level of the fill at the back of the wall is greater than one point five (1.5) metres above the finished ground level in front of the wall;
- (f) environmental barrier;
- (g) sign/signal gantry or high mast for lighting, television cameras and catenary lighting systems; and
- (h) drainage tanks or lagoon walls or pumping stations

TCPA 1990 means the Town and Country Planning Act 1990

Third Party Attachments means attachments owned by a third party who has been authorised by the Council to affix to Apparatus, including (but not limited to):

- (a) political signage;
- (b) fire hydrant signs;
- (c) bus stop signs and timetables;
- (d) any special event signage or advance direction signage;
- (e) direction signage (including A/RAC signs);
- (f) neighbourhood watch signs; and
- (g) blind persons referencing point,

provided that Third Party Attachments shall not include any electronic or electrical connections except those which constitute Third Party Attachments as at the Service Commencement Date

Third Party Undertakings means any undertakings, letters, deeds and agreements notified by the Council to the Service Provider from time to time

Third Party Works means any works carried out by a Third Party which involves development as defined under section 55 of Town and Country Planning Act 1990

Traffic Data means the information relating to traffic in the relevant reports as required under the Highways Services Specification and any information relating to traffic obtained by the Council by direct interrogation of any measuring equipment

Tunnel means any structure designed and used to provide pedestrian and/or vehicular access under, around or through any Highway Network Part

Value for Money (VfM) means in accordance with the principles set out at paragraph 40.3 of Annex 3, the Proposal in respect of the Capital Works (Highways) where assessed against the Open Market would offer the most economically advantageous tender for the delivery of the Capital Works (Highways),

Works for Road Purposes has the meaning given in section 86(2) of NRSWA

Work Site means any area of the Highway Network upon which the Service Provider (or a Sub-Contractor) is carrying out works, only during the time when such works are being carried out

Part 2 - Mobilisation

2 Mobilisation

2.1 Subject to paragraph 2.3, the Service Provider shall notify to the Council, in writing, not later than seven (7) Business Days prior to the Service Commencement Date (or such later date as specified in the Mobilisation Plan) that all of the following have been effected:

- (a) all statutory notifications have been made and Necessary Consents obtained, to the extent required by Law, to enable the Service Provider to commence or procure the commencement of the Highways Services (including without limitation notifying the emergency services of contact details, including a twenty four (24) hour telephone link, for use in the event of an Emergency relating to the Highway Network);
- (b) the Contact Centre which the Service Provider is required to operate and maintain as part of the Customer Relations Management and the Management Information System are operational and capable of performing the functions required of them pursuant to the Highways Services Specification (to the extent necessary for the Service Provider to properly commence performance of the Highways Services);
- (c) there are sufficient vehicles, stock, personnel, office space and storage space including as set out in the Method Statements to permit the Service Provider to comply with the Service Provider's obligations under this Agreement (to the extent necessary for the Service Provider to properly commence performance of the Highways Services); and
- (d) the requirements in paragraph 2.2 have been met.

2.2 Subject to paragraph 2.3, prior to commencement of the Highways Services (or such later date as specified in the Mobilisation Plan) the Service Provider shall have:

- (a) established an office within the Council Area;
- (b) entered into its sub-contracts with all Key Sub-Contractors to the extent not entered into by the Agreement Date;
- (c) appointed the Key Staff (who will liaise with and shadow Council counterparts until the Service Provider is satisfied with knowledge transfer) and notified the Council of the same;
- (d) taken all steps necessary to prepare for taking possession of the Highways Depot on the Service Commencement Date;
- (e) provided the Council with the Assets and Equipment Register;
- (f) made all statutory notifications and obtained all Necessary Consents, to the extent required by Law, so that the Service Provider is able to commence or procure the commencement of the Highways Services;
- (g) ensured that all Transferring Employees have received appropriate induction training;
- (h) an operational Contact Centre in place that is capable of performing the functions set out in the Highways Services Specification so that the Service Provider is properly able to commence the performance of the Highways Services;

- (i) appointed those persons who are to be the representatives of the Service Provider on the Partnership Board and notified the Council of the same;
- (j) migrated one hundred percent (100%) of the Council's electronic information in respect of the Highway Network onto the appropriate databases within the Management Information System,
- (k) set up and agreed reasonable and appropriate access rights with the Council to any of the Council 's hard copy information in respect of the Highway Network including granting any assignment or renewal of any Software Licences,
- (l) taken possession of any Initial Transferring Assets from the Council in accordance with this Agreement, and
- (m) ensure that all due diligence has been completed and all mechanisms are in place such that the Service Provider shall be able to ensure that from the Services Commencement Date the Council shall not be in breach of any of their statutory functions under any Relevant Legislation.

2.3 Notwithstanding the provisions of paragraphs 2.1 and 2.2, in relation to activities which are not required under the Mobilisation Plan to be completed prior to the Service Commencement Date, the Service Provider shall complete all actions required by the Mobilisation Plan by the date specified in the Mobilisation Plan

3 Council Obligations in respect of the Highway Network prior to Service Commencement Date

3.1 Council Obligations

During the period from the Agreement Date until the Service Commencement Date, the Council shall carry out its obligations in respect of the Highway Network in accordance with the requirements set out in the Highway Policies as at the Agreement Date.

3.2 Access to Records

For the purposes of this paragraph 3 the Service Provider shall have access to the Council's records for the period from the Agreement Date until the Service Commencement Date or such other period as mutually agreed between the Parties, acting reasonably, in relation to all Reactive Maintenance and Capital Works (Highways) as may reasonably be requested

3.3 Provision of Information

The parties agree that

- (a) upon any request by the Council, the Service Provider shall provide to the Council hard copies of all or any part of the information contained in the Management Information System. The cost and expense of providing such copies to the Council shall be borne by the Council save in circumstances where the Council is unable to access copies of the Management Information System on-line by reason of any fault or problem relating to the Service Provider's information technology systems or the Management Information System does not comply with the requirements of this Agreement, in which case all of the cost and expense of providing such copies shall be borne by the Service Provider, and

- (b) the Council shall, from time to time and at the reasonable request of the Service Provider, provide any necessary information required to update the Management Information System.

Part 3 - Business Continuity Planning

4 Business Continuity Plan

The Service Provider shall keep the Business Continuity Plan up to date in accordance with Clause 17 of the Agreement so as to ensure that it corresponds and responds to developments and/or changes in risks and circumstances in relation to the Highways Services

Part 4 - Annual Programme

5 Annual Programmes

5.1 Good Industry Practice

The Service Provider shall:

- (a) prepare and develop each Annual Programme in accordance with Good Industry Practice and in order to meet the relevant requirements of the Highways Services Specification and include the matters identified in paragraph 5.2 and annex 1 to these Highways Services Special Conditions; and
- (b) diligently perform the Highways Services in accordance with each Annual Programme, as applicable from time to time.

5.2 The Annual Programme

Each Annual Programme shall contain the following information:

- (a) details of the Highways Services that the Service Provider intends to undertake in the relevant Agreement Year (on a street-by-street basis);
- (b) details of the Highway Network Parts which the Service Provider reasonably believes it will replace in the forthcoming Agreement Year and in the three (3) Agreement Years following the Agreement Year to which such Annual Programme relates;
- (c) having made due enquiry, details of significant transportation projects or other programmes of works that the Council or a third party is planning to carry out during the twelve (12) month period following the date of the relevant Annual Programme;
- (d) having made due enquiry, details of the relevant activities of any Statutory Undertaker in the affected streets and how the Service Provider intends to co-operate with the same;
- (e) the latest version of the Road Closure Schedule;
- (f) details of all known Special Event Closures;
- (g) any proposed revisions to the Emergency Works Procedure; and
- (h) all information relating to the treatment of drainage and any required works awaiting completion,

and the Annual Programme shall comply with the provisions of the Method Statements.

5.3 In producing the Annual Programme the Service Provider shall use reasonable endeavours to:

- (a) utilise their experience from other highways contracts to create the most efficient and effective proposals for the Highway Network;
- (b) employ best practice from the highways and other sectors, whilst at all times continuing to comply with all relevant standards;

- (c) propose improvements to the delivery of the Highways Services to the Council setting out in all instances a cost/benefit analysis (with accompanying business case where appropriate) and any associated risks together with an accompanying risk management strategy designed to mitigate the impact of any such risks

5 4 Amendment of Annual Programmes

Without prejudice to the Service Provider's obligations under Schedule 4 (Performance Monitoring) the Annual Programme shall be revised as necessary

- (a) to take into account actual progress made;
- (b) any Accruals or De-Accruals pursuant to the Accrual and De-Accrual Process;
- (c) any relevant Changes pursuant to the Change Control Procedure,
- (d) any amendments required as a result of operational requirements,
- (e) to ensure that any Improvements at all times comply with this paragraph 5,
- (f) any Capital Works (Highways) are supported with the level of detail as set out at paragraph 5.2,
- (g) to take account of the relevant activities of any Statutory Undertakers and/or any third party and/or transportation projects planning to carry out in the affected streets, and
- (h) any other relevant matters,

and the Service Provider shall submit such amended Annual Programme, pursuant to, and in accordance with the Review Procedure.

6 Maintenance Obligations

6 1 The Service Provider shall maintain the Highway Network in accordance with these Highways Services Special Conditions and in such a way that.

- (a) continuously reduces the number and scope of insurance claims made against the Council,
- (b) meets all of the Council's statutory duties in respect of the relevant Legislation,
- (c) ensures that the Highways Network is kept obstruction free, safe and in a condition which is consistent with Good Industry Practice; and
- (d) takes into account whole life asset management costing principles so as to maximise value for money for the Council

as more particularly described in the Highways Services Specification

7 Inspections and Access

7 1 Council to Attend Inspections

The Parties agree that:

- (a) the Service Provider shall give the Council Representative timely notice of any general or particular inspection of any part of the Highway Network to be conducted in accordance with the Highways Services Specification; and
- (b) the Council Representative shall be entitled to attend any inspection of any part of the Highway Network (whether or not it is entitled to receive or has received notice pursuant to paragraph 7.1(a)) upon giving reasonable notice to the Service Provider.

7.2 Access for Council

The Service Provider shall procure that:

- (a) the Council Representative is provided with all such access as is required under Clause 31 (Enquiries, Investigations and Inspections);
- (b) the Council Representative shall have the right to attend monthly site and other similar progress meetings; and
- (c) the Council Representative and any other nominee of the Council has unrestricted access to the Work Sites at all reasonable times in order to conduct any study or trial (in accordance with the provisions of paragraph 7.4) for purposes of research initiated by the Council;

provided always that nothing in this paragraph 7.2 shall restrict the Council Representative or any nominee of the Council having reasonable access to the Highway Network to the extent such access does not impede the Service Provider in the delivery of the Highways Services.

7.3 Access for Relevant Authorities

The Service Provider shall procure that all relevant authorities have access to the Work Sites throughout the Service Period in order to carry out any work (including without limitation surveys and inspections) as required pursuant to any Law or to exercise any right, power or duty of such Relevant Authority under any Law subject, other than in the case of an emergency, to reasonable notice being given. Whenever consistent with the requirements of the Relevant Authority in carrying out such work, such access may be limited so as not unnecessarily to impede or restrict traffic flows or any works being carried out by the Service Provider.

7.4 Trials

- (a) Any study or trial referred to in paragraph 7.2(c) shall be conducted in such manner as to minimise the loss of availability of any road or any adverse effect on traffic flows on the Highway Network and no such study or trial shall, without the consent of the Service Provider (such consent not to be unreasonably withheld or delayed), substantially affect the physical integrity of the Highway Network. The occurrence of such study or trial shall constitute an Excusing Cause and the provisions of clause 39 of this Agreement shall apply.
- (b) The Council shall, as soon as reasonably practicable, and in any event no later than twenty (20) Business Days prior to the commencement of any study or trial notify the Service Provider of the nature of the relevant study or trial.

8 Traffic Management

8.1 Traffic Management obligation

Without prejudice to paragraph 29.9 (Primary Duty of Co-Ordination), the Service Provider shall

- (a) carry out the Highways Services so as to minimise any inconvenience caused to members of the public and interested parties and to minimise the period of Road Section Closures; and
- (b) liaise and co-operate with the Council in connection with the discharge by the Council of its duties under section 16 of the Traffic Management Act 2004.

8.2 Liaison on Traffic Management

The Service Provider shall be responsible for ensuring compliance with the reasonable requirements of other highway authorities and of the police with regard to the management of traffic which may be affected by the carrying out of the Highways Services

9 Special Event Closures

9.1 Notice of Special Events

Prior to the commencement of each Agreement Year the Council shall provide the Service Provider with a list of Special Events likely to occur during that Agreement Year, and update the list by giving not less than three (3) Business Days' written notice to the Service Provider as and when further details of listed Special Events, or new Special Events, become available

9.2 Agreement of Special Events

- (a) No later than twenty (20) Business Days prior to each Special Event, the Service Provider and the Council shall agree (or failing agreement there shall be determined in accordance with the Dispute Resolution Procedure) the period of any Road Section Closures which will be caused by the Special Event (Special Event Closures). Any Special Event Closures shall constitute an Excusing Cause and the provisions of Clause 39 of this Agreement shall apply.
- (b) In exceptional cases where the notice period required under paragraph 9.2(a) is not possible due to late notification of a Special Event to the Parties a notification period of ten (10) Business Days shall be permitted

10 Communications

10.1 Telecommunications Equipment

The Service Provider shall

- (a) obtain, in a timely manner and maintain in force, any licence or consent required under the Telecommunications Act 1984 in order to perform its obligations in relation to the Highways Services

- (b) not license the installation of telecommunications equipment on the Highway Network other than with the prior written consent of the Council or in accordance with any Law.

11 Development Control

11.1 Vehicle and Incident Information

The Service Provider shall, if requested by the Council provide:

- (a) access to such information, records or databases that it holds relating to:

- (i) current or past vehicular traffic flow on the Highway Network;
- (ii) vehicular traffic flow forecasts for the Highway Network; or
- (iii) Incident records,

as the Council may require to be provided for the purpose of making any land use planning or development control decisions or policy; and

- (b) the estimated cost of carrying out specified highway works where the Council expects to be able to recharge the costs of carrying out specified works as part of a planning or highway function.

11.2 Prohibition on entering into agreements

The Service Provider shall not enter into commitments with third parties to provide or procure for the benefit of that third party, any land or buildings or any works relating to the Highway Network without the prior written consent of the Council. The Council may, from time to time, authorise the Service Provider to enter into commitments in relation to the provision or procurement of works relating to the Highway Network either individually, by reference to a class of works or parties or land benefiting and on either a terminable or time limited basis provided that:

- (a) the Council may set conditions and restrictions in any authorisation granted;
- (b) the Service Provider shall at all times act in accordance with the Highways Services Specification.

11.3 Design Consultative Services

The Service Provider shall, when requested to do so by the Council and in accordance with Good Industry Practice, carry out the Design Consultative Services in relation to any proposed Additional Works (whether or not such Additional Works lead to the Accrual of additional Highway Network Parts).

Part 5 - Accruals

12 Accrual and De-Accrual of Highway Network Parts

12.1 Notwithstanding any provision in the Change Control Procedure:

- (a) the Service Provider shall accept Highway Network Parts into the scope of the Highways Services, and
- (b) the Council is entitled to remove Highway Network Parts from the scope of the Street Highways Services,

in each case in connection with, or as a consequence of, a Relevant Action of the Council

12.2 If at any time during the Service Period, taking into account all Accruals and De-Accruals, there is an aggregate five percent (5%) increase or decrease in the length of road forming part of the Highways Network compared with the length of road existing at the Service Commencement Date (as identified in the Inventory), such change in the Highways Network shall be dealt with as a Council Change under the Change Control Procedure

12.3 Any adjustment to the Payment which is determined or agreed under the Change Control Procedure pursuant to paragraph 12.1 to reflect the change in the Service Provider's costs in providing the Highways Services as a result of the change in length of road shall apply from the date of the Change Control Confirmation

Part 6 – Ownership of and Access to the Highway Network

13 Ownership and Use of Highway Network

13.1 Licence

From the Service Commencement Date until the end of the Agreement Period, the Council shall permit the Service Provider and any Service Provider Related Party to carry out the Highways Services on the Highway Network, subject to:

- (a) the terms and conditions relating to the use of land imposed by any existing Land Rights;
- (b) any requirement for planning consent under the Town and Country Planning Act 1990 (as amended) or advertisement consent;
- (c) any rights of third parties granted to them from time to time by or on behalf of the Council, including street trading or market trading licences, amenity licences, oversailing licences, licence to bridge, consents under s115E of the Highways Act 1980, landscaping or planting licences, licences for the placing of a builder's skip on the highway or otherwise;
- (d) the rights of owners of private streets and bridges and others with private rights in, on, under or over the Highway Network;
- (e) the Apparatus Licence set out in paragraph 15.2 (Licence to the Service Provider);
- (f) the rights of access referred to in paragraph 7.2 (Access for Council);
- (g) the provisions of paragraph 7.3 (Access for Relevant Authorities) and the right of any Relevant Authority under any Law to have access to the Highway Network;
- (h) the right of any relevant highway authority to have access for the execution on or near the Highway Network of any work needed to fulfil any function of such highway authority under any Law;
- (i) the provisions of paragraph 19 (Security of the Highway Network);
- (j) the rights of any party to have access for the purposes of carrying out or procuring the carrying out of highway or access works associated with a planning permission or similar development consent.

13.2 Observance of Land Rights by Service Provider

The Service Provider shall, in providing the Highways Services, observe and comply with the terms and conditions of any Land Rights.

14 Access to Third Party Land

14.1 Service Provider to Secure Access

Where, in connection with the Highways Services the Service Provider needs to enter land off the highway which is outside the control of the Council, the Service Provider shall use all reasonable endeavours to secure access to such land for the Council and the Service Provider for such period

as may be required by either party to facilitate the due performance of these Highways Services Special Conditions

14.2 Notification

Where the Service Provider is unable to gain access as required by paragraph 14.1:

- (a) the Service Provider shall use all reasonable endeavours to identify an alternative access or an alternative location or an alternative solution as soon as reasonably practicable; and
- (b) if the Service Provider is unable to identify an alternative access or an alternative location or an alternative solution it shall notify the Council, in writing, as soon as reasonably practicable of the Service Provider's inability to obtain the required access to such land and such notice shall include all relevant details of the land, the access required, the reason for the access, the duration for which such access is required together with documentary evidence of the reasonable endeavours taken by the Service Provider to obtain such access and/or identify an alternative access or location or solution

14.3 Process where access not obtainable

Upon receipt by the Council of a notice service pursuant to paragraph 14.2(b):

- (a) where the Council reasonably believes that the Service Provider has not complied with paragraph 14.2(a), inform the Service Provider what further steps it wishes the Service Provider to take to comply with paragraph 14.2(a) and the Service Provider shall either take such steps or refer the matter to the Dispute Resolution Procedure,
- (b) when the Council is satisfied that the Service Provider has complied with paragraph 14.2(a) the parties shall meet to agree what action should be taken to secure the necessary access which may include the Council taking such steps as, in its absolute discretion, it shall decide to obtain the required access on the Service Provider's behalf,
- (c) if an alternative location or access or solution has not been identified or the Council has not obtained the access required within twenty (20) Business Days of meeting pursuant to paragraph 14.3(a) then paragraph 14.4 shall apply.

14.4 Failure to Secure Access

From the date twenty (20) Business Days after the meeting referred to in 14.3(b) until the earlier of

- (a) the Council obtaining the required access,
- (b) the parties agreeing an alternative location or solution whereby access to the relevant third party land is no longer required;
- (c) a Change is implemented in accordance the Change Control Procedure,

such failure shall constitute an Excusing Cause and the provisions of Clause 39 of this Agreement shall apply

15 Ownership and Licence of Apparatus

15.1 Property of the Council

Notwithstanding paragraph 15.2:

- (a) the Existing Apparatus shall remain the property of the Council;
- (b) all New Apparatus shall become the property of the Council upon either:
 - (i) the date when such New Apparatus is certified pursuant to paragraph 24.4 (Certification of Capital Works (Highways)); or
 - (ii) if the New Apparatus is not certified, subject to paragraph 16.2 (Incomplete Apparatus) on the earlier of the Termination Date or the Expiry Date;

and the Service Provider shall carry out, or procure the carrying out, of all actions necessary to ensure the rights, title and interest in, and to, the Apparatus transfer to the Council on the relevant date set out in this paragraph 15.1.

15.2 Licence to the Service Provider

With effect from:

- (a) the Service Commencement Date in relation to Existing Apparatus; and
- (b) the date that title in the New Apparatus passes to the Council pursuant to paragraph 15.1(b);

in each case until the earlier of the Termination Date and the Expiry Date, the Council shall licence the New Apparatus to the Service Provider, on the terms of the Apparatus Licence set out in paragraph 15.3.

15.3 Terms of the Apparatus Licence

The Council grants to the Service Provider a licence (the **Apparatus Licence**) with the right to grant a sub-licence to a Service Provider Related Party on the following terms:

- (a) the licence shall permit the Service Provider to:
 - (i) install Apparatus; and/or
 - (ii) use, manage, work on, remove, maintain, clean and repair the Apparatus; and/or
 - (iii) affix or remove Attachments to or from the Apparatus;

in each case in connection with and only insofar as such installation, use, management, work, removal, maintenance, cleaning, repair, affixing and removal is necessary or expedient for the performance of the Service Provider's obligations or the exercise of the Service Provider's rights under these Highways Services Special Conditions;

- (b) in the exercise of the Apparatus Licence the Service Provider shall and shall procure that each Service Provider Related Party granted a sub-licence shall:

- (i) use reasonable endeavours not to cause any nuisance,
 - (ii) at all times comply with Good Industry Practice;
 - (iii) comply with all relevant Law and Guidance and Highway Standards relating to the carrying out of the Highways Services,
 - (iv) obtain all Necessary Consents; and
 - (v) make good any damage to any Council Assets or any Highway Network Part forthwith but only insofar as the same arises from or in connection with the Highways Services;
- (c) for the avoidance of doubt, neither the Apparatus Licence nor the permission to carry out the Highways Services on the Highway Network is a licence under NRSWA and is granted subject and without prejudice to
- (i) any right of the Council under this Agreement to provide the Highways Services,
 - (ii) the Council's rights, powers, duties generally and the exercise of its rights, functions and performance of its obligations in accordance with these Highways Services Special Conditions, and
 - (iii) the rights of agents of the Council, statutory undertakers and holders of licences under the NRSWA (or any agents of the same),
- (d) the Apparatus Licence is not a lease of any Apparatus and the parties do not intend the Apparatus Licence to transfer any real property from the Council to the Service Provider or grant to the Service Provider any interest in any Apparatus the subject of this Apparatus Licence or in the land on which any such Apparatus is placed.

16 Risk in the Apparatus

16.1 Existing Apparatus

The Service Provider shall, in providing the Highways Services and at its own cost, take such steps as are necessary to repair or replace any item of Existing Apparatus which for any reason is damaged (whether as a result of accident or vandalism or otherwise) so that the Highways Services Specification and the other requirements of this Agreement are complied with.

16.2 Incomplete Apparatus

Without prejudice to paragraph 15.1, where part of an item of Apparatus has been installed but the installation has not been completed by the Termination Date, then.

- (a) no later than the Termination Date, the Service Provider shall deliver to the Council a written list detailing the incomplete items of Apparatus together with such photographic evidence as is reasonably necessary for the Council to identify the incomplete items of Apparatus;
- (b) the Council shall, within ten (10) Business Days of receipt of the list referred to in paragraph 16.2(a) specify, in writing, which incomplete items of Apparatus shall be removed by the Service Provider;

(c) no later than twenty (20) Business Days of receipt of the written instructions referred to in paragraph 16.2(a), the Service Provider shall:

- (i) remove, at no cost to the Council, the items identified by the Council to be removed; and
- (ii) transfer to the Council the rights, title and interest in, and to, all remaining incomplete items of Apparatus.

16.3 New Apparatus

Subject to paragraph 21 (Capital Works (Highways)), risk in the New Apparatus shall be the responsibility of the Service Provider until it reverts to the Council in accordance with paragraph 16.4. The Service Provider shall, in providing the Highways Services, take such steps as are necessary to repair or replace any item of New Apparatus which for any reason is damaged (whether as a result of an accident, vandalism or otherwise) so that the Highways Services Specification and the other requirements of this Agreement are complied with.

16.4 Transfer of Risk to the Council

Subject to the provisions of the Accrual and De-Accrual Process and the Change Control Procedure, risk in the Apparatus shall pass to the Council at 23:59:59 on the last day of the Agreement Period.

16.5 Advertising

- (a) The Service Provider shall not place any advertising, sponsorship or branding on any Highway Network Part, Apparatus or Highways Equipment without the Council's prior written consent.
- (b) The Council shall be entitled to exercise their absolute discretion in respect of any requests made by the Service Provider under paragraph 16.5(a).

17 Use and Disposal of the Apparatus and Equipment

17.1 Restriction on Use of Apparatus

The Service Provider shall not:

- (a) use the Apparatus for any purpose other than in respect of the performance of the Service Provider's obligations under this Agreement; and
- (b) subject to paragraph 17.2 and Clause 22 (Third Party Contracts and Income) of this Agreement, shall not sell, lease, transfer, grant rights over or otherwise dispose or part with possession of (or purport to do any of the foregoing) or any interest in any item of Apparatus without obtaining the prior written consent of the Council.

17.2 Permitted Transfer and Disposal

The Service Provider may sell, lease, transfer, grant rights over or otherwise dispose or part with possession of any item of Apparatus to the extent that:

- (a) such disposal is identified in an Annual Programme; and

- (b) in the Service Provider's reasonable opinion, the Apparatus comprises equipment which is of a waste or scrap nature

17.3 Consent

Any consent granted by the Council pursuant to paragraph 17.1(b) may be given generically in relation to particular Apparatus, or specifically in relation to an individual item of Apparatus, and shall be subject to such conditions as the Council may specify in its absolute discretion, (including without limitation as to price and that any proceeds, including any related profit, is remitted to and belongs to the Council or as it otherwise may direct)

18 Necessary Consents

18.1 Necessary Consents for fixing Apparatus

The Service Provider may, in the course of providing the Highways Services, be required to affix Apparatus to structures that are not Highway Network Parts and the Service Provider shall:

- (a) diligently and without delay and, to the extent that it is lawfully entitled to do so, take such action as is necessary or appropriate to liaise with, and obtain Necessary Consents from, Owners (as that term is defined in Section 45(9) of the Public Health Act 1961) of the structure to which it is proposed Apparatus will be attached,
- (b) keep the Council informed of progress on a continuing basis at all reasonable times, and upon reasonable request by the Council;
- (c) where the Service Provider, using all reasonable endeavours, has been unable to obtain a Necessary Consent from an Owner, give written notice to the Council informing the Council that the Service Provider has been unable to obtain such Necessary Consent and such notice shall set out:
 - (i) details of the relevant Apparatus, structure and Owner,
 - (ii) documentary evidence of the reasonable endeavours taken by the Service Provider to secure such Necessary Consent, and
 - (iii) proposed alternative design solutions whereby the relevant Apparatus could be affixed in another location or to another structure (or other Apparatus) which design solutions shall be the minimum departure from the relevant standards set out in the Highways Services Specification

18.2 Process to be followed where consent not obtained

Upon receipt by the Council of a notice served pursuant to paragraphs 18.1(c) or 18.5(b):

- (a) where the Council reasonably believes that the Service Provider has not complied with paragraph 18.1(c), inform the Service Provider what further steps it wishes the Service Provider to take (which may include the submission of further design solutions) to comply with paragraph 18.1(c) and the Service Provider shall either take such steps or refer the matter to the Dispute Resolution Procedure,

- (b) when the Council is satisfied that the Service Provider has complied with paragraph 18.1(c) the parties shall meet to discuss the means by which the failure to obtain the Necessary Consent to affix the Apparatus to structures can be overcome and the continued performance of these Highways Services Special Conditions can be facilitated. Such steps may include the Council seeking to obtain the Necessary Consent and/or the Council agreeing to a departure from a relevant standard set out in the Highways Services Specification and/or the Apparatus being affixed in an alternative location as directed by the Council.

18.3 Failure to Obtain Consent

From the date twenty (20) Business Days after the date the Council first meets with the Service Provider pursuant to paragraph 18:2(b) until the earlier of:

- (a) the Service Provider or the Council obtains the Necessary Consent to affix the Apparatus;
- (b) the Apparatus is installed in another location in accordance with the Highways Services Specification;
- (c) the Council provides its approval to a variation to the design of the Apparatus pursuant to the Review Procedure;
- (d) the relevant Apparatus is De-Accrued in accordance with the Accrual and De-Accrual Process;
- (e) a Change is implemented in accordance with the Change Control Procedure,

any failure to obtain a Necessary Consent to affix Apparatus to a structure other than other Apparatus shall constitute an Excusing Cause and the provisions of Clause 39 (Excusing Causes) of this Agreement shall apply.

18.4 Removal of Apparatus

The Service Provider shall be responsible (at the Council's cost to the extent that such cost is reasonably and properly incurred by the Service Provider) for complying with (in accordance with the Public Health Act 1961 and any other applicable Law) any requests from Owners to:

- (a) remove Apparatus from structures temporarily during periods of repair or reconstruction; and
- (b) remove Apparatus from structures permanently.

18.5 Owner's request to remove Apparatus

In the event that a request is made by an Owner to remove Apparatus from a structure the Service Provider shall:

- (a) where the Apparatus is to be removed temporarily, remove and refix the relevant Apparatus and during the period of removal take such alternative measures as are necessary to ensure the Highways Services Specification is complied with;
- (b) where the Owner has requested the Apparatus be removed permanently, inform the Council in writing forthwith and use reasonable endeavours to agree with the Owner that the

Attachment remain in its original position. Where the Service Provider has been unable to obtain agreement from the Owner that the Attachment shall remain in its original position, then the Service Provider shall serve a written notice on the Council containing the information set out in paragraph 18 1(c) and thereafter paragraph 18 2 and paragraph 18 3 shall apply.

18 6 Court Proceedings to remove Apparatus

The Council may at its discretion commence proceedings under the Public Health Act 1961 (or other applicable Law) so that a court can determine whether an Owner is obliged to allow or entitled to disallow the Apparatus to be fixed to the relevant structure

18 7 Service Provider to take Proceedings

The Council may serve written notice on the Service Provider requiring the Service Provider, at the Council's cost, (to the extent such costs are reasonably and properly incurred by the Service Provider)

- (a) to diligently and without delay prepare the paperwork in the name of the Council in respect of any proceedings taken or to be taken by the Council pursuant to paragraph 18 7, and/or
- (b) to attend any court proceedings,

provided that the Council shall, as soon as practicable following a reasonable request from the Service Provider, sign any necessary documentation and take such other necessary steps or steps reasonably required by the Service Provider which only the Council is able to take relating to any such proceedings and if either party becomes aware that the Council is not entitled pursuant to any Law, to delegate responsibility under this paragraph 18.7 to the Service Provider, that party shall inform the other party of that fact and as soon as reasonably practicable thereafter the Council and/or the Service Provider shall take such steps as are necessary to ensure compliance with the relevant Law

19 Security of the Highway Network

19.1 Responsibility for Protestors and Trespassers

The Council shall not be responsible at any time from the Service Commencement Date for

- (a) the presence on, or around, or entry on to, or around, the Highway Network or Highways Depot of, by or caused by any Protestor or Trespasser, or
- (b) any other interference with, or affecting, the Highway Network or Highways Depot or the vicinity of them caused by any Protestor or Trespasser; or
- (c) any interference with or affecting the Highways Services, by or caused by any Protestor or Trespasser; or
- (d) any act, omission or default of any Protestor or Trespasser; or
- (e) any lawful or unlawful activities of any Protestor or Trespasser

and where any of the above circumstances results in the Council being unable to comply with paragraph 13 (Ownership and Use of Highway Network) or paragraph 15 (Ownership and Licence of Apparatus) to make available to the Service Provider access to the Highway Network this shall not be a breach of those paragraphs or any other obligation or warranty of the Council under this Agreement.

19.2 No Relief for Offsite Works

The Service Provider shall not be relieved of any requirement to carry out any part of the Highways Services if the failure of the relevant highway authority (not being the Council) to give to the Service Provider access to Council Areas required to carry out the relevant part of the Highways Services is the result of any of the circumstances set out in paragraph 19.1.

19.3 The acts (or presence) of Protesters and Trespassers shall be an Excusing Cause and the provisions of Clause 39 (Excusing Causes) of this Agreement shall apply.

19.4 Service Provider to Bear Loss

Subject to paragraph 19.5, the Service Provider, shall reimburse any Losses suffered by any person arising out of a failure by the Service Provider to deliver the Highways Services as a result of any circumstance set out in paragraph 19.1, provided that nothing in this paragraph 19.3 shall affect:

- (a) any right of the Council to make or recover pursuant to any claim against any Protester or Trespasser for damage suffered by the Council or any Council Related Party; or
- (b) any right of the Service Provider to make or recover pursuant to any claim against any Protester or Trespasser for damage suffered by the Service Provider or any Service Provider Related Party.

19.5 No Payments to Protestors

The Service Provider shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protestors or Trespassers.

19.6 Gypsies and Travellers

The following provisions shall apply in relation to gypsies and travellers on the Highway Network:

- (a) the Service Provider shall at all times:
 - (i) treat gypsies and travellers with courtesy and respect and in a humane and compassionate manner;
 - (ii) not take any action in relation to gypsies and travellers other than in accordance with the Council's then published policy on unauthorised encampments or after prior consultation with the Council;
 - (iii) not make any provision on the Highway Network for any temporary or permanent site for gypsies or travellers;

- (b) subject to the prior written consent of the Council, the Service Provider shall bring an action in the name of the Council for the possession of any part of the Highway Network which is subject to an unauthorised encampment and the Service Provider shall indemnify and keep indemnified the Council against all Losses and Claims arising out of, any such action. During the period that such encampment is in place the Service Provider shall take all reasonable steps to ensure that the size of the encampment does not increase.

20 Fossils and Antiquities

20.1 Ownership of Finds

As between the parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Highway Network are or shall become, upon discovery, the absolute property of the Council.

20.2 Discovery of Finds

Upon the discovery of such item during the course of carrying out the Highways Services, the Service Provider shall:

- (a) immediately inform the Council Representative of such discovery by written notice;
- (b) take all steps not to disturb the object and, if necessary, cease any part of the Highways Services in so far as the carrying out of such part of the Highways Services would endanger the object or prevent or impede its excavation, and
- (c) take all necessary steps to preserve the object in the same position and condition in which it was found.

20.3 Procedure on discovery of a Find

Upon receipt of a written notice pursuant to paragraph 20.2(a) the following provisions shall apply:

- (a) the Council Representative shall promptly, and in any event within ten (10) Business Days of a receipt of a written notice from the Service Provider, issue an instruction to the Service Provider specifying what action the Council Representative requires to be taken in relation to such discovery and if no such instruction is forthcoming within such period the Service Provider may continue to carry out the affected works,
- (b) the Service Provider shall within a reasonable period comply with any instruction issued by the Council Representative pursuant to paragraph 20.3(a) at its own cost (except and to the extent that such instruction constitutes an Council Change pursuant to paragraph 20.3(c) in which case the provisions of the Change Control Procedure shall apply),
- (c) if directed by the Council Representative, the Service Provider shall allow representatives of the Council to enter the Works Site or relevant part of the Highway Network for the purposes of removal or disposal of such discovery and the Council shall comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by the Service Provider Representative from time to time;

- (d) if any instruction given pursuant to in paragraph 20.3(a) includes a requirement for the Service Provider to suspend the carrying out of any part of the Highways Services and/or to carry out works which are not works which would be strictly necessary for the purpose of compliance with Law or any Necessary Consents, such works or instruction to suspend shall be deemed to be an Council Change and the provisions of the Change Control Procedure shall apply; and
- (e) the Council shall act promptly and diligently in dealing with its obligations in this paragraph 20 in relation to any find so as to mitigate any effect on the Service Provider and/or the Highways Services.

Part 7 – Capital Works (Highways)

21 Capital Works (Highways)

21.1 The Service Provider shall liaise with, and promptly provide all reasonably required information to, the Technical Services Provider to assist with the preparation of the draft Capital Programme (Highways) by the Technical Services Provider. Such information shall include provisional proposals which include the information set out in paragraph 21.5

21.2 Once the Council has approved the Capital Programme (Highways) prepared by the Technical Services Provider, the Council (or the Technical Services Provider) shall provide the Service Provider with such Capital Programme (Highways) with details of Capital Works (Highways) which the Council proposes to be carried out during the following Agreement Year

21.3 The Council gives no warranty as to the value or type of works covered in each Capital Programme (Highways) or that any such programme will apply in any Agreement Year

21.4 The Service Provider shall maintain, from the Service Commencement Date until all liability in respect of Capital Works (Highways) has ceased, the relevant Required Insurances (which shall include contractor's all risks insurance).

21.5 Within twenty (20) Business Days of receipt of the approved Capital Programme (Highways), the Service Provider shall respond providing, in relation to each element of Capital Works (Highways) in the Capital Programme (Highways) a proposal which provides, as a minimum, the following details in accordance with Method Statement 10 (a Proposal).

(a) an estimate of its costs for carrying out the relevant works, with a full breakdown of its costs using the agreed Schedule of Rates in relation to the same, to be provided on the basis of Open-Book Accounting and which must demonstrate Value for Money and remain open for acceptance at any time during the following Agreement Year,

(b) a proposed timetable for completion of the relevant works;

(c) proposed payment arrangements in relation to the relevant works, provided that:

(i) for works with a value of less than [REDACTED] the Service Provider's proposal must be on the basis of a lump sum on completion (Lump Sum Payment),

(ii) in relation to works with a value between [REDACTED] the Service Provider's proposal may include monthly milestone payment based on completion of clearly defined physical elements of the works with each milestone payment [REDACTED] (Milestone Payment),

each to be known as the Proposal Fee,

(d) details of any required Road Section Closures;

(e) any temporary modifications to, or suspension of, Traffic Regulation Orders,

(f) details of any Necessary Consents,

(g) to the extent possible, details of the proposed members of the professional team and the forms of any appointments and collateral warranties in favour of the Council in relation to them to the extent they are not already in existence, and

- (h) details of any potential impact on the performance of the Highways Services together with proposals to mitigate such impact.

21.6 Where the Council does not, acting reasonably, accept that a Proposal offers Value for Money the Council may:

- (a) request that the Service Provider redrafts the Proposal; or
- (b) notwithstanding Clause 8 (Exclusivity) of the Agreement, if following a period of sixty (60) Business Days the Parties cannot agree the terms of the Proposal, the Council shall have the right to either deliver the relevant Capital Works (Highways) itself or to seek tenders from Third Parties in order to deliver the Capital Works (Highways).

21.7 The Service Provider shall provide the Council with all information and assistance requested by the Council in relation to the development of each Proposal, including amending the Proposal as required. The Service Provider shall carry out Capital Works (Highways) in accordance with each agreed Proposal.

22 Performance of Capital Works (Highways)

22.1 The Service Provider shall carry out, or procure the carrying out, of the design (including the preparation of Design Data) and construction, completion and testing of the Capital Works (Highways) so that:

- (a) the Capital Works (Highways) or the relevant part of the Capital Works (Highways) shall be completed in accordance with the terms of the Proposal;
- (b) the Capital Works (Highways) shall fully comply with and meet all the requirements of this Agreement, the Highways Services Specification (where applicable), Good Industry Practice, all Necessary Consents, Highways Policies and all applicable Legislation in effect as at the Completion Date;
- (c) new materials only shall be used in carrying out the Capital Works (Highways) (unless the Council agrees otherwise in writing) and all goods used or included in the Capital Works (Highways) shall be of satisfactory quality, and there shall not be used or included in the Capital Works (Highways) any products or materials not in conformity with Relevant British or European Union Standards or codes of practice or which, at the time of use, are widely known to contractors or members of the relevant design profession within the European Union to be deleterious to health and safety or to the durability of highways and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
- (d) all persons employed in connection with the performance of the Capital Works (Highways) shall be skilled and experienced in their several professions, trades and callings or adequately supervised;
- (e) all aspects of the Capital Works (Highways) will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Capital Works (Highways) in accordance with this Agreement and having regard to the activities which are being carried out on the Highway Network and having regard to the safety of the public or any Council Related Party likely to be, or capable of

being, affected by the carrying out of the Capital Works (Highways) or the relevant aspect of the Capital Works (Highways), and

- (f) prior to the relevant Completion Date the Capital Works (Highways) are maintained in good order, kept in a safe condition and protected from damage, and the Highway Network is secured against trespassers (where reasonably practicable) and clean and tidy so far as practicable, having regard to the nature of the Capital Works (Highways).

23 Defects Liability

- 23.1 Any Defects for which the Service Provider is responsible which appear within the Defects Liability Period shall be specified by the Council (or the Technical Services Provider) in a schedule of Defects which shall be delivered to the Service Provider as an instruction of the Council to make good the Defects listed not later than ten (10) Business Days after the expiration of the Defects Liability Period, and within a reasonable time after the receipt of such schedule, the Defects specified shall be made good by the Service Provider at no cost to the Council
- 23.2 Notwithstanding paragraph 23.1, the Council may, whenever it considers it necessary so to do, provided it is not later than ten (10) Business Days after the expiration of the Defects Liability Period, issue instructions requiring any Defect for which the Service Provider is responsible which appears within the Defects Liability Period to be made good and the Service Provider shall within a reasonable time (and in any event within a period of ten (10) Business Days or such longer period as the Parties may, acting reasonably, agree) after receipt of such instructions comply with the same at no cost to the Council
- 23.3 In cases of urgency the Council's instructions under paragraphs 23.1 and 23.2 may require any matter to be made good within such period of time specified in the instruction as the circumstances shall require, and the provisions of paragraphs 23.1 and 23.2 shall be applied by reference to such reduced time period
- 23.4 If the Service Provider fails to comply with an instruction issued pursuant to paragraph 23.1 or paragraph 23.2 within ten (10) Business Days of the relevant instruction or such longer period as may be agreed or where paragraph 23.3 applies such reduced period of time as is reasonable, the Council may itself carry out or employ and pay others to carry out the necessary making good of any Defect, recovering from the Service Provider the costs and losses incurred as a result of such Defect and making good the same as a debt
- 23.5 When all Defects which the Council may have required to be made good under paragraphs 23.1 or 23.2 have been made good, the Council's Representative shall issue a certificate to that effect, which certificate shall not be unreasonably delayed or withheld, and completion of making good defects shall be deemed for all the purposes of this Agreement to have taken place on the day stated in such notice (the Certificate of Completion of Making Good Defects) provided that the Council's Representative shall not be required to issue any Certificate of Completion of Making Good Defects any earlier than 14 days after the expiry of the Defects Liability Period. The issue of any Certificate of Completion of Making Good Defects shall not affect the continuing liability of the Service Provider in respect of any Defects.
- 23.6 The Council may retain a sum of up to ~~10%~~ of the payment due to the Service Provider in relation to any package of Capital Works (Highways) in accordance with paragraph 26 (Payment for Capital Works), (a Retention)

23.7 The Council shall pay the Service Provider:

23.8 (a) the first half of the Retention to the Service Provider within twenty (20) Business Days of a Completion Certificate being issued in accordance with paragraph 24.4 (If the Service Provider (in its capacity as Technical Services Provider) ceases to provide the Technical Services for any reason, the Service Provider (in its capacity as Highways Services Provider) shall enter into the Provider Direct Agreement with the incoming Technical Services Provider provided that:

(a) the Technical Services Provider is an organisation of appropriate legal and financial standing with appropriate resources and technical expertise to carry out (or procure the carrying out of) the Technical Services; and

(b) in advance of execution of any Provider Direct Agreement, the incoming Technical Services Provider provides evidence in a form acceptable to the Service Provider (acting reasonably) that it holds professional indemnity insurance against risks and with a level of cover acceptable to the Service Provider (acting reasonably).

23.9 Where the Service Provider (in its capacity as Highways Services Provider) has entered into a Provider Direct Agreement with an incoming Technical Services Provider and incurs any Losses due to failure by the incoming Technical Services Provider to comply with its design or other obligations it will be required to claim under the Provider Direct Agreement against the incoming Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.

Certification of Capital Works (Highways) in relation to any package of Capital Works (Highways);
and

(b) the second half of the Retention to the Service Provider within twenty (20) Business Days of a Certificate of Completion of Making Good Defects in relation to the relevant Capital Works (Highways)

24 Liability for Capital Works (Highways)

24.1 Subject to clause 41.1 and 41.2 of this Agreement and paragraph 24.2 the maximum aggregate liability of the Service Provider to the Council in contract, tort, negligence, breach of statutory duty or otherwise arising under or in connection with the relevant Capital Works (Highways) (including, but not limited to, in relation to Losses) shall, in relation only to Losses in respect of which the Service Provider is not required to maintain insurance in accordance with this Agreement, not exceed an amount equal to 100% of the value of the relevant Capital Works (Highways).

24.2 The limitations in paragraph 24 shall not apply to the Service Provider's liability in respect of its indemnity obligations set out in clause 41.11.1 to 41.11.5 (inclusive) (Indemnities and Liability) of this Agreement.

24.3 Where the Service Provider is also the Technical Services Provider, if the Service Provider (in its capacity as Highways Services Provider) incurs any Losses due to failure by the Service Provider in its capacity as Technical Services Provider to comply with its design or other obligations it will be required to claim against the Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.

24.4 If the Service Provider (in its capacity as Technical Services Provider) ceases to provide the Technical Services for any reason, the Service Provider (in its capacity as Highways Services Provider) shall enter into the Provider Direct Agreement with the incoming Technical Services Provider provided that

(a) the Technical Services Provider is an organisation of appropriate legal and financial standing with appropriate resources and technical expertise to carry out (or procure the carrying out of) the Technical Services; and

(b) in advance of execution of any Provider Direct Agreement, the incoming Technical Services Provider provides evidence in a form acceptable to the Service Provider (acting reasonably) that it holds professional indemnity insurance against risks and with a level of cover acceptable to the Service Provider (acting reasonably)

24.5 Where the Service Provider (in its capacity as Highways Services Provider) has entered into a Provider Direct Agreement with an incoming Technical Services Provider and incurs any Losses due to failure by the incoming Technical Services Provider to comply with its design or other obligations it will be required to claim under the Provider Direct Agreement against the incoming Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same

25 Certification of Capital Works (Highways)

25.1 Notification by the Service Provider to the Council

The Service Provider shall give at least five (5) Business Days' notice in writing to the Council Representative on each occasion that the Service Provider intends to inspect and certify (for the purposes of final assessment and issue of a Compliance Certificate) the relevant Capital Works (Highways) and/or Milestone (as appropriate) Such notice shall specify the location and time at which the inspection is to be carried out

25.2 Inspections

The Council shall notify the Service Provider that the Council Representative and/or any nominee of the Council may attend the Service Provider's inspection and carry out such assessments or inspections to satisfy himself or themselves that the Service Provider has carried out the inspection in accordance with the Method Statements and met the requirements of these Highways Services Special Conditions, including without limitation any requirements set out in the Highways Services Specification The Council shall use reasonable endeavours to procure that the person(s) attending any assessments or inspections shall not delay the inspection or adversely affect the Service Provider's ability to perform its obligations under these Highways Services Special Conditions

25.3 Written confirmation

The Service Provider shall, within two (2) Business Days of completion of the relevant inspection, confirm to the Council in writing, whether or not it believes that the relevant Capital Works (Highways) and/or Milestone as relevant are Compliant (subject to any Snagging Items) and, if applicable, submit to the Council a draft Snagging List

25.4 Non-Compliance

If the Council does not agree with the Service Provider's written confirmation and/or draft Snagging List issued pursuant to paragraph 25.4 then the Council shall, within five (5) Business Days of receipt, notify the Service Provider accordingly, giving details of the affected Highway Network Parts and/or Milestone and the grounds of non-compliance of the Capital Works (Highways) (which, to the extent considered appropriate by the Council, may include information relating to any inspections carried out by the Council or any nominee of the Council). Following any such notification, the Service Provider shall, as soon as possible, consider the details of the notification and confirm whether or not it agrees with the Council's notification.

25.5 Rectification

Where the Service Provider agrees with the Council's notification given pursuant to paragraph 25.4, the Service Provider shall, as soon as possible, take such steps as it considers necessary to ensure that the relevant Capital Works (Highways) are Compliant. The Service Provider shall notify the Council on completion of the relevant steps and the provisions of paragraphs 25.1 to 25.4 (inclusive) shall apply until the Council accepts the Service Provider's written confirmation or the matter is referred to the Dispute Resolution Procedure.

25.6 Disagreement with Council notice

Where the Council has served notice pursuant to paragraph 25.4 but the Service Provider does not agree with the Council's notification, the parties shall use their reasonable endeavours in good faith to reach agreement by discussion, but if no agreement is reached either party may refer the matter to the Dispute Resolution Procedure.

25.7 Delay to Completion

Where the Council has served notice pursuant to paragraph 25.4 and either the Service Provider agrees with the Council's notification or a Dispute is in progress, the relevant Highway Network Parts and/or Milestone shall not be treated as being Compliant for the purposes of this Agreement (and no Compliance Certificate shall be issued) until such date that it is agreed or determined that the relevant Highway Network Parts and/or Milestone(s) (as appropriate) are Compliant (subject to any Snagging Items).

25.8 Certificate of Compliance

Upon the agreement between the Council and the Service Provider that the relevant Highway Network Parts and/or Milestone(s) are Compliant, the Service Provider shall issue to the Council a Compliance Certificate together with a Snagging List.

25.9 Rectification of Snagging Items

Where a Snagging List has been issued pursuant to paragraph 25.8, the Service Provider shall rectify the Snagging Items within twenty (20) Business Days of the date of issue of the Snagging List.

25.10 Failure to Complete Snagging

Where the Service Provider fails to rectify the Snagging Items in accordance with the provisions of paragraph 25.9, then the Council shall be entitled to serve written notice on the Service Provider requiring such works to be carried out within twenty (20) Business Days of receipt of such notice,

failing which the Council shall be entitled to carry out necessary works to rectify the Snagging Items and the Service Provider shall pay the Council's costs and expenses reasonably and properly incurred in the carrying out of such works within twenty (20) Business Days of receipt of an invoice from the Council

25 11 No effect on Service Provider's Obligations

The issue of any Compliance Certificate in no way affects the obligations of the Service Provider under this Agreement, including without limitation in respect of any failure by the Service Provider to meet the requirements of the Highways Services Specification

26 Payment for Capital Works (Highways)

26 1 Payment

The Council shall pay the Service Provider for the carrying out of the Capital Works (Highways) either.

- (a) where the Capital Works (Highways) are commissioned in accordance with paragraph 21 5(c)(i) of these Highways Services Special Conditions via a Lump Sum Payment, or
- (b) where the Capital Works (Highways) are commissioned in accordance with paragraph 21 5(c)(ii) of these Highways Services Special Conditions through Milestone Payments,

in each case on receipt by the Council of a valid Compliance Certificate

26 2 Following the issue of any Compliance Certificate in accordance with paragraph 25 (If the Service Provider (in its capacity as Technical Services Provider) ceases to provide the Technical Services for any reason, the Service Provider (in its capacity as Highways Services Provider) shall enter into the Provider Direct Agreement with the incoming Technical Services Provider provided that

- (a) the Technical Services Provider is an organisation of appropriate legal and financial standing with appropriate resources and technical expertise to carry out (or procure the carrying out of) the Technical Services, and
- (b) in advance of execution of any Provider Direct Agreement, the incoming Technical Services Provider provides evidence in a form acceptable to the Service Provider (acting reasonably) that it holds professional indemnity insurance against risks and with a level of cover acceptable to the Service Provider (acting reasonably)

26 3 Where the Service Provider (in its capacity as Highways Services Provider) has entered into a Provider Direct Agreement with an incoming Technical Services Provider and incurs any Losses due to failure by the incoming Technical Services Provider to comply with its design or other obligations it will be required to claim under the Provider Direct Agreement against the incoming Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.

26 4 Certification of Capital Works (Highways)) the Service Provider shall provide the Council with:

- (a) an application for payment showing the amount the Service Provider considers to be payable, together with a summary of (where relevant) any amounts previously paid,

- (b) a copy of the relevant Compliance Certificate; and
- (c) any additional information the Council reasonably requires.

26.5 Notice of payment due to the Service Provider

26.6 Within ten (10) Business Days after receipt by the Council of the Service Provider's application for payment in accordance with paragraph 25 (If the Service Provider (in its capacity as Technical Services Provider) ceases to provide the Technical Services for any reason, the Service Provider (in its capacity as Highways Services Provider) shall enter into the Provider Direct Agreement with the incoming Technical Services Provider provided that:

- (a) the Technical Services Provider is an organisation of appropriate legal and financial standing with appropriate resources and technical expertise to carry out (or procure the carrying out of) the Technical Services; and
- (b) in advance of execution of any Provider Direct Agreement, the incoming Technical Services Provider provides evidence in a form acceptable to the Service Provider (acting reasonably) that it holds professional indemnity insurance against risks and with a level of cover acceptable to the Service Provider (acting reasonably).

26.7 Where the Service Provider (in its capacity as Highways Services Provider) has entered into a Provider Direct Agreement with an incoming Technical Services Provider and incurs any Losses due to failure by the incoming Technical Services Provider to comply with its design or other obligations it will be required to claim under the Provider Direct Agreement against the incoming Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.

Certification of Capital Works (Highways)) the Council will give notice to the Service Provider of the amount of the payment made or proposed to be made being the amount claimed by the Service Provider which is not disputed by the Council and shall pay that amount to the Service Provider by the final date for payment referred to in paragraph 26.2. Any failure to reach agreement shall be resolved in accordance with the Dispute Resolution Procedure.

26.8 Notice of withholding payment

At least five (5) Business Days before the final date for payment of any amount due to the Service Provider, the Council shall give notice to the Service Provider of any amounts claimed by the Service Provider that the Council in accordance with these Highways Services Special Conditions either objects to and is seeking to withhold or of any amount that the Council is owed by the Service Provider (including any amounts previously overpaid to the Service Provider) which the Council is seeking to withhold. Any notice shall set out the sum or sums proposed to be withheld, the ground or grounds for withholding payment and the amount attributable to each ground.

26.9 Date when payment due

The payment of the sums due to the Service Provider in accordance with paragraph 26.5 (Notice of payment due to the Service Provider) will be due ten (10) Business Days after the receipt by the Council of the Service Provider's application for payment in accordance with paragraph 26.2.

26.10 Final date for payment

The final date for payment of any sums referred to in paragraphs 26.9 (Date when payment due) and 26.11 (Final statement and Repayment) shall be ten (10) Business Days after the date the relevant payment became due

26.11 Final statement and Repayment

Not later than three (3) months after the issue of the Certificate of Completion of Making Good Defects in accordance with paragraph 23.5, the Service Provider shall provide to the Council a breakdown of:

- (a) all the payments made to the Service Provider in relation to the relevant package of Capital Works (Highways), and
- (b) any further payments due to the Service Provider in accordance with these Highways Services Special Conditions, together with a full explanation of any additional payments due, over and above previously agreed payments in respect of completed Milestones including the balance of any amount payable,

and paragraphs 26.5 (Notice of payment due to the Service Provider) to 26.10 (Final date for payment) shall apply in respect of any sum which the Service Provider claims is due pursuant to this paragraph 26.7

26.12 VAT

All sums payable by or to the Council or the Service Provider are exclusive of VAT. In the case of any VAT payable, the VAT shall be due 14 days after receipt by the receiving party of a valid VAT invoice

26.13 Interest on late payments

Save where otherwise specifically provided, where any payment or sum of money due from the Council to the Service Provider under any provision of these Highways Services Special Conditions (which for the avoidance of doubt shall not include any amounts referred to in any notice of withholding of payment in accordance with paragraph 26.8 (Notice of withholding payment)) is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate calculated on a daily basis and compounded quarterly from the due date (whether before or after any judgment) until actual payment

27 Road Closures

27.1 Road Closure Schedule

The Council will notify the Service Provider with details of any Road Closure Schedule for the first Agreement Year prior to the Service Commencement Date. The Service Provider shall submit to the Council Representative in accordance with the Review Procedure a proposed Road Closure Schedule in respect of the Highway Network including details of the proposed start and end dates for each period of Road Section Closure and the works to be carried out not later than 1st January in each Agreement Year after the first Agreement Year, for the next succeeding Agreement Year.

27.2 Revision of Road Closure Schedule

Not later than thirty (30) Business Days prior to the commencement of any Quarter, the Service Provider may submit to the Council Representative, in accordance with the Review Procedure, a revision of the current Road Closure Schedule showing proposed revisions to the periods of Road Section Closure in respect of such Quarter. If there is no objection to any such revision pursuant to the Review Procedure, then it shall replace the Road Closure Schedule in respect of such Quarter.

27.3 Restrictions on Road Section Closures

The Service Provider shall effect all Road Section Closures:

- (a) in accordance with a Road Closure Schedule;
- (b) in accordance with paragraph 28.2;
- (c) in an emergency, in accordance with paragraph 28.5;
- (d) first obtaining any order necessary under any Law;

and the Council shall provide all reasonable assistance that may be requested by the Service Provider in connection with obtaining any such order. The Service Provider shall not be treated as "effecting" a Road Section Closure where the Service Provider licences or authorises any obstruction of the highway (other than by any Service Provider Related Party) (including street works) in the proper performance of its obligations under paragraph 29 (Contracting Out of Functions) and paragraph 30 (Exercise of Statutory Powers by Council).

27.4 Council Rescheduling of Road Section Closures

The Council Representative may, upon sixty (60) Business Days prior written notice, require the Service Provider to re-schedule a period of Road Section Closure set out in a Road Closure Schedule, provided that the Council Representative may not require:

- (a) that such period of Road Section Closure be brought forward by more than sixty (60) days from the scheduled date of commencement of such period of Road Section Closure; or
- (b) that a period of Road Section Closure be deferred by more than sixty (60) days from the scheduled date of commencement of such period of Road Section Closure.

27.5 Emergency Road Section Closures

If as a result of an emergency the need arises for Emergency Reactive Maintenance requiring Road Section Closures otherwise than in accordance with a Road Closure Schedule or as permitted under paragraph 28.2, the Service Provider may effect such Road Section Closure, provided that the Service Provider shall, as soon as reasonably practicable, advise the Council Representative of and the reasons for such closure and shall take all reasonable steps to minimise the duration of such Road Section Closure.

27.6 Duty of Good Faith

The Service Provider shall at all times be under a duty of good faith to ensure that the Service Provider plans, records and reports Road Section Closures and provides the Council with a true and fair view of the extent, location and duration of all Road Section Closures and at the end of each

month shall provide a report to the Council detailing the timings and extent of actual Road Section Closures for the previous month as part of the Monthly Report

27 7 Provision of Information in relation to Traffic Regulation Orders

Whether or not paragraph 30 (Exercise of Statutory Powers by Council) applies, the Service Provider (at its cost) shall be responsible for, and shall provide to the Council, all data gathering, document preparation, administrative and other support and liaison (including preparation of plans, publication of notices, administrative steps required to serve notices and serving notices) in such manner and at such times as to enable the Council to make any traffic regulation order in connection with the carrying out of the Highways Services

27 8 Issue of Traffic Regulations Orders

Subject to paragraph 30 (Exercise of Statutory Powers by Council) at the request of the Council and on such terms and conditions as the Council may require consistent with the proper exercise of its statutory duties, the Service Provider shall be responsible on behalf of the Council, for the advertising, making and implementation of all traffic regulation orders/notices required in order for the Service Provider to carry out the Highways Services.

27 9 Information on Road Closures

The Service Provider shall provide to the Council such information (including without limitation details of proposed Road Section Closures and information about its traffic safety and management measures on the Highway Network) as may be required for purposes of any information service operated by or on behalf of the Council from time to time. Such information shall contain such details, be in such format and be sent to such address at such times as may be notified to the Service Provider by the Council from time to time.

Part 8 – Condition of the Highway Network

28 Service Provider Due Diligence

28.1 Without any limitation to any other provision of this Agreement the Service Provider, to the extent reasonably required, shall be deemed to have:

- (a) satisfied itself as to the nature and extent of the risks assumed by it under this Agreement;
- (b) gathered all information necessary to perform its obligations under this Agreement and any other obligations assumed;
- (c) inspected and examined to its reasonable satisfaction the Highway Network and their surroundings and, where applicable, any existing structures or works on, over or under the Highway Network;
- (d) satisfied itself as to:
 - (i) the means of communication with and access to and through the Highway Network, the accommodation it may require and the adequacy of the rights of access set out in paragraph 13.1 (Licence) for those purposes;
 - (ii) the possibility of interference by persons (other than the Council and other than persons claiming rights or title through, under or paramount to the Council) with access to or use of the Highway Network or benefiting from rights in respect of land;
 - (iii) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - (iv) the risks of interference by Protestors or Trespassers or any other persons trespassing on the Highway Network;
- (e) examined, checked and satisfied itself as to the adequacy, correctness and suitability of all Design Data made available to the Service Provider by the Council prior to the Agreement Date and which the Service Provider has adopted or made use of in the Method Statements or which the Service Provider intends to adopt or make use of; and
- (f) generally obtained for itself all necessary information as to:
 - (i) the risks, contingencies and all other circumstances which may influence or affect the requirements in relation to the Highways Services and its decision to contract to carry out the Highways Services; and
 - (ii) any other factors which would affect its decision to enter into this Agreement or the terms on which it would do so.

Part 9 – Contracting out and carrying out of Functions/Statutory Powers

29 Contracting Out of Functions

29.1 Contracting Out of Functions

Subject to the provisions of this paragraph 29, the Service Provider is hereby authorised by the Council as Local Highway Authority, Highway Authority, Street Authority, Bridge Authority, Responsible Authority, Transport Authority and Traffic Authority (each as defined in the Highways Act and/or NRSWA) from the Service Commencement Date until the Expiry Date or, if earlier, the Termination Date to exercise, for the purposes of the provision of the Highways Services on the Highway Network each of the functions of the Council listed in Annex 2 of these Highways Services Special Conditions. The Service Provider and the Council shall take such actions as are necessary for the efficient transfer of any such function to the Service Provider.

29.2 Terms of Authorisation

The authorisation made under this paragraph 29 in respect of each and every Authorised Function is made on the following terms

- (a) it shall be non-assignable; and
- (b) the Service Provider shall not delegate any Authorised Function but, for the avoidance of doubt, shall be entitled to require sub-contractors to provide services in relation any Authorised Function,

and the Service Provider shall exercise properly and fully each of the Authorised Functions in respect of the provision of the Highways Services on the Highway Network for as long as the authorisation made under this paragraph 29 is effective

29.3 Revocation of Authorised Functions

The Council may, in its absolute discretion, revoke the authorisation in respect of any or all of the Authorised Functions and any such decision of the Council shall not be subject to review under the Dispute Resolution Procedure. Such revocation shall be a Council Change and the provisions of the Change Control Procedure shall apply. The Service Provider shall cease to exercise the relevant Authorised Function from the date of revocation which shall be the date agreed or determined pursuant to the Change Control Procedure. If an authorisation is revoked by the Council other than in accordance with this paragraph 29.3, then for the purposes of Section 73 of the Deregulation and Contracting Out Act 1994 "relevant contract" shall mean this paragraph 29.3 and no other provision of these Highways Services Special Conditions

29.4 Expiry of Authorisation

In the event that the 1999 Order and/or the 2009 Order or any replacement order made under Section 77 of the Deregulation and Contracting Out Act 1994 shall cease for whatever reason to be effective in relation to any or all of the Authorised Functions, such cessation shall be an Council Change and the provisions of the Change Control Procedure shall apply

29.5 Exercise of Authorised Functions

In exercising the Authorised Functions the Service Provider shall act in accordance with the principles of any Law which governs the conduct of the Council and, without prejudice to the generality of the foregoing, shall:

- (a) comply with all relevant Law, Guidance, Highways Standards and any other administrative and procedural requirements;
- (b) not take any decisions or actions which may be considered perverse or unreasonable and liable to be quashed;
- (c) obey the rules of natural justice; and
- (d) take such reasonable actions as are necessary to minimise the risk of Judicial Review

and if the Service Provider fails to exercise any Authorised Function in the manner set out in this paragraph 29 then the Council may withdraw or suspend the authorisation in respect of any such Authorised Function.

29.6 Reporting of Authorised Functions

For so long as any authorisation under this paragraph 29 is effective the Service Provider shall include in the Monthly Report details of all actions taken by the Service Provider pursuant to the Authorised Functions in respect of the relevant month; including without limitation details of:

- (a) all notices given and received;
- (b) all directions and consents given to Statutory Undertakers;
- (c) all agreements, commitments or compromises reached with Statutory Undertakers; and
- (d) any arbitration proceedings commenced or proposed.

and without prejudice to the generality of paragraph 29.6(a) - 29.6(d) (inclusive) the Service Provider shall provide to the Council Representative with the Monthly Report, all copies of all consents and directions given by the Service Provider and all notices given and received by the Service Provider pursuant to the Highways Act or NRSWA.

29.7 Action on ceasing of authorisation

In the event of:

- (a) the revocation of an authorisation under paragraph 29.3; or
- (b) the suspension or withdrawal of authorisation under paragraph 29.6; or
- (c) on the expiry of an authorisation under paragraph 29.4;

the Service Provider shall take such actions as are necessary for the efficient transfer of any such function to such persons as the Council may designate.

29 8 Further Orders

In the event that any further order under Section 73 of the Deregulation and Contracting Out Act 1994 provides for the exercise of further functions of a Local Highway Authority, Street Authority, Traffic Authority or Bridge Authority additional to those listed in Annex 2 of these Highways Services Special Conditions (Authorised Highway Functions and Services) then

- (a) the Council may give written notice authorising the Service Provider to exercise any, or all, such further functions for the remainder of the Services Period (but not prior to the Service Commencement Date) for the purposes of the provision of the Highways Services on the Highway Network, and
- (b) the Service Provider and the Council shall take such actions as are necessary for the efficient transfer of any such further functions to the Service Provider,

and the provisions of this paragraph 29 shall apply as if such further functions were Authorised Functions listed in Annex 2 of these Highways Services Special Conditions (Authorised Highway Functions and Services)

29 9 Primary Duty of Co-Ordination

The Service Provider shall

- (a) use its best endeavours to co-ordinate the execution of works of all kinds affecting the Highway Network (whether carried out by a Service Provider or Service Provider Related Party or by third parties)
 - (i) in the interests of safety;
 - (ii) so as to minimise the inconvenience to persons using the Highway Network having regard in particular to the needs of people with disabilities, and
 - (iii) so as to protect the structure of the Highway Network and the integrity of Apparatus, and in accordance with all relevant Law, Guidance and Highways Standards, and in accordance with paragraph 22 10,
- (b) comply with such directions as to the co-ordination of works of all kinds including the co-ordination of works on streets other than the Highway Network, as the Council may give from time to time consistent with Good Industry Practice;
- (c) take steps to ensure that Statutory Undertakers only open the highway relying upon Section 55 of NRSWA where there genuinely is a requirement to carry out emergency works (as defined in NRSWA),
- (d) at all times, on request, demonstrate to the Council that it has carried out all appropriate monitoring, actions and measures required to ensure compliance with this paragraph 29 9.

29.10 Obligations under NRSWA

In performing the Highways Services, the Service Provider shall

- (a) operate the GMRAPS within Trafford and carry out any other obligations under the NRSWA regarding the occupancy of the highway required by the statutory undertakers to carry out works;
- (b) comply with NRSWA and fulfil all obligations of the Council under NRSWA;
- (c) comply with the Regulations and Highways Standards;
- (d) comply with any requirements of Statutory Undertakers notified to the Service Provider pursuant to NRSWA;
- (e) shall at all times take all steps necessary to ensure that the Council is able to comply with its duties under NRSWA, the Regulations and the Codes of Practice; and
- (f) assist the Council in carrying out any tasks it needs to undertake pursuant to paragraph 29.10(e).

29.11 Carrying out of Works

The Service Provider shall notify the Council of all proposed Major Highway Works, Diversionary Works and Works for Road Purposes necessary in connection with the Highways Services and shall:

- (a) direct, notify, contract, commit or compromise with Statutory Undertakers in respect of such works; and
- (b) carry out any such works in accordance with NRSWA, the Regulations, Highways Standards and the provisions of this paragraph 29.

29.12 Costs of Works

The Service Provider shall be responsible for all costs of, and shall make all payments due to, Statutory Undertakers in connection with any Diversionary Works provided that:

- (a) subject to paragraph 29.12(b) and paragraph 29.17, the Council shall pay to the Service Provider within twenty (20) Business Days of receipt by the Council, any monies actually received by it from any Statutory Undertaker in respect of the Highway Network pursuant to any provision of NRSWA, the Regulations or the Codes of Practice, other than fees relating to Sample Inspections;
- (b) if a contribution is made to the Council pursuant to Section 78 of NRSWA then payment shall only be made to the Service Provider if the contribution relates to costs actually incurred, or likely to be incurred, by the Service Provider during the Agreement Period and the Service Provider shall pay to the Council any contribution received if the contribution relates to costs incurred or likely to be incurred outside the Agreement Period;
- (c) at the request of the Service Provider, the Council shall use reasonable endeavours to recover and pay to the Service Provider (other than charges pursuant to Section 74A) of NRSWA all sums due to the Council as Street Council in respect of the Highway Network pursuant to NRSWA, the Regulations or Codes of Practice and the Service Provider shall reimburse to the Council all costs (including administrative costs, general staff costs and overheads) incurred by the Council in pursuing payment of such sums.

29 13 Street Works Register

The Service Provider shall.

- (a) maintain, keep and manage the Street Works Register providing information as more particularly prescribed pursuant to Sections 53 and 54 of NRSWA and such other information of which it becomes aware as is eligible for registration,
- (b) make any payment or payments to such party as may be required pursuant to Section 53(5) of NRSWA;
- (c) maintain at all times a terminal linked to the Street Works Register for the purposes of giving and receiving notices and information affecting the Highway Network and the surrounding road network

29 14 Payment by Statutory Undertakers

The Service Provider shall be entitled, on behalf of the Council, to request that Statutory Undertakers pay any charges due under Section 74A of NRSWA and any regulations made pursuant to it. At the request of the Service Provider, the Council shall use reasonable endeavours to recover all charges properly requested and pay all net receipts to the Service Provider and

- (a) all receipts net of costs received by the Service Provider pursuant to Section 74 of NRSWA and any regulations made pursuant to it shall be used only for delivering the Highways Services,
- (b) the Service Provider shall provide the Council, on request, all records and accounts of any receipts and the expenditure of those receipts necessary to demonstrate compliance with paragraph 29 14(a),
- (c) the Service Provider shall indemnify the Council for all costs (including administrative costs, general staff costs and overheads) incurred by the Council in pursuing payment of such charges.

29 15 Street Works Licence

Subject to the provisions of Section 50 and Schedule 3 of NRSWA, the Council shall as soon as is reasonably practicable after receiving a request from the Service Provider, grant a Street Works Licence to the Service Provider and the relevant sub-contractors in respect of any specified part of the Highway Network on the terms that the Street Works Licence shall

- (a) be non-assignable,
- (b) not continue beyond the shorter of the Service Period and the period during which the Council is Street Authority in respect of the Highway Network; and
- (c) only be exercisable after consultation with any affected Relevant Authority or any person owning Apparatus.

29.16 Possible Offences of Statutory Undertakers

The Service Provider shall notify the Council of any possible offence committed, or likely to be committed, by a Statutory Undertaker under NRSWA of which the Service Provider is aware and shall provide such information relating to such offence as may be required by the Council.

29.17 Works under Section 82(2) of NRSWA

If works are necessary as a consequence of an event described in Section 82(2) of NRSWA then such works shall be a Change requested by the Council and the provisions of the Change Control Procedure shall apply. Any sums received by the Council from any Statutory Undertaker in connection with such event shall not be subject to paragraph 29.12.

30 Exercise of Statutory Powers by Council

30.1 Exercise of Statutory Powers

Whenever the exercise by the Council of any statutory power is essential to enable the Service Provider to perform any obligation under this Agreement, the following provisions of this paragraph 30 shall apply.

30.2 Request by Service Provider

- (a) If the Service Provider believes that the exercise by the Council of any statutory power is essential to enable the Service Provider to perform any obligation under this Agreement, the Service Provider shall give written notice to that effect to the Council and such notice shall:
 - (i) clearly specify the action requested of the Council, the duty of the Service Provider under these Highways Services Special Conditions in respect of which such action is requested and the reasons why such action by the Council is required;
 - (ii) indicate the time by which the requested action is required; and
 - (iii) set out any recommendation by the Service Provider in respect of the requested action.
- (b) No later than fifteen (15) Business Days after receipt of the notice referred to in paragraph 30.2(a), the Council shall acknowledge receipt of such notice and shall give its estimate of the date on which it will respond on the merits of the request, which date shall be as soon as reasonably practicable in the circumstances, taking into consideration, among other things, any requirement for consultation with the public or other Interested parties in connection with such request. No such estimate shall be binding on the Council.
- (c) The Council shall consider on its merits in accordance with its statutory duties any request for action contained in the notice referred to in paragraph 30.2(a). Without limiting the discretion of the Council in responding to any such request, the Council shall, in reaching any such decision, give consideration, among other things, to the matters set out in paragraph 30.3. The decision of the Council on the merits of the request shall not be subject to review under the Dispute Resolution Procedure.

30.3 Matters to be considered by Council

The considerations referred to in paragraph 30.2(c) are the following

- (a) whether the Council has the statutory power to take the action requested by the Service Provider pursuant to paragraph 30.2(a),
- (b) whether there is any alternative course available to the Service Provider (and the cost of such alternative course) which would not require action by the Council,
- (c) the effect the requested action would have on the interests of any third parties,
- (d) whether the timing and substance of the request is such as to enable the Council to consider the merits of the request in accordance with the principles of procedural fairness (taking into account where appropriate the necessity or desirability of consultation with other Interested parties), and
- (e) whether the action requested would have any implications for safety, either of any third parties or members of the public

30.4 Unreasonableness of Council

Subject to paragraph 30.5, if

- (a) in the exercise of its discretion, the Council refuses to take the action requested, or
- (b) the Council unreasonably delays in taking the action requested (unreasonableness being assessed in the context of the processes which the Council must properly go through in order to arrive at its decision, including any mandatory or proper discretionary consultation periods and the like, and the burden of proof shall be upon the Service Provider to prove in any dispute under the Dispute Resolution Procedure that delay has been unreasonable for this purpose),

then such refusal or delay shall constitute an Excusing Cause and the provisions of paragraph 39 (Excusing Cause) of this Agreement shall apply

30.5 Duty to Mitigate

The Service Provider shall not be relieved of its liability pursuant to paragraph 30.4 to the extent such liability could have been avoided by the Service Provider taking all steps necessary to mitigate the effects of the refusal or delay of the Council to take the requested action but was not so avoided because the Service Provider failed to take such steps

30.6 Secretary of State/Court consent

If the Council, in the exercise of its discretion, decides that it wishes to seek to exercise such statutory power requested by the Service Provider pursuant to paragraph 30.2(a) and the consent, confirmation or order of the Secretary of State or any order of the Court is required for the exercise by the Council of such statutory power

- (a) then the Council shall, as soon as reasonably practicable in the circumstances, apply for such consent, confirmation or order,

- (b) the decision of the Secretary of State or the Court shall not be subject to review under the Dispute Resolution Procedure and the Council shall not be obliged to exercise any right of appeal of such decision;
- (c) if the Secretary of State or the Court refuse to give or make any consent, confirmation or order then:
 - (i) if the refusal renders impossible (and not merely more expensive) the Service Provider's performance of these Highways Services Special Conditions (as a whole) or has a fundamental effect on the rights and obligations of the Service Provider under these Highways Services Special Conditions, then the Council shall issue a Change to address such impossibility or fundamental effect; and
 - (ii) in all other cases the provision of paragraphs 30.4 and 30.5 shall apply.

31 Operations affecting Statutory Undertakers

31.1 Council Consent

Other than pursuant to an Authorised Function, the Service Provider shall not contract with, enter into binding commitments with, compromise with, give a notice of intention to proceed to, impose obligations upon, issue Street Works Licences to or seek to recover costs from any Statutory Undertaker or carry out works affecting any Statutory Undertaker, without the prior written consent of the Council. Such consent of the Council may be given either in terms relating to a particular contract, commitment, compromise or works or upon terms relating to particular classes of contracts, commitments, compromises or works.

31.2 Council obligations

The Council shall:

- (a) from time to time, at the request of the Service Provider, notify Statutory Undertakers that, subject to the terms and conditions set out in paragraph 29 (Contracting Out of Functions), the Service Provider shall be performing the services referred to in paragraph 29 (Contracting Out of Functions); and
- (b) promptly notify the Service Provider of any Statutory Undertaker's requirements or notices or any notices from Street Authorities for streets other than the Highway Network (but which affect the Highway Network) which it receives pursuant to NRSWA or the Regulations.

Part 10 – Service Standards and Payment

32 Service Obligation

32.1 Standard of Service

The Service Provider shall provide the Highways Services continuously throughout the Services Period:

- (a) in accordance with the Agreement Standard,
- (b) in accordance with the Annual Programmes,
- (c) in accordance with all Highways Standards;
- (d) in accordance with the other provisions of these Highways Services Special Conditions;
- (e) in order to, subject to paragraph 8 (Traffic Management) and paragraph 9 (Special Event Closures), keep the Highway Network open for public use;
- (f) without prejudice to paragraph 29.9 (Primary Duty of Co-Ordination), so as not to interfere unnecessarily with the convenience of:
 - (i) the public or the access to, use and occupation of public or private roads or footpaths, footways or bridleways, whether under the control or in the possession of the Council or any other person,
 - (ii) the users of any Council areas of the Highway Network not being used for highway or access purposes, or
 - (iii) the owners or occupiers of land or persons benefiting from Land Rights in respect of land adjacent to the Highway Network, and
- (g) in a manner which shall:
 - (i) secure the safety of users of the Highway Network, workers or other persons on the Highway Network or on land adjacent to the Highway Network or using adjoining roads or facilities;
 - (ii) enable the Council to fulfil its statutory duties and functions in relation to the Highway Network and not place the Council in breach of any Law relating to the Highway Network, and
 - (iii) not impair the ability of others with statutory duties or functions in relation to the Highway Network to perform those duties and functions

32.2 Objectives of the Service

In performing the Highways Services the Service Provider shall use reasonable endeavours to ensure that:

- (a) delay to users of the Highway Network and of adjoining roads or facilities are minimised,

- (b) optimise the availability of the Highway Network for public use;
- (c) the risk of adverse effects on the environment and on the amenity enjoyed by the owners and occupiers of land adjacent to the Highway Network and to adjoining roads and facilities is minimised;
- (d) accidents and emergencies are responded to as quickly as possible and their adverse effects minimised;
- (e) risk of damage or disturbance to or destruction of third party property is minimised;
- (f) members of the public are treated with due courtesy and consideration;
- (g) users are given adequate information and forewarning of any events on or any matters affecting the Highway Network as will enable them to minimise any adverse consequences on them of those events or matters;
- (h) data relating to the maintenance of the Highway Network and events on the Highway Network are collected and disseminated such that the Council and other persons or bodies with statutory duties or functions in relation to the Highway Network or adjoining roads are better able to perform those duties and functions;
- (i) the Highway Network is operated and maintained to no less a standard than is appropriate for a highway of the character of the Highway Network and for use by the traffic which is reasonably to be expected to use the Highway Network;
- (j) so far as it is consistent with the requirements of safety and information for users that there is a minimum of signage and size of signage associated with highways;
- (k) at all times the environmental and aesthetic quality (including the standard of design and materials used) of the Highway Network shall be maintained and, where possible, enhanced;
- (l) that the level of night time working is kept at a minimum consistent with local environmental and amenity sensitivities.

32.3 Design Standards

The Service Provider shall ensure that:

- (a) any works will comprise only materials and goods which will be of sound and merchantable quality and have been manufactured or prepared in accordance with the Highways Services Specification and with the quality assurance procedures established pursuant to paragraph 37 (Quality Management and Safety) and all workmanship shall be in accordance with sound construction practice applicable at the time of construction; and
- (b) subject to the terms of the Review Procedure, the design of any Highway Network Part (including any works affecting a Structure) shall be carried out by and/or supervised by persons who are suitably qualified and experienced so to do and in particular have adequate previous experience of the part of the design they are carrying out or supervising.

32.4 **Maintenance**

The Service Provider shall ensure, on a continuing basis, that at all times its maintenance and operating procedures are sufficient to ensure that

- (a) the Highways Services are continuously compliant with the Highways Services Specification and these Highways Services Special Conditions,
- (b) the design intention of all Highway Network Parts to achieve their full working life is maintained, and
- (c) the relevant Highway Network Parts shall comply with the relevant Required Standard (as defined in paragraph 40.4(a)) on the Expiry Date

33 **Sub-Contractors in the Construction Industry Scheme**

33.1 The following provisions shall apply in respect of the Sub-Contractor Legislation (as hereafter defined)

- (a) in this paragraph 33 (but not otherwise)
 - (i) **Sub-Contractor Legislation** means Chapter 3 of Part 3 Finance Act 2004, the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 or any other statute or subordinate legislation relating to the Scheme as from time to time modified or replaced either before or after the Agreement Date,
 - (ii) **Principal** means a person who is a contractor for the purposes of the Sub-Contractor Legislation,
 - (iii) **Statutory Deduction** means the deduction referred to in section 61 of the Finance Act 2004 or such other deduction as may be required by Sub-Contractor Legislation,
- (b) the Parties acknowledge that the Council is a Principal, and the Service Provider is a sub-contractor and this Agreement is a contract relating to construction operations for the purposes of the Sub-Contractor Legislation and that therefore the Sub-Contractor Legislation shall apply to all payments to be made by the Council to the Service Provider hereunder,
- (c) not later than fifteen (15) Business Days before the first payment under this Agreement is due to be made to the Service Provider or after this paragraph 33 applies for the first time and on each occasion when this paragraph 33 applies following a period when it has not so applied, the Service Provider shall, to the extent appropriate under the Sub-Contractor Legislation, provide the Council with all information and assistance which may be required by the Council in order to verify the Service Provider's entitlement to be paid without the Statutory Deduction under the Sub-Contractor Legislation, or the rate of Statutory Deduction which is applicable to such payment, including (but not limited to) its unique taxpayer reference,
- (d) the Council shall as a Principal

- (i) provide to the Service Provider in writing any information required under Section 4(8) of the Income Tax (Construction Industry Scheme) Regulations 2005 or such other information as may be required by the Sub-Contractor Legislation at the relevant time;
 - (ii) submit monthly returns to HM Revenue and Customs in accordance with the Sub-Contractor Legislation,
- as appropriate under the Sub-Contractor Legislation in force at the relevant time;
- (e) where any error or omission has occurred in calculating or making the Statutory Deduction then:
 - (i) in the case of over-deduction, the Council shall correct that error by repayment of the sum over-deducted to the Service Provider (save where the Council has accounted for that deduction to H M Revenue and Customs, in which case such repayment shall be made following and to the extent of a receipt by the Council of a corresponding repayment from H M Revenue Customs which the Council shall use reasonable endeavours to procure as soon as reasonably possible); and
 - (ii) in the case of an under-deduction, the Service Provider shall correct that error or omission by repayment of the sum under-deducted to the 4Authority forthwith on written demand;
 - (f) if compliance with this paragraph 33 causes the Authority or the Service Provider to breach any other term of this Agreement, then the provisions of this paragraph shall prevail, and in particular (without limitation) any provision in this Agreement which:
 - (i) require the payment of interest by the Council to the Service Provider (to the extent that they require such payment of interest); or
 - (ii) give the Service Provider the right to terminate this Agreement due to amounts of money due from the Council to the Service Provider being unpaid,

shall not apply to any amount properly withheld or not paid by the Council in accordance with the provisions of paragraph 33.1(e) or to an error or omission by the Council in calculating or making the Statutory Deduction where that error or omission has been rectified under paragraph 33.1(d).

34 Not Used

35 Third Party Undertakings and Agreements

35.1 Council subcontracts Third Party Undertakings to Service Provider

From the Service Commencement Date, the Council sub-contracts to the Service Provider the obligation to observe and perform all obligations of the Council under the Third Party Undertakings (other than the Retained Obligations) and shall indemnify and (subject to clause 41 (Indemnities and Liability)) of this Agreement hold the Council harmless from and against:

- (a) all liabilities arising out of, or in relation to, the Delegated Obligations or the performance, defective performance or failure to perform the Delegated Obligations to the extent due for performance after the Service Commencement Date; and
- (b) the Council's internal costs of satisfying the Delegated Obligations in place of the Service Provider (where, following such failure or defective performance and in its absolute discretion it elects to do so) and a fair apportionment of the cost of any employees or other resources committed to so doing as a result of the defective performance of the Service Provider or the failure of the Service Provider to observe or perform the Delegated Obligations, and
- (c) any Losses incurred by the Council as a result of the inability of the Council to observe or perform the Retained Obligations or to exercise the Retained Rights, or any increase in the costs or expenses incurred in observing or performing the Retained Obligations, to the extent arising from the failure of the Service Provider to observe and perform the Delegated Obligations in accordance with their terms

35 2 Assignment of benefit of Delegated Rights to the Service Provider

The Council hereby assigns to the Service Provider the benefit of the Delegated Rights, and the Service Provider shall, if requested by the Council, perform the Delegated Rights, and shall observe the proper exercise of the same and indemnify and, subject to Clause 41 (Indemnities and Liability) of this Agreement hold the Council harmless from and against

- (a) all liabilities arising out of or in relation to improper exercise or a failure to exercise the Delegated Rights; and
- (b) any Losses incurred by the Council as a result of
 - (i) the exercise by the Service Provider of the Delegated Rights, and
 - (ii) the inability of the Council to observe or perform the Retained Obligations or to exercise the Retained Rights, or any increase in the costs or expenses incurred in observing or performing the Retained Obligations, to the extent arising from the failure of the Service Provider to exercise the Delegated Obligations in accordance with their terms and having due regard to the respective rights and obligations of the parties under these Highways Services Special Conditions

35 3 Retained Obligations and Retained Rights

The Council shall observe and perform the Retained Obligations and shall properly exercise the Retained Rights and nothing in these Highways Services Special Conditions shall have the effect of removing or otherwise prejudicing the exercise of the Retained Rights

35.4 Informing other parties

The Council shall, within fifteen (15) Business Days of the Service Commencement Date, inform each of the other parties to the Third Party Undertakings in writing that the Service Provider is the assignee of the Delegated Rights and shall perform the Delegated Obligations on behalf of the Council.

35.5 Consistency of exercise of rights and obligations

Each party shall exercise all of its rights and obligations under these Highways Services Special Conditions, whether related to the Delegated Obligations, the Delegated Rights, the Retained Obligations, the Retained Rights or otherwise, in a manner consistent with the observance and performance of the Delegated Obligations and the Retained Obligations (as appropriate) and so as to avoid putting the other party in breach of either of the same.

35.6 Termination, release, variation etc of Third Party Undertakings

Subject to paragraph 35.8 neither party shall, without the other party's prior written approval (such approval not to be unreasonably withheld or delayed):

- (a) agree to terminate, give notice to terminate or otherwise take action to terminate, repudiate or discharge or secure the termination of any of the Third Party Undertakings or treat the same as having been terminated, repudiated or otherwise discharged;
- (b) release, waive, settle, compromise or otherwise prejudice or vary any rights or claims which the other party may have under any of the Third Party Undertakings; or
- (c) vary or agree or purport to vary the terms of any of the Third Party Undertakings.

35.7 New Third Party Agreements

The Service Provider shall not, without the prior written consent of the Council, enter into with any Third Party any commitment to provide or procure for the benefit of land or buildings or for such Third Party, the provision or procurement of any works relating to the Highway Network.

35.8 Novation Agreements

At the request of the Council, the Service Provider shall promptly and in any event within five (5) Business Days enter into an agreement to novate to the Service Provider:

- (a) any of the Transferable Agreements; and
- (b) such other Third Party Undertakings as the Council may reasonably require by notice in writing to the Service Provider having obtained any required Third Party consents to such novation any necessary Third Party executory actions,

but excluding from any novation any Retained Rights and any Retained Obligations.

35.9 Enforcement of Council's rights

The Council shall:

- (a) subject to paragraph 35.9(c), at the request of the Service Provider, take such steps as the Service Provider may reasonably request to enforce the Council's rights and powers under the Third Party Undertakings (other than rights and powers which have been novated to the Service Provider in accordance with paragraph 35 8) to the extent reasonably required by the Service Provider to perform its obligations under these Highways Services Special Conditions,
- (b) subject to paragraph 35 7 permit the Service Provider to engage in such negotiations and conduct such disputes with any other party to the Third Party Undertakings as are reasonably required by the Service Provider to perform its obligations under these Highways Services Special Conditions (other than in relation to Transferable Agreements which have been novated to the Service Provider under paragraph 35 7) including by conducting such court, arbitration or other proceedings as the Service Provider may reasonably consider necessary for such purpose, and
- (c) be indemnified and secured to its reasonable satisfaction by the Service Provider against all liabilities incurred by virtue of, or in relation to, such matters as are referred to in paragraphs 35 9(a) and 35 9(a), and be kept informed by the Service Provider of the progress of any such enforcement action, negotiations, disputes or proceedings as are referred to in paragraph 35 9(a)

35 10 Each Third Party Undertaking notified to the Service Provider by the Council after the Agreement Date shall be deemed to be a Change requested by the Council and the terms of the Change Control Procedure shall apply

36 Highways Works Authority

Notice by Council

36 1 The Council may, acting in its capacity as a Highway Works Authority, propose to undertake or procure the undertaking of any works and/or management not specifically dealt with by any other express provision of this Agreement relating to the Highways Services within or about the Highway Network and the Council does not (in its discretion) require those Highway Network Parts to be removed from the Highways Services the Council shall

- (a) where such works are
 - (i) Small HWA Works, issue a notice to the Service Provider at least five (5) Business Days (or such other period as the Council may, acting reasonably, consider appropriate); or
 - (ii) Major Highway Works, issue a notice to the Service Provider at least twenty (20) Business Days (or such other period as the Council may, acting reasonably, consider appropriate),

prior to the Council Work Start Date,

(b) the notice referred to in paragraph 36 1(a) shall specify.

- (i) the affected part of the Highway Network,

- (ii) the date upon which the works are due to commence (the **Council Work Start Date**); and
- (iii) a reasonable estimate of the completion date of such works (the **Council Work End Date**) provided that the same may be altered by the Council (acting reasonably) giving further written notice of to the Service Provider as soon as reasonably practicable.

Response to HWA Works Notice

36.2 In response to any notice served pursuant to paragraph 36.1(a), the Service Provider shall where such notice is in respect of:

- (a) Small HWA Works, respond to the Council at least three (3) Business Days; or
- (b) Major HWA Works, respond to the Council at least ten (10) Business Days;

prior to the Council Work Start Date with a written response (the **HWA Works Response**) setting out any matters which, in the reasonable opinion of the Service Provider, the Council should have regard in order to minimise disruption to the Highways Services, provided that the Council shall not be bound to have regard to such matters.

Standards of HWA Works

36.3 Where the Council undertakes or procures any works and/or management in its capacity as Highway Works Authority it shall comply with the following standards when undertaking such works and/or management:

- (a) to the extent that an applicable standard is contained in the Design Manual for Roads and Bridges, such standard; and/or
- (b) to the extent that the works to be undertaken by the Council are not of a type to which the standards described in paragraph 36.3(a) apply, Good Industry Practice.

Interference of HWA Works

36.4 Works and/or management carried out or procured by the Council as referred to in paragraph 36.1 shall, to the extent that the Service Provider is unable to provide any part of the Highways Services, constitute an Excusing Cause and to the provisions of clause 39 (Excusing Causes) of this Agreement shall apply.

37 Quality Management and Safety

37.1 Quality Management Systems and the Service Quality Plan

The Service Provider shall ensure that:

- (a) the provision of the Highways Services is the subject of quality management systems;
- (b) the quality management systems referred to in paragraph 37.1(a) shall be reflected in appropriate quality plans, the standard of which shall be consistent with ISO 9000 or any equivalent standard which is generally recognised as having replaced it;

(c) without limitation to the generality of paragraph 37 1(a), there shall at all times be in existence a Design Quality Plan and a Service Quality Plan, and

(d) the Highways Services is carried out in compliance with the Quality Plans

37.2 Sub-Contractors

Where any aspect of the Highways Services are performed by a Sub-Contractor, then the provisions of this paragraph 37 (in so far as relevant or appropriate to the activities to be performed by such Sub-Contractor) shall apply in respect of each Sub-Contractor (and the Service Provider shall procure that such Sub-Contractor shall comply with the same) Provided that this paragraph 37 shall not be construed as requiring a Sub-Contractor to have their own Quality Plans or to appoint a separate Quality Manager but only to comply with the relevant sections of the relevant Quality Plan.

37.3 Changes to the Quality Plans

The Service Provider shall make such changes to any Quality Plan as is required for such Quality Plan to continue to comply with the requirements contained in these Highways Services Special Conditions and such changes shall be subject to the Council's approval given in accordance with the Review Procedure.

37.4 Quality Manuals and Procedures

If any Quality Plan refers to, relies on or incorporates any quality manual or procedure then such quality manual or procedure or the relevant parts thereof shall be submitted at the time that such Quality Plan (or part thereof) is submitted pursuant to the Council for review in accordance with the Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan (or part thereof) pursuant to the Review Procedure

37.5 Quality Manager

The Service Provider shall appoint (or shall procure the appointment of) a person to act as a Quality Manager from the Service Commencement Date, to assist the Service Provider in the performance of its obligations under this paragraph 38 and:

- (a) the identity of the Quality Manager (and any replacement) shall be subject to the prior written approval of the Council Representative (such approval not to be unreasonably withheld or delayed);
- (b) without limitation, the terms and conditions of the appointment of the Quality Manager shall require him to
 - (i) ensure the effective operation of the quality systems described in this paragraph 37,
 - (ii) audit the quality systems at regular intervals and report the findings of such audit to the Council Representative,
 - (iii) review all quality systems at intervals agreed with the Council Representative to ensure their continued suitability and effectiveness;
 - (iv) liaise with the Council Representative on all matters relating to quality management, and

- (v) report to the Service Provider on all matters relating to this paragraph 37.

37.6 Quality Monitoring

The Council Representative may carry out audits of the Quality Management Systems (including without limitation all Quality Documentation) at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of such Quality Management Systems.

37.7 Site Safety and Security

The Service Provider shall have full regard for the safety of all persons on the Highway Network (including Work Sites) (whether lawfully or not) and shall keep the Work Sites in an orderly state appropriate to the avoidance of danger to such persons. Without limitation to paragraph 19 (Security of the Highway Network), the Service Provider shall take such measures as are reasonably required to prevent trespass onto Work Sites of any persons or livestock not entitled to be there including, without limitation, the fencing of Work Sites where appropriate.

37.8 Management of risk

The Service Provider shall:

- (a) establish and maintain effective policies, procedures and systems for the effective ongoing management of significant strategic and operational risks throughout the Agreement Period so as to minimise the potential impact of any such risk on the Council, the Service Provider and the Highway Network;
- (b) provide to the Council Representative on request information on the Service Provider's policies, procedures and systems for managing risk, such information to include without limitation:
 - (i) details of the structure of the ownership of risk within the organisation and where responsibility for the management of significant strategic and operational risks lies;
 - (ii) details of policies, procedures and systems for identifying, profiling, controlling and monitoring all significant strategic and operational risks; and
 - (iii) details of the monitoring and reviewing of policies, procedures and systems for the management of the risks to ensure effectiveness in practice.

37.9 Emergency Services

The Service Provider shall comply at all times with all lawful and proper instructions of the emergency services in respect of the Highway Network.

38 Liaison and Partnering

38.1 Interested Parties and Consultees

The Service Provider shall, in connection with carrying out the Highways Services:

- (a) discharge any lawful and proper requirements of any Relevant Authorities of which the Service Provider has notice or ought reasonably to be aware from time to time;

(b) take all reasonable steps, ancillary to the Highways Services in order to minimise any risk of a Judicial Review challenge being made against the Council as a result of the Highways Services being carried out. Without limitation, such steps shall where appropriate include:

- (i) the provision of information to the public;
- (ii) consultation with the public, and
- (iii) taking reasonable steps to reflect the outcome of such consultation in the manner in which the Highways Services are carried out.

39 Traffic Data

Without prejudice to any rights which either party may have in the Traffic Data each party shall be entitled, without further consent from the other party

- (a) to use the Traffic Data for the purposes of exercising its rights or carrying out its obligations and rights under these Highways Services Special Conditions, in the case of the Council only, or carrying out any statutory function, and
- (b) to incorporate the Traffic Data in any traffic or other statistics prepared by or on behalf of each party and to publish such statistics or the Traffic Data either generally or to a limited category of persons or otherwise to exploit such statistics or the Traffic Data and whether or not in return for any fee.

40 Surveys on Expiry and Retention Fund

40.1 Final Surveys

No later than eighteen (18) months prior to the Expiry Date, the Council shall be entitled to carry out or procure the carrying out of:

- (a) a survey (the **Highway Network Survey**) of the Highway Network to assess whether it has been, and is being, maintained by the Service Provider in accordance with its obligations under paragraph 32.1 (Standard of Service) and/or paragraph 32.4 (Maintenance);
- (b) a survey and/or investigation of the accuracy of the Management Information System (the **Management Information System Survey**) to determine whether or not the Management Information System has been, and is being, kept up to date by the Service Provider in accordance with its obligations under this Agreement, and
- (c) if the Service Provider has been notified under paragraph 40.4(a) that rectification and/or maintenance work is required, then no earlier than twelve (12) months prior to the Expiry Date, the Council shall (to the extent the works have not been carried out by the Service Provider in the interim) deduct the cost of the Highway Network Survey and/or the Management Information System Survey and the costs of any required works as quantified by either the Highway Network Survey or the Management Information System Survey in equal instalments from each Payment payable after the date of notification and pay such amount into an interest bearing account (the **Retention Fund Account**) until this Agreement has expired or terminated,

and subject to paragraph 40.4(c), the cost of the Final Surveys shall be borne by the Council.

40.2 Notice of Final Surveys

The Council shall notify the Service Provider in writing a minimum of five (5) Business Days in advance of the dates it wishes to carry out the Final Surveys. The Council shall consider in good faith any reasonable request by the Service Provider for the Final Surveys to be carried out on a different dates if such request is made at least two (2) Business Days prior to the notified dates and the Service Provider (acting reasonably) is able to demonstrate that carrying out the Final Surveys on the notified dates would materially prejudice the Service Provider's ability to provide the Highways Services.

40.3 Minimisation of Disruption

When carrying out the Final Surveys, the Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Highways Services by the Service Provider. The Service Provider shall afford the Council or any person carrying out the Final Surveys (free of charge) any reasonable assistance required by the Council during the carrying out of the Final Surveys.

40.4 Results of Final Surveys

If the Highway Network Survey shows that the Service Provider has not complied with or is not complying with its obligations under paragraph 32.1 (Standard of Service) and/or paragraph 32.4 (Maintenance), or if the Management Information System Survey shows that the Service Provider has not kept the Management Information System in accordance with its contractual obligations, the Council shall:

- (a) notify the Service Provider of the rectification and/or maintenance work which is required to bring the Highway Network or the Management Information System to the standard they would have been in if the Service Provider had complied or was complying with its obligations under this Agreement and, in particular, to ensure the requirements of paragraph 32.4 (Maintenance) are met (the **Required Standard**);
- (b) specify a reasonable period within which the Service Provider shall carry out such work (the **Specified Period**); and
- (c) recover the cost of the Highway Network Survey and/or the Management Information System Survey (as shall be applicable) from the Service Provider by means of a withdrawal from the Retention Fund Account or, if the Retention Fund Account has been exhausted, a deduction from the next payment of the Payment or recover such amount as a debt payable on demand.

40.5 Rectification Work

The Service Provider shall carry out such rectification and/or maintenance work notified pursuant to paragraph 40.4(a) (the **Outstanding Works**) in order to reach the Required Standard to the Council's reasonable satisfaction within the Specified Period and any costs it incurs in carrying out the Outstanding Works shall be at its own expense.

40.6 Reimbursement

If and to the extent that the Service Provider carries out the Outstanding Works to reach the Required Standard to the Council's reasonable satisfaction within the Specified Period, the Council shall (to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account) reimburse the Service Provider's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Service Provider. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Service Provider's costs, the Service Provider shall bear the balance of its costs itself.

40.7 Failure to carry out work

If, and to the extent that, the Service Provider fails to carry out the Outstanding Works to reach the Required Standard to the Council's reasonable satisfaction within the Specified Period, the Council shall be entitled to carry out itself, or procure the carrying out of the Outstanding Works at the Service Provider's expense. The Council shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account make deductions from the Payment to pay for such rectification or maintenance works or recover such amount as a debt payable on demand.

40.8 Balance of Fund

In the event that

- (a) all the rectification and/or maintenance work identified by the Council has been carried out to the Required Standard; to the Council's reasonable satisfaction,
- (b) all such rectification and/or maintenance work has been paid for by the Service Provider; and
- (c) no Termination Notice given in accordance with this Agreement is outstanding,

then the Council shall pay any credit balance on the Retention Fund Account (including accrued interest) to the Service Provider as soon as practicable

40.9 Public Health Act

The Service Provider shall be fully responsible for ensuring that the obligations of Service Provider and the Council (to the extent that the Service Provider is carrying out such obligations on the Council's behalf or is acting in accordance with the Council's reasonable instructions pursuant to this Agreement) under the Public Health Act 1961 and all other applicable Law are complied with insofar as they apply to the performance of the Highways Services and for taking all necessary or appropriate action in relation to the same

Annex 2: Schedule of Council Authorised Highway Functions¹

Authorised Highway Functions

Section A

Functions conferred by the Highways Act 1980 or any regulations under any provision of that Act

Bridge Authority has the meaning given in Section 88(1)(b) of the 1991 Act

Highway Authority has the same meaning as ascribed in the Highways Act; and

Traffic Authority has the meaning given in Section 121A of the Road Traffic Regulation Act 1984

1 Subject to paragraph 10 of this Section A, functions conferred on the Authority as Highway Authority for a highway in relation to that highway or to highway connected land, by or under any of the following provisions of the 1980 Act

- (a) section 41 (1) (Highway Authority's duty to maintain highway maintainable at public expense);
- (b) section 62 (general power of improvement);
- (c) section 64 (dual carriageways and roundabouts);
- (d) section 66 (provision of footways and guard-rails etc. for publicly maintainable highways);
- (e) section 68 (refuges);
- (f) section 69 (1) (Highway Authority's powers to construct, light, etc subways);
- (g) section 70 (footbridges over highways),
- (h) section 71 (margins for horses and livestock),
- (i) section 75 (1) and (2) (Highway Authority's powers to vary widths of carriageways and footways),
- (j) section 76 (levelling of highways);
- (k) section 77 (alteration of levels),
- (l) section 78 (cutting off of corners),
- (m) section 80 (1), (2), and (3) (power to fence highways),
- (n) section 81 (provision of highway boundary posts),
- (o) section 84 (maintenance of cattle-grids and by-passes),

¹ Indicative list Council to confirm

- (p) section 90 (protection of bridges and railways);
- (q) section 90G (traffic calming works);
- (r) section 92 (reconstruction of bridge maintainable at public expense);
- (s) section 96 (powers of highway and local authorities to plant trees, lay out grass verges etc.);
- (t) section 97 (lighting of highways);
- (u) section 99 (metalling of highways);
- (v) section 100 (1), (2), (4), (5) and (6) (Highway Authority's powers and duties relating to drainage of highways) except insofar as they relate to the power to enter premises under section 168 of the Water Industry Act 1991 (entry for works purposes);
- (w) section 101 (1), (3), (4), (5), and (6) (power to fill in roadside ditches etc.);
- (x) section 102 (1) and (2) (provision of works for protecting highways against hazards of nature);
- (y) section 103 (provision of posts to indicate depth of flood water);
- (z) section 104 (mitigating nuisance of dust);
- (aa) section 105 (power to improve road-ferries);
- (bb) section 114 (provision of public conveniences by county council for users of roads for which they are the Highway Authority);
- (cc) section 115H (1) (prohibition on exercise of certain of a council's powers without consent of the Highway Authority);
- (dd) section 133 (damage to footways of streets by excavations);
- (ee) section 139 (1) and (2) (prohibition on deposit of builders' skips without permission of the Highway Authority);
- (ff) section 140 (2) (removal of builders' skips);
- (gg) section 141 (2) (Highway Authority's power by notice to require removal of tree or shrub in or near carriageway);
- (hh) section 150 (1), (2) and (4) (Highway Authority's duty to remove snow, soil etc. from highway) except insofar as they relate to an obstruction in a highway which is the property of any person;
- (ii) section 167(2), (5) and (6) (consultation with Highway Authority and local authority's power to give notices in relation to retaining walls near streets);
- (jj) section 169 (1), (2), (3) and (4) (power of Highway Authority to license, and give directions in relation to, scaffolding or other structures obstructing the highway);

- (kk) section 171 (control of deposit of building materials and making of excavations in streets) except insofar as functions conferred by or under section 171(7) relate to the removal of property of any person,
 - (ll) section 178 (1) (prohibition on placing rails, beams etc over highways without consent of the Highway Authority)
- 2 Subject to paragraphs 11 and 12, functions conferred on a local Highway Authority by or under section 288 of the 1980 Act (power to require gas and water pipes to be moved) insofar as that provision applies to the exercise of any other function listed in this Part 1 of this Schedule 10
- 3 Subject to paragraphs 11 and 12, functions conferred on a local Highway Authority as competent authority, by virtue of its being a Highway Authority for a highway, by or under any of the following provisions of the 1980 Act.
- (a) section 143 (1) (competent authority's power to give notice requiring removal of structures from highways); and
 - (b) section 154 (1), (1A) and (2) (competent authority's power to give notice requiring removal of overhanging hedge, tree or shrub), and
 - (c) section 185 (competent authority's power to install etc refuse or storage bins in streets)
- 4 Functions conferred on a local Highway Authority as Highway Authority for a highway by or under the following provisions of the Walkway Regulations 1973:
- (a) regulation 3 (1) (prohibition on exercise of certain powers conferred on Highway Authority in relation to walkways without consent of building owner),
 - (b) regulation 4 (1) (prohibition on placing etc. of apparatus of statutory undertakers without consent of Highway Authority and building owner),
 - (c) regulation 5 (3) (prohibition on temporary closure of walkway until expiry of a specified period from the date of notice to the Highway Authority and others), and
 - (d) regulation 6 (stopping up of walkway by building owner)
- 5 Paragraphs 1 to 3 shall not include:
- any functions conferred by or under section 294 of the 1980 Act (entry etc., of premises by Highway Authority or council for certain purposes), or
- (a) any function to the extent that the function confers a power or right of entry into or on any premises or land of which the local Highway Authority is not the owner or occupier
- 6 Where section 338 or 339 of the 1980 Act (saving for works, etc., of dock, harbour and canal undertakers and saving for works etc. of drainage authorities etc.) applies to the exercise of any functions listed in paragraphs 0 to 2, those functions shall be construed as including any additional requirements imposed by those sections.

Part 1

Authorised Highway Functions

Section B

Functions conferred by the New Roads and Street Works Act 1991 or regulations under any of provision of that Act:

Functions conferred on the Authority as Street Authority by or under any of the following provisions of the 1991 Act:

- (a) Section 53 (the street works register);
- (b) Section 54(1) and (4) (advance notice of certain works to be given to the Street Authority and compliance with requirements imposed by the Street Authority);
- (c) Section 55(1) and (4) (notice to be given to the Street Authority of the starting date of works and prohibition on starting works without notice except with the consent of the Street Authority);
- (d) Section 56(1) and (4) (Street Authority's power to give directions as to the timing of street works and duty to have regard to the Code of Practice in exercising power);
- (e) Section 58 (restriction on works following substantial road works);
- (f) Section 59 (general duty of Street Authority to co-ordinate works);
- (g) Section 60(1) (general duty of Statutory Undertaker to co-operate with the Street Authority with respect to the execution of street works);
- (h) Section 61 (protected streets) except in so far as they relate to the power to designate a street as protected;
- (i) Section 65(5) (Street Authority's power to take steps where Statutory Undertaker has failed to comply with certain obligation, and to recover costs incurred);
- (j) Section 66(3) and (4) (Street Authority's power to give notice to Statutory Undertaker to mitigate and discontinue obstruction, to take necessary steps and recover costs incurred);
- (k) Section 68(1) (Statutory Undertaker to afford reasonable facilities to the Street Authority);
- (l) Section 70(3) and (4) (Statutory Undertaker to inform the Street Authority of completion of interim and permanent reinstatement);
- (m) Section 72 (powers of Street Authority in relation to reinstatement);
- (n) Section 75 (inspection fees);
- (o) Section 81 (duty to maintain Apparatus);

- (p) Section 82(1) (payment of compensation to Street Authority); and
 - (q) Section 94(1) and (2) (power of Street Authority to enter into an agreement with a Statutory Undertaker for the execution of street works)
- 7 Functions conferred on the Authority as Traffic Authority by or under Section 65(2) of the 1991 Act (Statutory Undertaker to comply with directions given by Traffic Authority)
- 8 Functions conferred on the Authority as a relevant authority other than a Street Authority by or under the following provisions of the 1991 Act
- (a) Section 81 (duty to maintain Apparatus) and
 - (b) Section 82(1) (payment of compensation to any relevant authority)
- 9 Functions conferred on the Authority as Highway Authority or as Bridge Authority by or under the following provisions of the 1991 Act
- (a) Section 83 (Works for Road Purposes likely to affect Apparatus in the street),
 - (b) Section 84(1), (3) and (4) (Undertaker and Bridge or Highway Authority to take steps where apparatus affected by major works and requirement to pay compensation in certain circumstances);
 - (c) Section 85(1) and (3) of the 1991 Act (Highway and Bridge Authority to bear allowable costs of necessary measures where Statutory Undertaker's Apparatus affected by Major Highway Works and rights to recover Statutory Undertaker's costs from third parties), and
 - (d) Section 88(4) and (5) (consultation with Bridge Authority prior to execution of certain works, provision of reasonable facilities for Bridge Authority to monitor works, and compliance with directions of Bridge Authority)
- 10 Functions conferred on the Authority as responsible authority by or under Section 90 of the 1991 Act (provisions as to reinstatement of sewers, drains or tunnels)
- 11 Functions conferred on the Authority as Street Authority for a street by or under regulation 3 of the Street Works (Inspection Fees) Regulations 1992 (undertaker required to pay the Street Authority a fee for each chargeable inspection carried out by the Street Authority)
- 12 Functions conferred on the Authority as Street Authority by or under regulation 3 or 10 of the Street Works (Reinstatement) Regulation 1992 (SI 1992/1689, amended by SI 1992/3110) (Street Authority's power to give notice affecting the standard of reinstatement required and extension of the period for completion by agreement between the Undertaker and the Street Authority)
- 13 Functions conferred on the Authority as Highway Authority or as Bridge Authority by or under any provision of the Street Works (Sharing of Costs of Works) Regulations 1992 (SI 1992/1690)
- 14 Functions conferred on the Authority as Street Authority for a street under Regulation 3 and 4 of the Street Works (Maintenance) Regulations 1992 (SI 1992/1691) (Street Authority's power to execute works to enable it to inspect Statutory Undertaker's Apparatus and to execute any emergency works needed)

- 15 Functions conferred on the Authority as Street Authority or as Highway Authority or as Bridge Authority by or under any of the following provisions of the Street Works (Registers, Notices, Directives and Designations) Regulations 1992:
- (a) regulation 3(2) and (3) (information on street works to be shown on the register, and the person responsible for securing its registration);
 - (b) regulation 5 (prescribed manner of service of notices);
 - (c) regulation 7 (notice of starting date of works);
 - (d) regulation 8 (procedure for giving directions);
 - (e) regulation 11(3) (information to be made available by Street Authority in respect of designated protected streets);
 - (f) regulation 12(3) (information to be made available by Street Authority in respect of designated streets with special engineering difficulties); and
 - (g) regulation 13(3) (information to be made available by Street Authority in respect of designated traffic sensitive streets).
- 16 Functions conferred on the Authority as Street Authority for a street under the Street Works Register (Registration Fees) Regulations 1999.
- 17 Functions conferred on the Authority as Highway Authority for a highway or as Bridge Authority for a bridge or as transport authority for a transport undertaking by or under any provision of the Street Works (Sharing of Costs of Works) (England) Regulations 2000
- 18 Functions conferred on the Authority for a highway under any provision of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001

Part 1

Authorised Highway Functions

Section C

Functions Conferred By Miscellaneous Enactments

Functions conferred on the Authority as Highway Authority for a highway by or under section 153 of the Public Health Act 1875 (power to require gas and water pipes to be moved)

- 1 Functions conferred on the Authority as Highway Authority for a highway by or under section 14 of the Public Health Act 1925 (consent of Highway Authority required for the provision of public drinking fountains, seats, etc in streets)
- 2 Functions conferred on the Authority by or under section 5(1) and (2) of the Local Government (Miscellaneous Provisions) Act 1953 (prohibition on the provisions of omnibus shelters etc , except with the consent of the Highway Authority and other persons)
- 3 Functions conferred on the Authority under section 5(1) and (2) of the Parish Councils Act 1957 (prohibition on the provision of seats, shelves, lamps etc in roads except with the consent of specified persons)
- 4 Functions conferred on the Authority as Highway Authority for a highway by or under the following provisions of the Public Health Act 1961
 - (a) section 45 (attachment of street lamps), and
 - (b) section 81 (summary recovery of damages for negligence)
- 5 Functions conferred on the Authority by or under section 5(6) of, and Schedule 1 to, the Litter Act 1983 (consent of the local Highway Authority required for works in relation to litter bins)
- 6 Functions conferred on the Authority as Highway Authority for a highway by or under section 72(1) of the Road Traffic Regulation Act 1984 (provision of traffic signs on or near a road with permission of the Highway Authority)
- 7 Functions conferred on the Authority as Highway Authority for a highway by or under sections 4 and 5(1) of the Cycle Tracks Act 1984 (provision of barriers in cycle tracks, etc. and Highway Authority's duty to pay compensation)

Part 2

Services in relation to the Authority's functions

As and when appropriate the Service Provider shall in good time in respect of the Project Facilities carry out the following services in relation to functions conferred on the Authority as Street Authority under any of the following provisions of the 1991 Act:

Section 50:

- (a) advise the Authority on the granting of Street Works Licences, including the preparation for issue by the Authority of such licences in such form as the Authority may from time to time authorise, such licences not to inure beyond the Contract-Period; and
- (b) agree with the Authority the reasonable fee to be charged in relation to the issue of a Street Works Licence and then assist the Authority in recovering from the licensee the amount of such fee;

1 Section 51(4): prepare for issue by the Authority appropriate notices and advise the Authority on the necessity for the same. If the Statutory Undertaker fails to comply with such notice the Service Provider shall if required by the Authority arrange the removal of unauthorised Apparatus from the Project Facilities. Assist the Authority in recovering the costs of such removal from the Statutory Undertaker;

2 Section 57(2): receive notices of emergency works and copy such notices to the keeper of the Street Works Register and to the Authority's Nominee;

3 Section 60(2): advise the Authority on steps which need to be taken in consequence of a Statutory Undertaking failing to comply with Section 60(1)

4 Section 62:

- (a) issue appropriate directions pursuant to Section 62(2), (3) and (4) and advise the Authority on the necessity for the same;
- (b) participate in or if so instructed by the Authority conduct any arbitration under Section 62(5);

5 Section 74:

- (a) receive notices pursuant to Section 74(3).
- (b) prepare for issue by the Authority appropriate notices pursuant to Section 74(3);
- (c) receive revised estimates pursuant to Section 74(4).
- (d) prepare for issue by the Authority appropriate notices pursuant to Section 74(4);
- (e) agree with the Authority the fee to be charged to Statutory Undertakers in accordance with the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway)(England) Regulations 2001 for the occupation of the Project Facilities where works carried out by Statutory Undertakers have been unreasonably prolonged; and

(f) assist the Authority in recovering the same from the Statutory Undertakers

6 Section 74A subject to any Regulations made under this section, assist the Authority to recover charges payable under this section

7 Section 76 agree with the Authority the costs incurred in connection with obtaining any orders pursuant to the Road Traffic Regulation Act 1984 which are to be charged to Statutory Undertakers and then assist the Authority in recovering the same from the Statutory Undertakers;

Part 3

Further Services in relation to the Authority's functions

As and when appropriate, the Service Provider shall in good time in respect of the Project Network carry out the following services in relation to functions conferred on the Authority as Street Authority under any of the following provisions of the 1991 Act:

- (a) Section 53: provide to the keeper of the Street Works Register such information as may be prescribed pursuant to Section 53 and such other information of which it becomes aware which is eligible for registration and make such payment or payments as the Secretary of State for Transport may require in relation to the Project Network pursuant to Section 53(5);
- (b) Section 54(1): receive the prescribed advance notice of works from Statutory Undertakers, copy such notices to the keeper of the Street Works Register and to the Authority's Nominee;
- (c) Section 54(4): prepare for issue by the Authority appropriate directions to be given to Statutory Undertakers relating to the provision of information and other procedural steps necessary for the co-ordination of the Statutory Undertakers' proposed works and advise the Authority on the necessity for the same;
- (d) Section 55(1): receive notices of starting date of works, copy such notices to the keeper of the Street Works Register and to the Authority's Nominee;
- (e) Section 55(4): prepare for issue by the Authority appropriate consents to be given to the Statutory Undertakers and advise the Authority on the necessity for the same;
- (f) Section 56(1) and (4): prepare for issue by the Authority appropriate directions as to the timing of street works to comply with the Codes of Practice and advise the Authority on the necessity for the same;
- (g) Section 58:
 - (i) prepare for issue by the Authority appropriate notices to be given restricting street works following substantial road works and advise the Authority on the necessity for the same;
 - (ii) prepare for issue by the Authority appropriate consents to be given to the Statutory Undertakers pursuant to Section 58(5)(b) and advise the Authority on the necessity for the same;
 - (iii) advise the Authority on reinstatement of the highway pursuant to Section 58(6) following unauthorised works; and
 - (iv) advise the Authority on costs incurred in reinstating the highway and assist the Authority in recovering such sums from the Statutory Undertakers;
- (h) Sections 59:
 - (i) without prejudice to the provisions of clause 25.9 (Primary Duty of Co-ordination), advise the Authority with regard to the co-ordination of the execution of works of all

- kinds affecting the Project Network in the manner set out in Sections 59(1)(a), (b) and (c),
- (ii) advise the Authority with regard to the steps necessary to ensure co-ordination with other Street Authorities pursuant to Section 59(2),
 - (iii) supply to the Authority any information required by the Secretary of State for Transport pursuant to Section 59(4),
 - (iv) assist the Authority in taking any steps directed by the Secretary of State for Transport pursuant to Section 59(5) or 59(6);
- (i) Section 61.
- (i) prepare for issue by the Authority appropriate consents pursuant to Section 61(1) and advise the Authority on the necessity for the same,
 - (ii) agree with the Authority the appropriate fee to be paid by the Statutory Undertaker to the Authority pursuant to Section 61(3) and then assist the Authority in recovering such fees from the Statutory Undertakers,
 - (iii) advise the Authority on placing conditions upon its consent and on contributing to expenses under Section 61(5), and
 - (iv) participate in or if so instructed by the Authority conduct any arbitration under Section 61(6),
- (j) Section 65(5)
- (i) advise the Authority if a Statutory Undertaker has failed to comply with Section 65(1) or (2) and advise on steps which need to be taken in consequence, and
 - (ii) advise the Authority on costs incurred in taking such steps and assist the Authority in recovering such costs from the Statutory Undertaker,
- (k) Section 66.
- (i) prepare for issue by the Authority appropriate notices to be given to Statutory Undertakers requiring them to take steps to mitigate or discontinue obstructions and advise the Authority on the necessity for the same, and
 - (ii) advise the Authority if Statutory Undertakers fail to comply with notices served under Section 66(3) and advise on steps which should be taken in consequence. Assist the Authority in recovering costs incurred in consequence of the Statutory Undertakers' failure,
- (l) Section 68(1) carry out such inspections or investigatory works on the Project Facilities as may be necessary to ascertain whether Statutory Undertakers have complied with their duties under the 1991 Act provided always that no charge will be made for any Sample Inspections;

(m) Section 70: receive notices from Statutory Undertakers pursuant to Sections 70(3) and (4) and supply copies to the Authority's Nominee;

(n) Section 72:

(i) carry out such investigatory works as may be necessary to ascertain whether Statutory Undertakers have complied with their duties with respect to reinstatement and advise the Authority accordingly;

(ii) prepare for issue by the Authority appropriate notices pursuant to Section 72(3) and advise the Authority on the necessity for the same; and

(iii) advise the Authority on the necessity to carry out works pursuant to Sections 72 (3) and (4). If required by the Authority, arrange the carrying out of such works and notify the Authority of the costs of such works. Assist the Authority in recovering such costs from the Statutory Undertakers. In such circumstances prepare for issue by the Authority appropriate notices pursuant to Section 72(4);

8 As and when appropriate the Service Provider shall in good time in respect of the Project Network carry out the following services in relation to functions conferred on the Authority as Traffic Authority by or under Section 65(2) of the 1991 Act:

(a) prepare for issue by the Authority appropriate directions concerning traffic signs and advise the Authority on the necessity for the same; and

(b) check whether Statutory Undertakers comply with such directions and advise the Authority accordingly;

9 As and when appropriate the Service Provider shall in good time in respect of the Project Network carry out the following services in relation to functions conferred on the Authority as a relevant authority other than a Street Authority by or under the following sections of the 1991 Act:

(a) Section 81:

(i) check that Apparatus belonging to the Statutory Undertakers' is being properly maintained and advise the Authority accordingly;

(ii) if the Apparatus is not being properly maintained then advise the Authority whether emergency works need to be executed in consequence of such failure;

(iii) if required by the Authority arrange the carrying out of such emergency works;

(iv) assist the Authority in recovering sums pursuant to Section 81(5);

(v) in such circumstances prepare for issue by the Authority appropriate notices pursuant to Section 81(6); and

(b) Section 82:

(i) advise the Authority if any of the events described in Section 82(2) occur; and

(ii) assist the Authority in recovering the sums pursuant to Section 82 (1).

10 As and when appropriate the Service Provider shall in good time in respect of the Project Network carry out the following services in relation to functions conferred on the Authority as a Highway Authority or as a Bridge Authority, by or under the following provisions of the 1991 Act

- (a) Section 83 prepare for issue by the Authority appropriate notices informing Statutory Undertakers of Works for Road Purposes likely to affect their Apparatus,
- (b) Section 84.
 - (i) on behalf of the Authority liaise with the Statutory Undertakers in identifying measures and settling specifications in connection with Diversionary Works and co-ordinate such Diversionary Works with the carrying out of Operations;
 - (ii) participate in or if so instructed by the Authority conduct any arbitration proceedings brought pursuant to Section 84(3); and
 - (iii) assist the Authority in recovering sums under Section 84(4);
- (c) Section 88 monitor the execution of works by Statutory Undertakers and advise the Authority accordingly Advise the Authority on requirements to be imposed on the Statutory Undertaker for the protection of bridges or for securing access Prepare for issue by the Authority appropriate notices setting out such requirements.

11 As and when appropriate the Service Provider shall in good time in respect of the Project Network carry out the following services in relation to functions conferred on the Authority by or under Section 90 of the 1991 Act.

- (a) prepare for issue by the Authority appropriate notices to Statutory Undertakers requiring them to carry out remedial works to sewers drains or tunnels owned by the Authority, and advise the Authority on the necessity for the same,
- (b) advise the Authority on what works need to be carried out in consequence of a failure by a Statutory Undertaker to comply with such notices If required by the Authority arrange the carrying out of such works Assist the Authority in recovering the costs of such works; and
- (c) where the Statutory Undertaker has failed to comply with its duties to reinstate and this is causing a danger to the users of the street, advise the Authority accordingly Advise the Authority on what works need to be carried out in consequence If required by the Authority arrange the carrying out of such works Assist the Authority in recovering the costs of such works from the Statutory Undertaker In such circumstances prepare for issue by the Authority appropriate notices pursuant to Section 90(3).

Annex 3: Value for Money

VfM shall be assessed in accordance with the following principles, in the event that the Proposal was subject to general benchmarking principles the proposed services would offer Value for Money taking into account the following assumptions in respect of the Service Provider:

- (a) the Service Provider, being the incumbent Highways Services Provider, has existing knowledge of the Highway Network and therefore, would require limited due diligence;
- (b) relevant Highways Equipment, Apparatus, plant and any other equipment or materials required in order to perform the Capital Highway (Works) are either already in the possession of the Service Provider or can be acquired at short notice;
- (c) suitably qualified, experienced and capable employees are currently engaged by the Service Provider in the delivery of the Highways Services and can be utilised in the performance of the Capital Highway (Works);
- (d) as the Service Provider is delivering the Highways Services they shall be best placed to understand any upcoming maintenance works, Road Closures, TROs or other statutory matters which may impact on the delivery the Capital Highway (Works) and can therefore, take steps to mitigate such impact to maximise efficiency of delivery

Open Market means the wider market in the Area relating to the provision of Comparable Services;

Value for Money (VfM) means in accordance with the principles set out at paragraph 37.3 of Annex 3, the Proposal in respect of the Capital Works (Highways) where assessed against the Open Market would offer the most economically advantageous tender for the delivery of the Capital Works (Highways);

Annex 4: Provider Direct Agreement

Dated

20

TECHNICAL SERVICES PROVIDER (1)

TRAFFORD BOROUGH COUNCIL (2)

HIGHWAYS SERVICES PROVIDER (3)

DIRECT AGREEMENT
relating to the provision of design services in relation to
the highways network

THIS DEED is dated

2015

BETWEEN:

- (1) **Technical Services Provider** (registered in England and Wales under company number) whose registered office is at (**Technical Services Provider**);
- (2) **TRAFFORD BOROUGH COUNCIL** whose principal office is situated at Trafford Town Hall, Talbot Road, Stretford, Greater Manchester M32 0TH (**Council**), which expression includes its permitted successors in title and assigns); and
- (3) **Highways Services Provider** (registered in England and Wales under company number) whose registered office is at (**Highways Services Provider**)

BACKGROUND

- (A) By a partnership agreement dated [] 2015 (**Technical Services Agreement**) the Council has appointed the Technical Services Provider to perform, amongst other services, certain design and technical services in relation to the Highway Network (as defined therein).
- (B) By a partnership agreement dated [] 2015 (**Highways Services Agreement**) the Council has appointed the Highways Services Provider to carry out cyclical and reactive maintenance works in relation to the Highway Network
- (C) Pursuant to part 7 of the Technical Services specification contained in Schedule 2 (*Specification*) to the Technical Services Agreement, the Technical Services Provider shall design, or procure the design of, certain works of a capital nature in relation to the Highway Network (**Highway Capital Works**)
- (D) Pursuant to part 9 of the Highways Services specification contained in Schedule 2 to the Highways Services Agreement, the Highways Services Provider shall carry out from time to time Highway Capital Works as required by the Council and as designed and specified by the Technical Services Provider
- (E) The Technical Services Provider is obliged under the Technical Services Agreement to give a warranty in this form in favour of the Highways Services Provider.

1 DEFINITIONS AND INTERPRETATIONS

In this deed unless the context otherwise requires, any defined term in this deed shall have the same meaning given to such term in the ♦ and the following terms shall have the following meanings

Partnership Agreement means either the Technical Services Agreement or the Highways Service Agreement as the context requires,

Service Provider means either the Highways Services Provider or the Technical Services Provider as the context requires

2 OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Highways Services Provider to the Technical Services Provider, receipt of which the Technical Services Provider acknowledges:

3 GENERAL

- 3.1 Each of the Service Providers acknowledges to the other Service Provider that it has received and examined the specifications contained within the other Partnership Agreement and acknowledges to the other Service Provider that a breach of its Partnership Agreement may cause Losses to the other Service Provider in connection with the performance of its Partnership Agreement.
- 3.2 Each of the Service Providers shall undertake its obligations and exercise its rights under this Agreement and under its Partnership Agreement in such a way as not to interfere with, hinder or delay the other Service Provider in complying with its obligations under its Partnership Agreement.
- 3.3 Each of the Service Providers undertakes to the other to consult and co-operate when performing any of its obligations under its Partnership Agreement that affect or are likely to affect the other Service Provider's performance of its contractual obligations under its Partnership Agreement, provided that such consultation and co-operation is consistent with the Service Provider's obligations under its Partnership Agreement and does not require the Service Provider to incur any additional material cost.
- 3.4 Subject to clause 3.3, each Service Provider shall act in good faith towards the other at all times and generally provide such assistance and co-operation as may be reasonably considered appropriate in order to assist the others to perform their obligations under their Partnership Agreement, provided always that no Service Provider shall be required to extend such co-operation to the extent that it would then be performing obligations of another Service Provider. Notwithstanding the generality of the foregoing, each of the Service Providers shall:
 - 3.4.1 where any information has been reasonably requested by the other as being required to assist it in performing its obligations under its Partnership Agreement (and provided such information is not commercially sensitive), then it shall provide such information to the other as soon as is reasonably practicable in the circumstances; and
 - 3.4.2 provide notice of, and permit the other Service Provider to attend, any meetings (either with the Council or any other third party) that may be reasonably considered to be of interest to, or to have any material impact upon, the other (save for meetings with sub-contractors that are of a commercially sensitive or confidential nature).

4 TECHNICAL SERVICES PROVIDER'S WARRANTY AND LIABILITY

- 4.1 The Technical Services Provider warrants to the Highways Services Provider that it has carried out and will continue to carry out its duties under the Technical Services Agreement in accordance with the Technical Services Agreement and that it has exercised and will continue to exercise, in carrying out the design of the Highway Capital Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to projects of similar size and scope to those comprising the Highway Capital Works. In particular and without limiting the generality of the foregoing the Technical Services Provider covenants with the Highways Services Provider that it has carried out and will carry out and complete the design of the Highway Capital Works in accordance with the Technical Services Agreement and duly observe and perform all its duties and obligations thereunder so as not to cause the Highways Services Provider any Losses.

- 4.2 Upon the expiration of 12 years from the date of completion of any capital works completed in accordance with any capital works contract, the liability of the Technical Services Provider under this deed shall cease and determine, save in relation to any claims made by the Highways Services Provider against the Technical Services Provider and notified by the Highways Services Provider to the Technical Services Provider in writing prior thereto

5 DESIGN DATA

- 5.1 The Technical Services Provider shall make available to the Highways Services Provider free of charge (and hereby irrevocably licences the Highways Services Provider to use) all data used in the preparation of designs and specification (**Design Data**) of Highway Capital Works that might reasonably be required by the Highways Services Provider. The Technical Services Provider shall obtain all necessary licences, permissions and consents necessary for it to make the Design Data available to the Highways Services Provider on these terms, for the purposes of the design or construction of the Highway Capital Works and/or the operation, maintenance or improvement of the Highway Capital Works (**Approved Purposes**), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

- 5.2 The Technical Services Provider

5.2.1 hereby grants to the Highways Services Provider, free of charge, an irrevocable non-exclusive and transferable (subject to the restrictions continued in clause 7 of this Deed) licence to use the Intellectual Property Rights which are or become vested in the Technical Services Provider for the Approved Purposes, and

5.2.2 shall (where any Intellectual Property Rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.2.1 above to the Council,

in both cases, solely for the Approved Purposes.

- 5.3 The Technical Services Provider warrants to the Highways Services Provider that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Design Data (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Highway Capital Works will not infringe the rights of any third party

6 INSURANCE

- 6.1 The Technical Services Provider hereby covenants with the Highways Services Provider to

6.1.1 take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) for any one claim and in the aggregate together with unlimited reinstatements of the limit and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Technical Services Provider's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Technical Services Provider's own claims record or other acts, omissions, matters or things peculiar to the Technical Services Provider will be deemed to be within the reasonable rates,

- 6.1.2 provide evidence (as and when reasonably required by the Highways Services Provider) satisfactory to the Highways Services Provider of the Professional Indemnity Insurance (referred to in clause 6.1.1) being in full force and effect from the date of the Technical Services Agreement (such evidence to include details of the cover);
- 6.1.3 provide the Highways Services Provider with notice of:
 - 6.1.3.1 any cancellation of the Professional Indemnity Insurance (referred to in clause 6.1) not less than thirty (30) days prior to the relevant cancellation date; and
 - 6.1.3.2 any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant changes or suspension;
- 6.1.4 inform the Highways Services Provider as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 6.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Highways Services Provider as the Highways Services Provider may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and
- 6.1.5 indemnify the Highways Services Provider in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 6.1.1.

7 CLAIMS FOR LOSSES

- 7.1 If:
 - 7.1.1 a Service Provider is in breach of its obligations under this Agreement; or
 - 7.1.2 a Service Provider is in breach of its obligations under its Partnership Agreement,
 (a Breaching Party) and, in either case such breach causes another Service Provider (a Claiming Party) to suffer any Loss then the Breaching Party shall be obliged to compensate the Claiming Party pursuant to this Agreement for such Loss, subject to and in accordance with this clause 7.
- 7.2 If a Service Provider wishes to pursue a claim under clause 7 then such Service Provider shall as soon as reasonably practicable after becoming aware of the incident or event giving rise to such claim serve notice on the other Service Provider (with a copy to the Council) setting out in as much detail as is reasonably practicable the relevant facts and basis of alleged liability but, for the avoidance of doubt, such Service Provider shall not be required to notify the other Service Provider of the quantum or expected quantum of the claim until such claim is actually brought.
- 7.3 The parties to the claim shall meet and/or otherwise discuss within five (5) Business Days of service of notice of a claim under clause 7.2 and use reasonable endeavours in good faith to agree to settle the claim and the reasonable details of such settlement.
- 7.4 If a Claiming Party fails to serve notice and/or to provide information in respect of a claim under clause 7.1 as required under clause 7.2, then that Claiming Party's entitlement to receive compensation or other relief as may be appropriate in all the

circumstances shall be reduced by the consequences of any such failure on that Claiming Party's part.

7.5 Each of the Service Providers agrees that it will not resist any claim brought against it by the Council under the relevant Partnership Agreement on the ground of any breach of this Agreement by the other Service Provider.

8 NOTICES

Any notice to be given by any party 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 45 pm on any day it will be deemed to be served on the next Business 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 45pm on a Business Day and otherwise on the next Business Day.

9 ASSIGNMENT

The benefit of and the rights of the Highways Services Provider under this deed may be assigned without the consent of the Technical Services Provider on two occasions only and the Highways Services Provider will notify the Technical Services Provider in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Technical Services Provider 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 hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

10 HIGHWAYS SERVICES SERVICE PROVIDER'S REMEDIES

The rights and benefits conferred upon the Highways Services Provider by this deed are in addition to any other rights and remedies it may have against the Technical Services Provider including without prejudice to the generality of the foregoing any remedies in negligence.

11 INSPECTION OF DESIGN DATA

The Technical Services Provider's liabilities under this deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which the Highways Services Provider may make or procure to be made for its benefit or on its behalf.

12 SUB-CONTRACTORS

Following a written request from the Council the Technical Services Provider will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in a form reasonably satisfactory to the Council in favour of any person in whose favour the Technical Services Agreement obliges the Technical Services Provider to give or procure the giving of such a warranty.

13 APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

14 THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Technical Services Provider acting by a Director and its Secretary/two Directors.

Director

Director/Secretary

The Common Seal of
Trafford Borough Council
was hereunto affixed in the presence of

Signature of duly authorised officer

Full name (Block Capitals)

Position/title

EXECUTED AS A DEED by the Highways Services Provider acting by a Director and its Secretary/two Directors.

Director

Director/Secretary

E 475

SCHEDULE 7

SPECIAL CONDITIONS - STREET LIGHTING SERVICES

SCHEDULE 9
PAYMENT MECHANISM

SCHEDULE 7

SPECIAL CONDITIONS - STREET LIGHTING SERVICES

Part 1 - Definitions

1 Definitions

1.1 In these Street Lighting Services Special Conditions, words and expressions shall have the meaning given in Schedule 1 of this Agreement or in the Street Lighting Services Specification unless defined below, or as the context otherwise requires

Accrual and De-Accrual Process means the procedure set out in part 4 of the Street Lighting Services Special Conditions

Accrued means, when applied to any item of Apparatus, Apparatus which has become the responsibility of the Service Provider pursuant to this Agreement by reason of a Change in accordance with the Change Control Procedure or the application of the provisions of the Accrual and De-Accrual Process and the terms **Accrual** and **Accrue** shall be construed accordingly

Accrual Date shall have the meaning given to it in paragraph 5.11(a) of these Street Lighting Services Special Conditions

Apparatus Acceptance Notice shall have the meaning given to it in paragraph 5.4(c) of these Street Lighting Services Special Conditions and paragraph 5.4(g) of these Street Lighting Services Special Conditions (as the context requires)

Certificate of Compliance means the document signed by the Service Provider to certify and warrant that new Apparatus (except in relation to the LED Services) is Compliant and the terms **Certified** and **Certification** shall be construed accordingly

Compliance Criteria means that the relevant item meets those requirements of the Street Lighting Specification and Street Lighting Special Conditions, which are to be met by the Service Provider in order to obtain a Certificate of Compliance

Compliant means (except in relation to the LED Services) the relevant Compliance Criteria have been met in relation to an installation or replacement or other works carried out by the Service Provider

De-Accrued means, when applied to any item of Apparatus, Apparatus which is no longer the responsibility of the Service Provider pursuant to this Agreement and **De-Accrual** shall be construed accordingly

Development particular Specification means a specification, that is not the Standard Development Specification, used as the specification for apparatus to be provided by the Council or by a third party, where such apparatus is intended to be accrued as Apparatus pursuant to these Street Lighting Services Special Conditions

Electricity Contract means an agreement entered into by the Council for the supply of electricity in accordance with paragraph 20.1 of these Street Lighting Services Special Conditions

Existing Apparatus means Apparatus which

- a) exists and which has been installed and commissioned as at the Service Commencement Date; and
- b) is owned by the Council and maintained by the Council or its sub-contractors at the Service Commencement Date,

including, without limitation, the Apparatus identified in the Inventory

Final Surveys means the Street Lighting Survey (as defined in paragraph 14.4(a) and/or the Management Information System Survey (as defined in paragraph 14.4(b) (as the context requires)

Grampian Planning Condition means a restriction placed on a development permitted under Section 72 of the TCPA 1990 such that the development may not take place until certain works on land under the control of a person other than the developer or applicant have taken place

HA 1980 means the Highways Act 1980

Highways Authority means the Highway Authority and or Lighting Authority responsible for the functions under the Highways Act 1980

LED Longstop Date means either six (6) months following the LED Programmed Completion Date, or thirty (30) months after the Service Commencement Date, whichever is the earlier

New Apparatus means all Apparatus but excluding the Existing Apparatus

Owner shall be the body responsible for fixing the apparatus

Protester or Trespasser means any person engaged in protest action or who wilfully obstructs the Service Provider from providing any part of the Street Lighting Services

Provider Direct Agreement means the direct agreement to be entered into between the Service Provider, the Council and an incoming Technical Services Provider in respect of the duty of care owed by the Technical Services Provider substantially in the form set out at Annex 1

Relevant Action means any of the following actions of the Council:

- (a) the Council (in its capacity as Highways Authority under the HA 1980):
 - (i) entering into a Section 38 Agreement
 - (ii) entering into a Section 278 Agreement
- (b) the Council (in its capacity as Planning Authority under the TCPA 1990):
 - (i) entering into a Section 106 Agreement
 - (ii) imposing a Grampian Planning Condition
- (c) any other requirements or actions of the Council taken within its statutory powers

Relevant Highway Works shall have the meaning of all works being undertaken or to be undertaken on the highway

Relevant Lighting Standards means

- (a) all relevant European and British Standards for road lighting including
 - (i) BS EN 13201,
 - (ii) BS 5489,
 - (iii) BS EN 14001 for Environmental Management,
 - (iv) BS 7671 Requirements for Electrical Installations,
 - (v) BS EN 40,
 - (vi) BS EN 60598,
 - (vii) BS EN 12899-1,
 - (viii) BS EN 12899-1,
 - (ix) BS 873,
- (b) Institution of Engineering and Technology Wiring Regulations,
- (c) Institution of Engineering and Technology Codes of Practice,
- (d) Institution of Lighting Engineers Guidance Notes for the Reduction of Lighting Pollution,
- (e) Institution of Lighting Engineers Technical Reports and Guidance Notes,
- (f) Institution of Lighting Engineers and Lasers, Festival and Entertainment Lighting Code,
- (g) CSS, Road Lighting Maintenance Code of Good Practice,
- (h) Well-lit Highways - Code of Practice for Highway Lighting Management, and

all other relevant standards, codes of practice, government and national policies, industry guidelines and good industry practice relating to any Apparatus and all successor standards, publications of or to the above mentioned Relevant Lighting Standards

Removed means any Apparatus which are removed from the Service by the Service Provider comprising, as appropriate, the disconnection from the electricity supply, physical removal of the Apparatus and any necessary reinstatement of surface finishes or building other than Snagging Items and the term Removal shall be construed accordingly and the term Removal shall be construed accordingly

Required Standards means the Standard Development Specification and any special requirements notified by the Council to the Service Provider

Section 38 Agreement means a contract between a developer and the Council under which the Council agrees, pursuant to Section 38 of the HA 1980, to adopt highways which are maintainable at public expense

Section 106 Agreement means a contract between a developer and the Council which, pursuant to Section 106 of the TCPA 1990, restricts or regulates the development of land

Section 278 Agreement means a contract between a developer and the Council under which the Council agrees, pursuant to Section 278 of the HA 1980, to the execution of highways works

Service Provider Equipment shall mean all equipment, plant and other things owned by or leased to the Service Provider and used exclusively for the purposes of providing the Service whether in relation to the installation or maintenance of Apparatus or otherwise

Standard Development Specification means a technical specification, agreed from time to time between the Council and the Service Provider, consistent with the Relevant Standards of the Street Lighting Services Specification and used as the specification for apparatus to be provided by the Council or a third party where such apparatus is intended to be accrued as Apparatus

Statutory Undertaker shall have the meaning given to it in NRSWA

TCPA 1990 means the Town and Country Planning Act 1990

Third Party Attachments means attachments owned by a third party who has been authorised by the Council to affix Attachments to Apparatus, including (but not limited to):

- (a) political signage;
- (b) fire hydrant signs;
- (c) bus stop signs and timetables;
- (d) any special event signage or advance direction signage;
- (e) direction signage (including AA/RAC signs);
- (f) neighbourhood watch signs; and
- (g) blind persons referencing point,

provided that Third Party Attachments shall not include any electronic or electrical connections except those which constitute Third Party Attachments as at the Service Commencement Date

Part 2 - Mobilisation

2 Mobilisation

2.1 Subject to paragraph 2.3, the Service Provider shall notify to the Council, in writing, not later than seven (7) Business Days prior to the Service Commencement Date (or such later date as specified in the Mobilisation Plan) that all of the following have been effected

- (a) all statutory notifications have been made and Necessary Consents obtained, to the extent required by law, to enable the Service Provider to commence or procure the commencement of the Street Lighting Services (including without limitation notifying the emergency services of contact details, including a twenty four (24) hour telephone link, for use in the event of an emergency relating to the Apparatus),
- (b) the Contact Centre which the Service Provider is required to operate and maintain as part of the CRM System and the Management Information System are operational, fully integrated with the CRM System, and capable of performing the functions required of them to the extent necessary for the Service Provider to properly commence performance of the Street Lighting Services,
- (c) there are sufficient vehicles, stock, personnel, office space and storage space including as set out in the Method Statements to permit the Service Provider to comply with the Service Provider's obligations under this Agreement (to the extent necessary for the Service Provider to properly commence performance of the Street Lighting Services), and
- (d) the requirements in paragraph 2.2 have been met

2.2 Subject to paragraph 2.3, prior to commencement of the Street Lighting Services (or such later date as specified in the Mobilisation Plan) the Service Provider shall have

- (a) established an office within the Council Area (if one will be used by the Service Provider in providing the Street Lighting Services),
- (b) entered into its sub-contracts with all Key Sub-Contractors to the extent not entered into by the Agreement Date,
- (c) appointed the Key Staff (who shall have shadowed their equivalent Council counter-parts for a period of at least one (1) month) and notified the Council of the same,
- (d) taken all steps necessary to prepare for taking possession of the Street Lighting Depot on the Service Commencement Date,
- (e) made all statutory notifications and obtained all Necessary Consents, to the extent required by Law, so that the Service Provider is able to commence or procure the commencement of the Street Lighting Services,
- (f) ensured that all Transferring Employees have received appropriate induction training,

- (g) an operational Contact Centre in place that is capable of performing the functions set out in the Street Lighting Services Specification so that the Service Provider is properly able to commence the performance of the Street Lighting Services;
- (h) appointed those persons who are to be the representatives of the Service Provider on the Partnership Board and notified the Council of the same;
- (i) migrated the Council's electronic information in respect of the Apparatus onto the appropriate databases within the Management Information System;
- (j) set up and agreed reasonable and appropriate access rights with the Council to any of the Council's hard copy information in respect of the Apparatus; and
- (k) taken delivery of the Initial Transferring Assets and stock from the Council in accordance with this Agreement.

2.3 Notwithstanding the provisions of paragraphs 2.1 and 2.2, in relation to activities which are not required under the Mobilisation Plan to be completed prior to the Service Commencement Date, the Service Provider shall complete all actions required by the Mobilisation Plan by the date specified in the Mobilisation Plan.

3 Management Information System

3.1 Management Information System

With effect from the Service Commencement Date, the Service Provider shall procure that there is a Management Information System in place for use in relation to the Street Lighting Services which shall:

- (a) accurately identify all of the Apparatus;
- (b) accurately store all information in relation to the Apparatus which is or may be relevant in respect of the implementation of the Street Lighting Services; and
- (c) comply in all respects with the Street Lighting Services Specification.

3.2 Availability of Management Information System

The Service Provider shall procure that:

- (a) the Management Information System shall be capable of being accessed by the Council on-line at all times (and for the avoidance of doubt on the basis of twenty four (24) hours a day and three hundred and sixty five (365) (or, in the case of a leap year, three hundred and sixty six (366)) days a year);
- (b) the Council shall at all times have the facility of being able to generate reports in an agreed form on any aspect of the Management Information System; and
- (c) the Management Information System is maintained and operated in such a way as to ensure that the information contained in it is never more than two (2) days out of date.

3.3 Provision of Information

Upon any request by the Council, the Service Provider shall provide to the Council hard or electronic copies of all or any part of the information contained in the Management Information System. The cost and expense of providing such copies to the Council shall be borne by the Council save in circumstances where the Council is unable to access copies of the Management Information System on-line by reason of any fault or problem relating to the Service Provider's information technology systems or the Management Information System does not comply with the requirements of paragraph 3.2, in which case all of the cost and expense of providing such copies shall be borne by the Service Provider.

Part 3 – Security of the Highway Network

4 Security of the Highway Network

4.1 Responsibility for Protestors and Trespassers

The Council shall not be responsible at any time from the Service Commencement Date for:

- (a) any interference with, or affecting, the Apparatus or the vicinity of them caused by any Protestor or Trespasser, or
- (b) any interference with or affecting the Street Lighting Services, by or caused by any Protester or Trespasser, or
- (c) any act, omission or default of any Protestor or Trespasser, or
- (d) any lawful or unlawful activities of any Protestor or Trespasser,

and where any of the above circumstances results in the Council being unable to comply with its obligation to make available to the Service Provider access to the Apparatus this shall not be a breach of that obligation or any other obligation or warranty of the Council under this Agreement but such circumstances shall constitute an Excusing Cause.

4.2 No Relief for Offsite Works

The Service Provider shall not be relieved of any requirement to carry out any part of the Street Lighting Services if the failure of the relevant highway authority (not being the Council) to give to the Service Provider access to the Apparatus required to carry out the relevant part of the Street Lighting Services is the result of any of the circumstances set out in paragraph 4.1.

4.3 Service Provider to Bear Loss

Subject to paragraph 4.5, the Service Provider, shall reimburse any Losses suffered by any person arising out of a failure by the Service Provider to deliver the Street Lighting Services as a result of any circumstance set out in paragraph 4.1, provided that nothing in this paragraph 4.3 shall affect:

- (a) any right of the Council to make or recover pursuant to any claim against any Protester or Trespasser for damage suffered by the Council or any Council Related Party, or
- (b) any right of the Service Provider to make or recover pursuant to any claim against any Protester or Trespasser for damage suffered by the Service Provider or any Service Provider Related Party.

4.4 No Payments to Protestors

The Service Provider shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protestors or Trespassers.

4.5 Gypsies and Travellers

In relation to gypsies and travellers on the highway network, the Service Provider shall at all times:

- (a) treat gypsies and travellers with courtesy and respect and in a humane and compassionate manner,
- (b) not take any action in relation to gypsies and travellers other than in accordance with the Council's then published policy on unauthorised encampments or after prior consultation with the Council,
- (c) not make any provision on the highway network for any temporary or permanent site for gypsies or travellers

Part 4 – Accruals

5 Addition and Removal of Apparatus

5.1 Notwithstanding any provision in the Change Control Procedure:

- (a) the Service Provider shall accept Apparatus into the scope of the Street Lighting Services in connection with, or as a consequence of, a Relevant Action of the Council; and
- (b) the Council is entitled to remove Apparatus from the scope of the Street Lighting Services pursuant to paragraph 5.4.

Errors in the Inventory

5.2 The Service Provider shall be responsible for any inaccuracies identified from time to time between the number and types of Apparatus for which the Service Provider is responsible at the Service Commencement Date and the number and types of Apparatus identified in the Inventory (for which the Service Provider shall not be compensated).

5.3 Accrual of Apparatus

Procedure to apply where actions taken prior to the Service Commencement Date

Where the Council requires the Service Provider to accept into the scope of the Street Lighting Service Apparatus which is the result of a Relevant Action taken prior to the Service Commencement Date, the following procedure shall apply:

- (a) the Council shall carry out inspections so as to satisfy itself that the relevant Apparatus complies with the Development particular Specification;
- (b) the Council, on being satisfied that the requirements of paragraph 5.3(a) have been satisfied shall provide to the Service Provider written notice stating:
 - (i) what Relevant Action requires Accrual of the Apparatus;
 - (ii) the identity of the parties involved;
 - (iii) the nature, location and extent of the works and a description of the Apparatus to be Accrued (including a plan showing the location of the installed Apparatus);
 - (iv) details of any cable distribution networks forming part of the Apparatus and proposed to be taken over by the Service Provider;
 - (v) the electrical test certificates for the Apparatus;
 - (vi) a copy of the Development particular Specification;
 - (vii) written confirmation from the developer confirming that the Apparatus complies with the Development particular Specification; and
 - (viii) sufficient relevant information to allow the Service Provider to satisfy any Legislation;

- (c) within ten (10) Business Days of receipt of the written notice given pursuant to paragraph 5 3(b), the Service Provider shall inspect the Apparatus and, within two (2) Business Days of such inspection, shall serve a written notice on the Council either
 - (i) confirming that the Apparatus inspected meets the relevant standards set out in the Development particular Specification to the Service Provider's reasonable satisfaction (**Apparatus Acceptance Notice**), or
 - (ii) confirming that the Development particular Specification has not been achieved to the Service Provider's reasonable satisfaction, setting out, in sufficient detail to enable the Council to comply with paragraph 5 3 the way in which the Apparatus does not achieve the Development particular Specification,
- (d) if the Service Provider fails to give written notice within the time period specified in paragraph 5 3(c) then the Service Provider shall be deemed to have accepted that the Apparatus meets the relevant requirements of the Development particular Specification and an Apparatus Acceptance Notice shall be deemed to have been issued by the Service Provider,
- (e) where paragraph 5 3(c)(ii) applies, the Council shall (unless it disagrees with the reasoning provided pursuant to paragraph 5 3(c)(ii) by the Service Provider, in which event the provisions of the Dispute Resolution Procedure shall apply)
 - (i) rectify or procure the rectification of the failure(s) so that the relevant standards set out in the Development particular Specification are met, and
 - (ii) when the Council is satisfied that any failures have been rectified, inform the Service Provider of such, whereupon the parties shall repeat the procedure set out in paragraph 5 3(c) until the Service Provider is satisfied (acting reasonably) that the relevant standards set out in the Development particular Specification are met or the Council issues an Apparatus Acceptance Notice,
- (f) when an Apparatus Acceptance Notice has been issued in accordance with paragraph 5 3(c) or paragraph 5 3(d) (as the case may be) or the Service Provider is deemed to have issued an Apparatus Acceptance Notice
 - (i) risk in such Apparatus shall transfer to the Service Provider on the date of the Apparatus Acceptance Notice,
 - (ii) the Service Provider shall within one (1) Business Day of the date of the Apparatus Acceptance Notice ensure that details of such Apparatus are added to the Management Information System, and
 - (iii) the energy forecast shall be revised

5 4 **Accrual of Apparatus after the Service Commencement Date**

Where the Council requires the Service Provider to accept into the scope of the Street Lighting Services Apparatus which is in existence (or will be in existence) as a result of a Relevant Action taken by the Council after the Service Commencement Date the following procedure shall apply

- (a) the Technical Services Provider shall provide to the Service Provider written notice stating:
 - (i) what Relevant Action requires Accrual of the Apparatus; and
 - (ii) the identity and contact details of the parties involved;
- (b) the Technical Services Provider shall within five (5) Business Days contact the relevant developer(s) and procure a plan of the proposed development or works and details of the types of relevant Apparatus and provide copies of the following to the Service Provider and to the Council:
 - (i) the lighting classes which the Technical Services Provider proposes should apply to each item of Apparatus and/or each road, footpath or cycle track within the proposed development or works (provided such lighting classes are as set out in the Street Lighting Services Specification);
 - (ii) details of any special requirements which it recommends should apply in addition to the Standard Development Specification with which the proposed development or works must comply; and
 - (iii) a copy of the proposed design of the Apparatus, including:
 - (A) details of all Apparatus types;
 - (B) locations of the Apparatus; and
 - (C) written confirmation by the developer that the design complies with the Required Standards;
- (c) the Service Provider shall, within ten (10) Business Days of receipt of the proposals and designs pursuant to paragraph 5.5(b), serve a written notice on the Technical Services Provider either:
 - (i) confirming that the Service Provider is satisfied (acting reasonably) that the proposed design meets the Required Standards; or
 - (ii) stating that the design does not meet the Required Standards and setting out (in sufficient detail to enable the Service Provider to comply with paragraph 5.4(d)) in what way the proposed design does not satisfy the Required Standards;
- (d) where the Technical Services Provider disagrees with the reasoning provided by the Service Provider pursuant to paragraph 5.4(c), the Technical Services Provider shall notify the Service Provider and the Council, and the Technical Services Provider shall rectify or procure the rectification of the design, so that the Required Standards are met to the Service Provider's satisfaction (acting reasonably);
- (e) the Technical Services Provider shall carry out random checks to ensure that installation of the relevant Apparatus is being carried out in accordance with Good Industry Practice and that the Required Standards are being met. If the Technical Services Provider is not satisfied (acting reasonably) that the Required Standards are being met, the Technical Services Provider shall inform the developer, the Service Provider and the Council forthwith;

- (f) following notification by the developer that installation has been completed and on the Technical Services Provider being satisfied that such installation has been so completed, the Technical Services Provider shall serve a written notice on the Service Provider stating
- (i) the nature, location and extent of the works and a description of the Apparatus to be inspected (including a plan showing the location of the installed Apparatus),
- and providing
- (ii) details of any cable distribution networks forming part of the Apparatus and proposed to be taken over by the Service Provider,
 - (iii) the electrical test certificates for the Apparatus,
 - (iv) a copy of the Required Standards (including the Standard Development Specification),
 - (v) written confirmation from the developer that the Apparatus complies with the Required Standards,
 - (vi) sufficient relevant information to allow the Service Provider to satisfy any Legislation,
- (g) within ten (10) Business Days of receipt of the written notice given pursuant to paragraph 5 4(f) the Service Provider shall inspect the relevant Apparatus and within two (2) Business Days of such inspection shall serve a written notice on the Technical Services Provider and the Council either
- (i) confirming that the Apparatus inspected achieves the Required Standards to the Service Provider's reasonable satisfaction (an Apparatus Acceptance Notice), or
 - (ii) stating that the Required Standards have not been achieved to the Service Provider's reasonable satisfaction and setting out in sufficient detail the reason(s) why the Required Standards have not been achieved and what steps the Technical Services Provider shall take to achieve the Required Standards,
- (h) if the Service Provider fails to give written notice within the time period specified in paragraph 5 4(g), then the Service Provider shall be deemed to have accepted that the Apparatus meets the Required Standards and an Apparatus Acceptance Notice shall be deemed to have been issued by the Service Provider,
- (i) where paragraph 5 4(g)(ii) applies the Technical Services Provider shall rectify or procure the rectification of such failure(s) so that the Required Standards are met to the Service Provider's satisfaction (acting reasonably),
 - (j) when the Technical Services Provider is satisfied that any failures have been rectified, the Technical Services Provider shall inform the Service Provider and the Council of such, whereupon the Service Provider shall repeat the procedure set out in paragraph 5 4(g) until it is satisfied that the Required Standards have been met or the Council issues an Apparatus Acceptance Notice,

(k) when an Apparatus Acceptance Notice has been issued in accordance with paragraph 5.4(g) or paragraph 5.4(h) (as the case may be) or the Service Provider is deemed to have issued an Apparatus Acceptance Notice:

- (i) the Apparatus shall constitute Apparatus that complies with the Street Lighting Services Specification (and, for the avoidance of doubt, the Service Provider shall procure that the lighting standards specified pursuant to paragraph 5.4(b)(i) are met);
- (ii) risk in such Apparatus shall transfer to the Service Provider on the date of the Apparatus Acceptance Notice;
- (iii) the Service Provider shall within two (2) Business Days of the date of the Apparatus Acceptance Notice, ensure that details of such Apparatus are added to the Management Information System; and
- (iv) the energy forecast shall be revised.

5.5 De-Accrual of Apparatus from the Service

The Council shall be entitled to request the De-Accrual of Apparatus from the scope of the Service by giving written notice (a De-Accrual Notice) to the Service Provider setting out:

- (a) what Relevant Action requires De-Accrual of the Apparatus;
- (b) details of the Apparatus to be De-Accrued;
- (c) the location of the Apparatus to be De-Accrued;
- (d) the proposed timing for the De-Accrual of the Apparatus; and
- (e) the date the De-Accrual of the Apparatus shall take effect,

and the Service Provider shall comply with all instructions of the Council given in respect of such De-Accrual, subject to such instructions being reasonable in terms of timing, nature and scope.

5.6 Where the Council serves a De-Accrual Notice:

- (a) the Apparatus shall cease to be treated as Apparatus for the purposes of this Agreement on the date stated in the De-Accrual Notice;
- (b) risk in such Apparatus shall transfer to the Council on the date set out in the De-Accrual Notice; and
- (c) the Service Provider shall, within two (2) Business Days of the date the Apparatus is De-Accrued ensure that such Apparatus is/are noted as De-Accrued on the Management Information System.

5.7 Payment for Accruals and De-Accruals

If at any time during the Service Period, taking into account all Accruals and De-Accruals, there is a net five percent (5%) increase or decrease in the aggregate amount of Apparatus from the

aggregate amount existing at the Service Commencement Date the Payment (excluding any variable elements) shall be increased or decreased by five percent (5%) (as appropriate)

5 8 **Not used**

5 9 **Identification of Apparatus not in the Inventory**

If, during the first eighteen (18) months following the Service Commencement Date, the Service Provider or the Council identifies Apparatus which

- (a) the Council is responsible for and which should be within the scope of the Street Lighting Services,
- (b) has not otherwise been Accrued, and
- (c) does not appear in the Inventory,

the Service Provider or the Council (as the case may be) shall serve notice to that effect on the other Party

5 10 In respect of Apparatus which is identified pursuant to paragraph 5 9 as not having been Accrued

- (a) such Apparatus shall be deemed to be Accrued fifteen (15) Business Days after the date of the notice served pursuant to paragraph 5 9 (Accrual Date),
- (b) on the Accrual Date, risk in such Apparatus shall transfer to the Service Provider, and
- (c) the Service Provider shall, within two (2) Business Days of the Accrual Date ensure that such Apparatus is/are noted on the Management Information System,

and such Accrual shall be deemed to be a Change and the Change Control Procedure shall apply (unless such Apparatus should have been Accrued pursuant to paragraph 5 4 or paragraph 5 5, in which case paragraph 5 8 shall apply)

5 11 If any Apparatus is identified as not being Accrued and such Apparatus meets the criteria set out in paragraph 5 9(a), 5 9(b) and 5 9(c) on a date later than eighteen (18) Months after the Service Commencement Date then paragraph 5 10 shall apply and no revision shall be made to the Payment as a result of such Accruals

6 **Certification**

6 1 **Certification by the Service Provider**

During the Service Period

- (a) the Service Provider shall self-certify all units of Apparatus (except in relation to the LED Services) being installed by the Service Provider in any particular month,
- (b) the Council (by itself or through the Council Representative or any Council Related Party having the relevant technical expertise) shall be entitled to inspect, comment upon, or object to at any stage of the installation process (and for a period of two (2) months thereafter) up

to one hundred per cent (100%) of the units of Apparatus being Certified by the Service Provider as being installed in that particular month; and

(c) the provisions of paragraphs 6.2 to 6.15 (inclusive) shall apply.

6.2 Notification by the Service Provider to the Council

The Service Provider shall give at least five (5) Business Days' notice in writing to the Council on each occasion that the Service Provider intends to carry out commissioning tests (for the purposes of final assessment and issue of a Certificate of Compliance) of the relevant Apparatus. Such notice shall specify the location and time at which the commissioning tests are to be carried out.

6.3 Inspections

If the Council wishes to attend the Service Provider's commissioning tests, the Council shall notify the Service Provider that the Council Representative and/or any Council Related Party who has the relevant technical expertise shall attend the Service Provider's commissioning tests and carry out such assessments or inspections to satisfy himself or themselves that the Service Provider has carried out the commissioning and met the requirements of this Agreement, including without limitation any requirements set out in the Street Lighting Services Specification (subject to any Snagging Items).

6.4 Written confirmation

The Service Provider shall, within two (2) Business Days of completion of the relevant commissioning tests, confirm to the Council in writing, whether or not it believes that the relevant Apparatus complies with the requirements of this Agreement (including without limitation the Street Lighting Services Specification) (subject to any Snagging Items) and, if applicable, submit to the Council a draft Snagging List.

6.5 Non-Compliance

If the Council does not agree with the Service Provider's written confirmation issued pursuant to paragraph 6.4 then the Council shall, within ten (10) Business Days of receipt, notify the Service Provider accordingly, giving details of the affected Apparatus and the grounds of non-compliance (which, to the extent considered appropriate by the Council, may include information relating to inspections carried out by the Council during the installation of the Apparatus). Following any such notification, the Service Provider shall, as soon as possible consider the details of the notification and confirm whether or not it agrees with the Council's notification.

6.6 Rectification

Where the Service Provider agrees with the Council's notification given pursuant to paragraph 6.5, the Service Provider shall as soon as possible, take such steps as it considers necessary to ensure that the relevant new Apparatus is Compliant. The Service Provider shall notify the Council on completion of the relevant steps and the provisions of paragraphs 6.3 to 6.5 (inclusive) shall apply until the Council accepts the Service Provider's written confirmation or the matter is referred to Dispute Resolution.

6.7 Dispute Resolution

Where the Council has served notice pursuant to paragraph 6 5 but the Service Provider does not agree with the Council's notification, the parties shall use their reasonable endeavours in good faith to reach agreement by discussion, but if no agreement is reached either Party may refer the matter to the Dispute Resolution Procedure

6 8 Delay to Installation

Where the Council has served notice pursuant to paragraph 6 5 and either the Service Provider agrees with the Council's notification or a dispute is in progress, the relevant Apparatus shall not be treated as being installed for the purposes of this Agreement (and no Certificate of Compliance shall be issued) until such date that it is agreed or determined that the relevant Apparatus is Compliant (subject to any Snagging Items)

6 9 Certificate of Compliance

Upon the agreement between the Council and the Service Provider that the relevant Apparatus is Compliant, the Service Provider shall issue to the Council a Certificate of Compliance together with a Snagging List

6 10 Rectification of Snagging Items

Where a Snagging List has been issued the Service Provider shall rectify the Snagging Items within twenty (20) Business Days of the date of issue of the Snagging List

6 11 Failure to Complete Snagging

Where the Service Provider fails to rectify the Snagging Items in accordance with the provisions of paragraph 6 10, then the Council shall be entitled to serve written notice on the Service Provider requiring such works to be carried out within twenty (20) Business Days of receipt of such notice, failing which the Council shall be entitled to carry out necessary works to rectify the Snagging Matters and the Service Provider shall pay the Council's costs and expenses reasonably and properly incurred in the carrying out of such works within twenty (20) Business Days of receipt of an invoice from the Council

6 12 Council entitled to make Enquiry

The Council shall be entitled to make any enquiry or test, or conduct any investigation it sees fit to satisfy itself that the units of New Apparatus and lighting schemes satisfy all of the requirements of this Agreement (including without limitation the Street Lighting Services Specification) including requesting the Service Provider to undertake illuminance tests in accordance with the Street Lighting Services Specification and BS EN 13201 or successor standard such that the outcome of such tests directly relates to lighting scheme and/or design compliance

6 13 Management Information System

Details of all New Apparatus shall be included in the Management Information System within two (2) Business Days of the issue of a Certificate of Compliance pursuant to paragraph 6 9 and from such date shall be required to meet the requirements of the Street Lighting Services Specification

6 14 No effect on Service Provider's Obligations

The issue of any Certificate of Compliance in no way affects the obligations of the Service Provider under this Agreement, including without limitation in respect of any failure by the Service Provider to meet the requirements of the Street Lighting Services Specification.

6.15 Excusing Cause

Where an Excusing Cause occurs and as a result an item of New Apparatus is deemed certified for the purposes of payment then the provisions of this paragraph 6 shall apply to such New Apparatus so that a Certificate of Compliance is issued for such New Apparatus as soon as practicable.

Part 5 – Ownership and Use of the Apparatus and other Assets

7 Ownership and Licence of Existing Apparatus

7 1 Property of the Council

Subject to paragraph 7 2, the Existing Apparatus shall remain the property of the Council

7 2 Licence to the Service Provider

The Council shall licence the Existing Apparatus to the Service Provider with effect from the date of this Agreement on the terms of the Apparatus Licence set out in paragraph 9 (Terms of the Apparatus Licence)

8 Ownership and Licence of New Apparatus

8 1 Property of the Council

Subject to paragraph 8 2, all New Apparatus shall become the property of the Council upon the date when such New Apparatus is Certified, or otherwise on the Expiry Date or, if earlier, the Termination Date

8 2 Licence to the Service Provider

With effect from the date that title in the New Apparatus passes to the Council pursuant to paragraph 8 1, the Council shall licence the New Apparatus to the Service Provider, on the terms of the Apparatus Licence set out in paragraph 9

9 Terms of the Apparatus Licence

The Council grants to the Service Provider a licence (**Apparatus Licence**) on the following terms

- (a) the licence shall permit the Service Provider to
 - (i) install Apparatus, and/or
 - (ii) use, manage, work on, remove, maintain, clean and repair the Apparatus, and/or
 - (iii) affix or remove Attachments to or from the Apparatus,
- (b) the Service Provider shall be entitled to grant a sub-licence (and such sub-licence shall include the right to grant sub-sub-licences) to a Service Provider Related Party to
 - (i) install Apparatus, and/or
 - (ii) use, manage, work on, remove, maintain, clean and repair the Apparatus, and/or
 - (iii) affix or remove Attachments to or from the Apparatus,

in each case in connection with and only insofar as such installation, use, management, work, removal, maintenance, cleaning, repair, affixing and removal is necessary or

expedient for the performance of the Service Provider's obligations or the exercise of the Service Provider's rights under this Agreement;

(c) the Apparatus Licence shall commence:

- (i) in respect of the Existing Apparatus as set out in paragraph 7.2; and
- (ii) in respect of the New Apparatus as set out in paragraph 8,

and the Apparatus Licence shall terminate on the Expiry Date or, if earlier, the Termination Date;

(d) in the exercise of the Apparatus Licence the Service Provider shall:

- (i) use reasonable endeavours not to cause any nuisance;
- (ii) at all times comply with Good Industry Practice;
- (iii) comply with all relevant Legislation, Guidance and Codes of Practice relating to the carrying out of the Street Lighting Services;
- (iv) obtain all Necessary Consents; and
- (v) make good any damage to any Council property, Assets or Apparatus forthwith but only insofar as the same arises from or in connection with the Street Lighting Services;

(e) for the avoidance of doubt, the Apparatus Licence is not a licence under NRSWA and is granted subject and without prejudice to:

- (i) any right of the Council pursuant to Clause 38 (Council Step-In) and/or any other express provision of this Agreement to provide the Street Lighting Services;
- (ii) the Council's rights, powers, duties generally and the exercise of its rights, functions and performance of its obligations in accordance with this Agreement; and
- (iii) the rights of agents of the Council, statutory undertakers and holders of licences under the NRSWA (or any agents of the same); and

(f) the Apparatus Licence is not a lease of any Apparatus and the parties do not intend the Apparatus Licence to transfer any real property from the Council to the Service Provider or grant to the Service Provider any interest in any Apparatus the subject of this Apparatus Licence or in the land on which any such Apparatus is placed.

10 Risk and ownership of in the Apparatus

10.1 Existing Apparatus

From 00.00.01 on the Service Commencement Date, and thereafter until it reverts to the Council in accordance with paragraph 10.5, all risk in the Existing Apparatus shall be borne by the Service Provider. The Service Provider shall, in providing the Street Lighting Services and at its own cost, take such steps as are necessary to repair or replace any item of Existing Apparatus which for any

reason is damaged (whether as a result of accident or vandalism or otherwise) so that the Street Lighting Services Specification and the other requirements of this Agreement are complied with

10 2 Recovery from Third Parties

If an Emergency Fault, Urgent Fault or Non-Emergency Fault occurs as a result of the conduct of a third party

- (a) the Service Provider shall be entitled
 - (i) to seek recovery of the costs of repair of such Emergency Fault, Urgent Fault or Non-Emergency Fault from the relevant third party to the extent that it is possible and reasonably practicable to do so, and
 - (ii) to retain any such costs of repair recovered from a relevant third party, and
- (b) the Council shall, having regard to the limited resources available to it, provide reasonable assistance to the Service Provider to enable the Service Provider to recover such costs of repair from the relevant third party,

provided always that

- (c) the Council shall not be obliged to make any financial contribution to the Service Provider's attempt to recover such costs of repair from the relevant third party, and
- (d) the Service Provider shall release the Council from any liability and indemnify it against any costs, losses or damages that may arise as a result of the Service Provider's attempt to recover such costs of repair from the relevant third party

10 3 Incomplete Apparatus

Without prejudice to paragraph 11, where part of an item of Apparatus has been installed but the installation has not been completed by the Expiry Date or, if earlier, Termination Date, then

- (a) no later than the Expiry Date or, if earlier, the Termination Date, the Service Provider shall deliver to the Council a written list detailing the incomplete items of Apparatus together with such photographic evidence as is reasonably necessary for the Council to identify the incomplete items of Apparatus,
- (b) the Council shall, within thirty (30) Business Days of receipt of the list referred to in paragraph 10 3(a) specify, in writing, which incomplete items of Apparatus shall be removed by the Service Provider,
- (c) no later than twenty (20) Business Days of receipt of the written instructions referred to in paragraph 10 3(b), the Service Provider shall
- (d) remove, at no cost to the Council, the items identified by the Council to be removed, and
- (e) transfer to the Council the rights, title and interest in, and to, all remaining incomplete items of Apparatus

10.4 New Apparatus

Risk in the New Apparatus shall be the responsibility of the Service Provider until it reverts to the Council in accordance with paragraph 10.5. The Service Provider shall, in providing the Service, take such steps as are necessary to repair or replace any item of New Apparatus which for any reason is damaged (whether as a result of an accident, vandalism or otherwise) so that the Street Lighting Services Specification and the other requirements of this Agreement are complied with.

10.5 Transfer of Risk to the Council

Subject to paragraph 13, risk in the Apparatus shall pass to the Council at 23:59:59 on the last day of the Service Period.

11 Use and Disposal of the Apparatus and the Equipment

11.1 Restriction on Use

The Service Provider shall not use the Apparatus for any purpose other than in respect of the performance of the Service Provider's obligations under this Agreement.

11.2 Restriction on Transfer and Disposal

Subject to paragraph 11.3, the Service Provider shall not sell, lease, transfer, grant rights over or otherwise dispose or part with possession of (or purport to do any of the foregoing) any interest in any item of Apparatus without obtaining the prior written consent of the Council.

11.3 Permitted Transfer and Disposal

The Service Provider may sell, lease, transfer, grant rights over or otherwise dispose or part with possession of any item of Apparatus to the extent that:

- (a) such disposal is identified in Annual Programme; and
- (b) in the Service Provider's reasonable opinion, the Apparatus comprises equipment which is of a waste or scrap nature (which, for the avoidance of doubt, the Service Provider is obliged to dispose of at its own cost).

11.4 Consent

Any consent granted by the Council pursuant to paragraph 11.2 may be given generically in relation to particular Apparatus, or specifically in relation to an individual item of Apparatus, and shall be subject to such conditions as the Council may specify in its absolute discretion (including without limitation as to price and that any proceeds, including any related profit, is remitted to and belongs to the Council or as it otherwise may direct).

11.5 Obligation to make Equipment Available

The Service Provider shall:

- (a) make its equipment, plant and vehicles available for such use as may reasonably be required by the Council or its employees or agents in connection with this Agreement (and in the case of an Emergency in connection with such Emergency); and

- (b) procure that its equipment, plant and vehicles is insured in respect of such use throughout the Service Period and in accordance with this Agreement

12 Necessary Consents

12.1 Not Used

12.2 Necessary Consents for fixing Apparatus

The Service Provider may, in the course of providing the Street Lighting Services, be required to affix Apparatus to structures other than other Apparatus and the Service Provider shall

- (a) diligently and without delay and, to the extent that it is lawfully entitled to do so, take such action as is necessary or appropriate to liaise with, and obtain Necessary Consents from, Owners (as that term is defined in Section 45(9) of the Public Health Act 1961) of the structure to which it is proposed Apparatus will be attached,
- (b) keep the Council informed of progress on a continuing basis at all reasonable times, and upon reasonable request by the Council,
- (c) where the Service Provider, using all reasonable endeavours, has been unable to obtain a Necessary Consent from an Owner, give written notice to the Council informing the Council that the Service Provider has been unable to obtain such Necessary Consent and such notice shall set out
 - (i) details of the relevant Apparatus, structure and Owner,
 - (ii) documentary evidence of the reasonable endeavours taken by the Service Provider to secure such Necessary Consent, and
 - (iii) proposed alternative design solutions whereby the relevant Apparatus could be affixed in another location or to another structure (or other Apparatus) which design solutions shall be the minimum departure from the Relevant Lighting Standards

12.3 Process to be followed where consent not obtained

Upon receipt by the Council of a notice served pursuant to paragraphs 12.2(c) or 12.6(b)

- (a) where the Council reasonably believes that the Service Provider has not complied with paragraph 12.2(c), inform the Service Provider what further steps it wishes the Service Provider to take (which may include the submission of further design solutions) to comply with paragraph 12.2(c) and the Service Provider shall either take such steps or refer the matter to the Dispute Resolution Procedure,
- (b) when the Council is satisfied that the Service Provider has complied with paragraph 12.2(c) the parties shall meet to discuss the means by which the failure to obtain the Necessary Consent to affix the Apparatus to structures can be overcome and the continued performance of this Agreement can be facilitated. Such steps may include the Council seeking to obtain the Necessary Consent and/or the Council agreeing to a departure from a Required Standard and/or the Apparatus being affixed in an alternative location as directed by the Council

12.4 Excusing Cause

From the date twenty (20) Business Days after the date the Council first meets with the Service Provider pursuant to paragraph 12.3(b) until the earlier of:

- (a) the Service Provider or the Council obtains the Necessary Consent to affix the Apparatus;
- (b) the Apparatus is installed in another location in accordance with the Street Lighting Services Specification;
- (c) the relevant Apparatus is De-Accrued in accordance with paragraph 5;
- (d) a Change is implemented in accordance with the Change Protocol,

any failure to obtain a Necessary Consent to affix Apparatus to a structure other than other Apparatus shall constitute an Excusing Cause.

12.5 Removal of Apparatus

The Service Provider shall be responsible for complying with (in accordance with the Public Health Act 1961 and any other applicable Legislation) any requests from Owners to:

- (a) remove Apparatus from structures temporarily during periods of repair or reconstruction; and
- (b) remove Apparatus from structures permanently,

provided that the Service Provider shall be entitled to seek to recover any reasonably incurred costs from the Owner and retain any such sums received.

12.6 Owner's request to remove Apparatus

In the event that a request is made by an Owner to remove Apparatus from a building pursuant to paragraph 12.5 the Service Provider shall:

- (a) where the Apparatus is to be removed temporarily, remove and re-fix the relevant Apparatus and during the period of removal take such alternative measures as are necessary to ensure the Street Lighting Services Specification is complied with;
- (b) where the Owner has requested the Apparatus be removed permanently, inform the Council in writing forthwith and use reasonable endeavours to agree with the Owner that the Apparatus remain in its original position. Where the Service Provider has been unable to obtain agreement from the Owner that the Apparatus shall remain in its original position, then, the Service Provider shall serve a written notice on the Authority containing the information set out in paragraph 12.2(c) and thereafter paragraphs 12.3 and 12.4 shall apply.

12.7 Court Proceedings to remove Apparatus

The Council may at its discretion commence proceedings under the Public Health Act 1961 (or other applicable Legislation) so that a court can determine whether an Owner is obliged to allow or entitled to disallow the Apparatus to be fixed to the relevant building.

12 8 Service Provider to take Proceedings

The Council may serve written notice on the Service Provider requiring the Service Provider, at the Council's cost, (to the extent such costs are reasonably and properly incurred by the Service Provider)

- (a) to diligently and without delay prepare the paperwork in the name of the Council in respect of any proceedings taken or to be taken by the Council pursuant to paragraph 12 7, and/or
- (b) to attend any court proceedings,

provided that the Council shall, as soon as practicable following a reasonable request from the Service Provider, sign any necessary documentation and take such other necessary steps or steps reasonably required by the Service Provider which only the Council is able to take relating to any such proceedings and if either party becomes aware that the Council is not entitled pursuant to any Legislation, to delegate responsibility under this paragraph 12 8 to the Service Provider, that party shall inform the other party of that fact and as soon as reasonably practicable thereafter the Council and/or the Service Provider shall take such steps as are necessary to ensure compliance with the relevant Legislation

12 9 Indemnity

The Service Provider shall indemnify and keep indemnified the Council on demand against all losses arising from or in connection with

- (a) any act or omission by the Service Provider in relation to or in connection with the matters referred to in paragraphs 12 2 to 12 8 (inclusive),
- (b) any failure of the Service Provider to comply with its obligations as set out in paragraphs 12 2 to 12 8 (inclusive), and
- (c) any damage or loss suffered by an Owner as a result of any act or omission of the Service Provider

13 Access to Third party Land to install Apparatus

13 1 Service Provider to Secure Access

Whenever the due performance of the Street Lighting Services necessitates the Service Provider entering land off the highway which is outside the control of the Council in connection with the installation of Apparatus, the Service Provider shall use all reasonable endeavours to secure access to such land for the Council and the Service Provider for such period as may be required by either of the parties to facilitate the due performance of this Agreement

13 2 Notification

Where the Service Provider is unable to gain access as required by paragraph 13 1

- (a) the Service Provider shall use all reasonable endeavours to identify an alternative access or (if appropriate) an alternative location as soon as reasonably practicable,

- (b) if the Service Provider is unable to identify an alternative access or (if appropriate) an alternative location it shall notify the Council, in writing, as soon as reasonably practicable of the Service Provider's inability to obtain the required access to such land and such notice shall include all relevant details of the land, the access required, the reason for the access, the duration for which such access is required together with documentary evidence of the reasonable endeavours taken by the Service Provider to obtain such access and/or identify an alternative access or location.

13.3 Process where access not obtainable

Upon receipt by the Council of a notice service pursuant to paragraph 13.2(b):

- (a) where the Council reasonably believes that the Service Provider has not complied with paragraph 13.2(a), inform the Service Provider what further steps it wishes the Service Provider to take to comply with paragraph 13.2(a) and the Service Provider shall either take such steps or refer the matter to the Dispute Resolution Procedure;
- (b) when the Council is satisfied that the Service Provider has complied with paragraph 13.2(a) the parties shall meet to agree what action should be taken to secure the necessary access which may include the Council taking such steps as, in its absolute discretion, it shall decide to obtain the required access on the Service Provider's behalf;
- (c) if an alternative location or access has not been identified or the Council has not obtained the access required for installation of the Apparatus within twenty (20) Business Days of meeting pursuant to paragraph 13.3(b) then paragraph 13.4 shall apply.

13.4 Excusing Cause

From the date twenty (20) Business Days after the meeting referred to in paragraph 13.3(b) until the earlier of:

- (a) the Council obtaining the required access;
 - (b) the parties agreeing an alternative location whereby access to third party land is no longer required;
 - (c) a Council Change being implemented in accordance the Change Control Procedure,
- such failure shall constitute an Excusing Cause.

Part 6 – Service Standards and Payments

14 Service Obligation and Performance Standards

14.1 Standard of Service

The Service Provider shall provide the Street Lighting Services continuously from the Service Commencement Date and throughout the remainder of the Services Period in accordance with

- (a) the Relevant Standards,
- (b) the Annual Programme, and
- (c) the Street Lighting Services Specification, these Street Lighting Services Special Conditions and the other provisions of this Agreement

14.2 Maintenance

The Service Provider shall ensure, on a continuing basis, that at all times its maintenance and operating procedures are sufficient to ensure that

- (a) the Apparatus is continuously compliant with the Street Lighting Services Specification, and
- (b) the design intention of the Apparatus to achieve their full working life is maintained

14.3 Standard on Expiry

The Service Provider shall perform the Street Lighting Services such that at the Expiry Date (or, if earlier, the Termination Date) the Apparatus shall be in the condition that is commensurate with the Service Provider having performed in full its obligations under the Agreement

14.4 Final Surveys

No later than eighteen (18) months prior to the Expiry Date, the Council shall be entitled to carry out or procure the carrying out of

- (a) a survey (the **Street Lighting Survey**) of the Apparatus to assess whether it has been, and is being, maintained by the Service Provider in accordance with its obligations under paragraph 14.1 (Standard of Service) and/or paragraph 14.2 (Maintenance),
- (b) a survey and/or investigation of the accuracy of the Management Information System (the **Management Information System Survey**) to determine whether or not the Management Information System has been, and is being, kept up to date by the Service Provider in accordance with its obligations under this Agreement, and
- (c) if the Service Provider has been notified under paragraph 14.7(a) that rectification and/or maintenance work is required, then no earlier than twelve (12) months prior to the Expiry Date, the Council shall (to the extent the works have not been carried out by the Service Provider in the interim) deduct the cost of the Street Lighting Survey and/or the Management Information System Survey and the costs of any required works as quantified by either the Street Lighting Survey or the Management Information System Survey in equal instalments from each Payment payable after the date of notification and pay such amount into an

interest bearing account (the **Retention Fund Account**) until this Agreement has expired or terminated,

and subject to paragraph 14.7(c), the cost of the Final Surveys shall be borne by the Council.

14.5 Notice of Final Surveys

The Council shall notify the Service Provider in writing a minimum of five (5) Business Days in advance of the dates it wishes to carry out the Final Surveys. The Council shall consider in good faith any reasonable request by the Service Provider for the Final Surveys to be carried out on a different dates if such request is made at least two (2) Business Days prior to the notified dates and the Service Provider (acting reasonably) is able to demonstrate that carrying out the Final Surveys on the notified dates would materially prejudice the Service Provider's ability to provide the Street Lighting Services.

14.6 Minimisation of Disruption

When carrying out the Final Surveys, the Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Street Lighting Services by the Service Provider. The Service Provider shall afford the Council or any person carrying out the Final Surveys (free of charge) any reasonable assistance required by the Council during the carrying out of the Final Surveys.

14.7 Results of Final Surveys

If the Street Lighting Survey shows that the Service Provider has not complied with or is not complying with its obligations under paragraph 14.1 (Standard of Service) and/or paragraph 14.2 (Maintenance), or if the Management Information System Survey shows that the Service Provider has not kept the Management Information System in accordance with its obligations, the Council shall:

- (a) notify the Service Provider of the rectification and/or maintenance work which is required to bring the Apparatus or the Management Information System to the standard they would have been in if the Service Provider had complied or was complying with its obligations under these Street Lighting Services Special Conditions and, in particular, to ensure the requirements of paragraph 14.2 (Maintenance) are met (the **Survey Standard**);
- (b) specify a reasonable period within which the Service Provider shall carry out such work (the **Specified Period**); and
- (c) recover the cost of the Street Lighting Survey and/or the Management Information System Survey (as shall be applicable) from the Service Provider by means of a withdrawal from the Retention Fund Account or, if the Retention Fund Account has been exhausted, a deduction from the next payment of the Payment or recover such amount as a debt payable on demand.

14.8 Rectification Work

The Service Provider shall carry out such rectification and/or maintenance work notified pursuant to paragraph 14.7(a) (the **Outstanding Works**) in order to reach the Survey Standard to the Council's

reasonable satisfaction within the Specified Period and any costs it incurs in carrying out the Outstanding Works shall be at its own expense

14 9 Reimbursement

If and to the extent that the Service Provider carries out the Outstanding Works to reach the Survey Standard to the Council's reasonable satisfaction within the Specified Period, the Council shall (to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account) reimburse the Service Provider's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Service Provider. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Service Provider's costs, the Service Provider shall bear the balance of its costs itself

14 10 Failure to carry out work

If, and to the extent that, the Service Provider fails to carry out the Outstanding Works to reach the Survey Standard to the Council's reasonable satisfaction within the Specified Period, the Council shall be entitled to carry out itself, or procure the carrying out of the Outstanding Works at the Service Provider's expense. The Council shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account make deductions from the Payment to pay for such rectification or maintenance works or recover such amount as a debt payable on demand

14 11 Balance of Fund

In the event that

- (a) all the rectification and/or maintenance work identified by the Council has been carried out to the Council's reasonable satisfaction,
- (b) all such rectification and/or maintenance work has been paid for by the Service Provider, and
- (c) no Termination Notice given in accordance with this Agreement is outstanding,

then the Council shall pay any credit balance on the Retention Fund Account (including accrued interest) to the Service Provider as soon as practicable

14 12 Public Health Act

The Service Provider shall be fully responsible for ensuring that the obligations of Service Provider and the Council (to the extent that the Service Provider is carrying out such obligations on the Council's behalf or is acting in accordance with the Council's reasonable instructions pursuant to these Street Lighting Services Special Conditions) under the Public Health Act 1961 and all other applicable Law are complied with insofar as they apply to the performance of the Street Lighting Services and for taking all necessary or appropriate action in relation to the same

15 Design of Apparatus

15 1 The design of all New Apparatus and the way in which such New Apparatus is installed in accordance with this Agreement (which, for the avoidance of doubt, shall include the Service

Provider's proposals as to how the Apparatus shall be installed and any plans for such installation) shall be subject to the Council's approval in accordance with the Review Procedure.

- 15.2 Where the Service Provider is also the Technical Services Provider, if the Service Provider (in its capacity as Street Lighting Services Provider) incurs any Losses due to failure by the Service Provider in its capacity as the Technical Services Provider to comply with its design obligations it will be required to claim against the Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.
- 15.3 If the Service Provider (in its capacity as Technical Services Provider) ceases to provide the Technical Services for any reason, the Service Provider (in its capacity as Street Lighting Services Provider) shall enter into the Provider Direct Agreement with the incoming Technical Services Provider provided that:
- (a) the incoming Technical Services Provider is an organisation of appropriate legal and financial standing with appropriate technical expertise and resources to provide (or procure the provision of) the Technical Services; and
 - (b) in advance of execution of any Provider Direct Agreement, the incoming Technical Services Provider provides evidence in a form acceptable to the Service Provider (acting reasonably) that it holds professional indemnity insurance against risks and with a level of cover acceptable to the Service Provider.
- 15.4 Where the Service Provider (in its capacity as Street Lighting Services Provider) has entered into a Provider Direct Agreement with an incoming Technical Services Provider and incurs any Losses due to failure by the incoming Technical Services Provider to comply with its design obligations it will be required to claim under the Provider Direct Agreement against the incoming Technical Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.

16 Public Highway Works and Relevant Legislation

16.1 New Roads and Street Works Act

The parties acknowledge and agree that for the purposes of this Agreement:

- (a) all works undertaken by the Service Provider in connection with the carrying out of the Street Lighting Services shall be Works for Road Purposes (as that term is defined in Section 86(2) of NRSWA);
- (b) to the extent that the provisions of NRSWA are relevant to the carrying out of the Street Lighting Services, the Service Provider shall itself, and shall procure that each Sub-Contractor shall, comply with:
 - (i) the provisions of NRSWA; and
 - (ii) all obligations placed on the Council pursuant to NRSWA in connection with Works for Road Purposes under (inter alia) Section 83 of NRSWA;
- (c) the Service Provider shall not undertake Major Highways Works (as that term is defined in Section 86(3) of NRSWA) without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed);

- (d) notwithstanding the provisions of Clause 32, the Service Provider shall keep records of the Apparatus as required by the Council (or such other person nominated by the Council) pursuant to NRSWA and shall consult all undertakers' records held pursuant to Section 79 of NRSWA prior to commencing any works in connection with the Service, and
- (e) notwithstanding the other provisions of this paragraph 16 1 and the obligations set out in NRSWA, requirements of the Street Lighting Services Specification shall apply to the giving of notices in relation to works carried out in connection with the Street Lighting Services

16 2 Traffic Management Act

The Service Provider acknowledges that the Council has duties imposed upon it by the Traffic Management Act 2004 and shall co-operate and liaise with the Council to assist the Council in discharging its duties under Section 16 of the Traffic Management Act 2004

16 3 Public Highway Works

Where the Council proposes to undertake or procure the undertaking of any works within or about the public highway and in the Council's view (acting reasonably) such works could not have reasonably been foreseen by the Service Provider and incorporated in the relevant Annual Programme and are likely to cause a direct material obstruction to or interference with the Service Provider's ability to perform its obligations in accordance with this Agreement (**Relevant Highway Works**) the Council shall

- (a) issue a notice to the Service Provider at least five (5) Business Days (or otherwise as is reasonable given the nature and scale of the Relevant Highway Works) prior to the commencement of such works, and
- (b) specify in the notice referred to in paragraph 16 3(a)
 - (i) the Apparatus which will be affected,
 - (ii) the date upon which the Relevant Highway Works are due to commence (**Temporary Suspension Start Date**), and
 - (iii) a reasonable estimate of the date on which the Relevant Highway Works will conclude (**Temporary Suspension End Date**) which period may be extended or reduced as the Council considers reasonable in all the circumstances by a further written notice given as soon as reasonably practicable to the Service Provider

16 4 Excusing Cause

In respect of any Apparatus which is affected by the Relevant Highway Works an Excusing Cause shall apply in respect of such Apparatus for the period between the Temporary Suspension Start Date and the Temporary Suspension End Date (as extended or reduced) provided that the Service Provider, acting in accordance with Good Industry Practice, could not reasonably be expected to mitigate any material interference or obstruction to the Service Provider's obligations under this Agreement

16 5 Failure to Issue a Notice

Where the Council does not issue a notice under paragraph 16.3 and it is agreed between the Parties or determined in accordance with the Dispute Resolution Procedure:

- (a) that works undertaken by the Council within or about the Public Highway either will or have caused a direct material obstruction to or interference with the Service Provider's obligations to perform the Service; and
- (b) such works could not have reasonably been foreseen by the Service Provider and incorporated into the relevant Annual Programme; and
- (c) such works have not been correctly entered into the Street Works Register in accordance with NRSWA at least five (5) Business Days before the planned commencement date of the proposed works,

an Excusing Cause shall apply in respect of Apparatus affected by the works for the period of such works, provided that the Service Provider, acting in accordance with Good Industry Practice, could not reasonably be expected to mitigate any material interference or obstruction with the Service Provider's obligations to perform the Street Lighting Services.

16.6 **Obligation to Provide Street Lighting Services**

During the period between any Temporary Suspension Start Date and Temporary Suspension End Date (as extended or reduced) or where paragraph 16.5 applies for the duration of the carrying out of the works the Service Provider shall not have any obligation to provide the Street Lighting Services in relation to the affected Apparatus, except to the extent that the Council requests the Service Provider to carry out the Service to the affected Apparatus. Where the Council does so request, the Service Provider shall use reasonable endeavours to comply with such request. All requests from the Council shall be in writing except in the case of an emergency (which oral request shall be confirmed in writing by the Council).

16.7 **Standard of Relevant Highway Works**

The Council shall ensure that during the period between the Temporary Suspension Start Date and the Temporary Suspension End Date (or where paragraph 16.5 applies for the duration of the carrying out of the works), the Relevant Highway Works (or, as the case may be, the works referred to in paragraph 16.5) shall be carried out so as not to cause any material deterioration in the condition of any Apparatus (excluding fair wear and tear).

17 **Sub-Contractors in the Construction Industry Scheme**

17.1 The following provisions shall apply in respect of the Sub-Contractor Legislation (as hereafter defined):

- (a) in this paragraph 17 (but not otherwise):
 - (i) **Sub-Contractor Legislation** means Chapter 3 of Part 3 Finance Act 2004, the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007 or any other statute or subordinate legislation relating to the Scheme as from time to time modified or replaced either before or after the Agreement Date;

- (ii) **Principal** means a person who is a contractor for the purposes of the Sub-Contractor Legislation,
 - (iii) **Statutory Deduction** means the deduction referred to in section 61 of the Finance Act 2004 or such other deduction as may be required by Sub-Contractor Legislation,
- (b) the Parties acknowledge that the Council is a Principal, and the Service Provider is a sub-contractor and this Agreement is a contract relating to construction operations for the purposes of the Sub-Contractor Legislation and that therefore the Sub-Contractor Legislation shall apply to all payments to be made by the Council to the Service Provider hereunder,
- (c) not later than fifteen (15) Business Days before the first payment under this Agreement is due to be made to the Service Provider or after this paragraph 17 applies for the first time and on each occasion when this paragraph 17 applies following a period when it has not so applied, the Service Provider shall, to the extent appropriate under the Sub-Contractor Legislation, provide the Council with all information and assistance which may be required by the Council in order to verify the Service Provider's entitlement to be paid without the Statutory Deduction under the Sub-Contractor Legislation, or the rate of Statutory Deduction which is applicable to such payment, including (but not limited to) its unique taxpayer reference,
- (d) the Council shall as a Principal
- (i) provide to the Service Provider in writing any information required under Section 4(8) of the Income Tax (Construction Industry Scheme) Regulations 2005 or such other information as may be required by the Sub-Contractor Legislation at the relevant time,
 - (ii) submit monthly returns to HM Revenue and Customs in accordance with the Sub-Contractor Legislation,
- as appropriate under the Sub-Contractor Legislation in force at the relevant time,
- (e) where any error or omission has occurred in calculating or making the Statutory Deduction then
- (i) in the case of an over-deduction, the Council shall correct that error by repayment of the sum over-deducted to the Service Provider (save where the Council has accounted for that deduction to HM Revenue and Customs, in which case such repayment shall be made following and to the extent of receipt by the Council of a corresponding repayment from HM Revenue and Customs which the Council shall use reasonable endeavours to procure as soon as reasonably possible), and
 - (ii) in the case of an under-deduction, the Service Provider shall correct that error or omission by repayment of the sum under-deducted to the Council forthwith on written demand,
- (f) if compliance with this paragraph 17 causes the Council or the Service Provider to breach any other term of this Agreement, then the provisions of this paragraph 17 shall prevail and in particular (without limitation) any provisions in this Agreement which

- (i) require the payment of interest by the Council to the Service Provider (to the extent that they require such payment of interest); or
- (ii) give the Service Provider the right to terminate this Agreement due to amounts of money due from the Council to the Service Provider being unpaid,

shall not apply to any amount properly withheld or not paid by the Council in accordance with the provisions of paragraph 17.1(e) or to an error or omission by the Council in calculating or making the Statutory Deduction where that error or omission has been rectified under paragraph 17.1(d).

18 Quality Assurance

18.1 Quality management systems and the Service Quality Plan

The Service Provider shall ensure that:

- (a) the provision of the Street Lighting Services is the subject of quality management systems;
- (b) the quality management systems referred to in paragraph 18.1(a) shall be reflected in appropriate quality plans, the standard of which shall be consistent with ISO 9000 or any equivalent standard which is generally recognised as having replaced it;
- (c) without limitation to the generality of paragraph 18.1(a), there shall at all times be in existence a design quality plan and a service quality plan (the Quality Plans); and
- (d) the Street Lighting Services are carried out in compliance with the Quality Plans.

19 Business Continuity Planning

19.1 The Service Provider shall keep the Business Continuity Plan up to date in accordance with Clause 17 of the Agreement so as to ensure that it corresponds and responds to developments and/or changes in risks and circumstances in relation to the Street Lighting Services.

20 Electricity Procurement

20.1 The Council shall be responsible for procuring and paying for electricity for all powered Apparatus.

20.2 The Service Provider shall provide all reasonable assistance to the Council in respect of the Council's obligations under paragraph 20.1 and shall not (directly or indirectly) cause the Council to breach any of its obligations under any Electricity Contract.

Part 7 - LED Upgrade

21 Service Provider Termination Events

21 1 Subject to paragraph 21 2, the following events shall each give rise to the right for the Council to terminate this Agreement and shall be deemed to be Service Provider Termination Events for the purposes of Clause 46 1 22

- (h) the Service Provider fails to complete the LED Services by the LED Longstop Date, and/or
- (i) the Technical Services Provider (acting in accordance with its obligations) does not issue a Certificate of Compliance (LED) in respect of at least 300 LED Luminaires in any rolling three (3) month period during the LED Programme Period,

each an LED Termination Event

21 2 The Parties acknowledge that the Council shall have the right to terminate this Agreement in respect of the LED Services only on the occurrence of an LED Termination Event, and so for the purposes of the application of Clause 51 the LED Services shall be deemed to be a Service Element and the definition of "Service Element" shall be interpreted accordingly

22 Guarantee and Residual Life

22 1 Prior to commencing the LED Services, the Service Provider shall enter into a tripartite agreement with the manufacturer of any LED Apparatus and the Council on such terms as are satisfactory to the Council, pursuant to which the manufacturer shall guarantee the economic life of the relevant LED Apparatus for a period of 20 years following Installation of the same

23 Disposal of Assets

23 1 The Service Provider must dispose of all assets and equipment removed from each Lighting Point as a result of carrying out the LED Programme in accordance with all relevant Legislation and Good Industry Practice and taking all reasonable steps to maximise the volume of material which is re-used and/or recycled

24 Postponement of LED Services

24 1 Notwithstanding any other provision of this Agreement, the Council may at any time prior to the commencement of the LED Services or during provision of the LED Services postpone the LED Services if the provision of the LED Services is subject to a Challenge, by written notice to the Service Provider (Postponement)

24 2 If the Council exercises its right to postpone the LED Services pursuant to paragraph 24 1, the Service Provider shall (as applicable)

- (a) cease provision of the LED Services within two (2) Business Days of notification of the Postponement,
- (b) ensure that any installations of LED Apparatus in progress at the time of commencement of the Postponement are completed within two (2) Business Days of notification of the

Postponement, and no Street Lights are left unlit contrary to the requirements of the Street Lighting Specification as a result of the Postponement;

- (c) ensure that any installations of LED Apparatus in progress at the time of commencement of the Postponement that cannot be completed within two (2) Business Days are left in a safe condition such that there is no actual or potential risk to the health and safety of any person arising from such incomplete installation;
- (d) not install any LED Luminaires in the Council Area pursuant to the LED Programme or the Street Lighting Maintenance Services during the period of Postponement.

24.3 If, during the period of Postponement, the Service Provider is required to replace Apparatus under the Street Lighting Services Specification and such replacement would (but for this provision) otherwise require the installation of LED Luminaire(s) by the Service Provider, the Service Provider shall instead use Non-LED Luminaire(s), provided that the Service Provider shall obtain the Council's prior approval for the installation of such Non-LED Luminaire(s) (such approval not to be unreasonably withheld or delayed by the Council).

24.4 On written notification by the Council of the termination of a period of Postponement, the Service Provider shall:

- (a) as soon as reasonably practical, commence or resume (as applicable) the provision of the LED Services;
- (b) make such reasonable adjustments to the LED Programme as may be required as a result of the Postponement; and
- (c) provide the updated LED Programme to the Council for approval (such approval not to be unreasonably withheld or delayed).

24.5 For the purposes of this paragraph 24:

Challenge means:

- (a) any written correspondence from a Third Party which indicates that a challenge to the validity of the Agreement or the nature of the Services to be provided under this Agreement will or may be made or that compensation or a remedy of any nature is being sought from the Council as a result of the entry into the Agreement by the Council; or
- (b) the issue of any proceedings by a Third Party of any nature that challenges the validity of the Agreement or the nature of the Services to be provided under this Agreement or under which compensation or a remedy of any nature is being sought from the Council,

in each case including, but not limited to, challenges or notifications received under any Legislation, judicial review principles and infraction proceedings initiated by the European Commission against the UK under the Treaty on the Functioning of the European Union.

Annex 1: Provider Direct Agreement

Dated

20

TECHNICAL SERVICES PROVIDER (1)
TRAFFORD BOROUGH COUNCIL (2)
STREET LIGHTING SERVICES PROVIDER (3)

DIRECT AGREEMENT
relating to the provision of design services in relation to
the street lighting

BETWEEN:

- (1) **Technical Services Provider** (registered in England and Wales under company number) whose registered office is at (**Technical Services Provider**),
- (2) **TRAFFORD BOROUGH COUNCIL** whose principal office is situated at Trafford Town Hall, Talbot Road, Stretford, Greater Manchester M32 0TH (**Council**), which expression includes its permitted successors in title and assigns), and
- (3) **Street Lighting Services Provider** (registered in England and Wales under company number) whose registered office is at (**Street Lighting Services Provider**)

BACKGROUND

- (A) By a partnership agreement dated [] 2015 (**Technical Services Agreement**) the Council has appointed the Technical Services Provider to perform, amongst other services, certain design and technical services in relation to the Highway Network (as defined therein)
- (B) By a partnership agreement dated [] 2015 (**Street Lighting Services Agreement**) the Council has appointed the Street Lighting Services Provider to carry out cyclical and reactive maintenance works in relation to street lighting on the Highway Network
- (C) Pursuant to the Technical Services specification contained in Schedule 2 (*Specification*) to the Technical Services Agreement, the Technical Services Provider shall design, or procure the design of, certain works of a capital nature in relation to the Highway Network (**Highway Capital Works**) including the design of street lighting
- (D) Pursuant to the Street Lighting Services specification contained in Schedule 2 to the Street Lighting Services Agreement, the Street Lighting Services Provider shall carry out from time to time street lighting works as part of the Highway Capital Works as required by the Council and as designed and specified by the Technical Services Provider
- (E) The Technical Services Provider is obliged under the Technical Services Agreement to give a warranty in this form in favour of the Street Lighting Services Provider

1 DEFINITIONS AND INTERPRETATIONS

In this deed unless the context otherwise requires, any defined term in this deed shall have the same meaning given to such term in the • and the following terms shall have the following meanings

Partnership Agreement means either the Technical Services Agreement or the Highways Service Agreement as the context requires,

Service Provider means either the Street Lighting Services Provider or the Technical Services Provider as the context requires

2 OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1 00) by the Street Lighting Services Provider to the Technical Services Provider, receipt of which the Technical Services Provider acknowledges

3 GENERAL

3 1 Each of the Service Providers acknowledges to the other Service Provider that it has received and examined the specifications contained within the other Partnership Agreement and acknowledges to the other Service Provider that a breach of its Partnership Agreement may cause Losses to the other Service Provider in connection with the performance of its Partnership Agreement

- 3.2 Each of the Service Providers shall undertake its obligations and exercise its rights under this Agreement and under its Partnership Agreement in such a way as not to interfere with, hinder or delay the other Service Provider in complying with its obligations under its Partnership Agreement.
- 3.3 Each of the Service Providers undertakes to the other to consult and co-operate when performing any of its obligations under its Partnership Agreement that affect or are likely to affect the other Service Provider's performance of its contractual obligations under its Partnership Agreement, provided that such consultation and co-operation is consistent with the Service Provider's obligations under its Partnership Agreement and does not require the Service Provider to incur any additional material cost.
- 3.4 Subject to clause 3.3, each Service Provider shall act in good faith towards the other at all times and generally provide such assistance and co-operation as may be reasonably considered appropriate in order to assist the others to perform their obligations under their Partnership Agreement, provided always that no Service Provider shall be required to extend such co-operation to the extent that it would then be performing obligations of another Service Provider. Notwithstanding the generality of the foregoing, each of the Service Providers shall:
- 3.4.1 where any information has been reasonably requested by the other as being required to assist it in performing its obligations under its Partnership Agreement (and provided such information is not commercially sensitive), then it shall provide such information to the other as soon as is reasonably practicable in the circumstances; and
- 3.4.2 provide notice of, and permit the other Service Provider to attend, any meetings (either with the Council or any other third party) that may be reasonably considered to be of interest to, or to have any material impact upon, the other (save for meetings with sub-contractors that are of a commercially sensitive or confidential nature).

4 TECHNICAL SERVICES PROVIDER'S WARRANTY AND LIABILITY

- 4.1 The Technical Services Provider warrants to the Street Lighting Services Provider that it has carried out and will continue to carry out its duties under the Technical Services Agreement in accordance with the Technical Services Agreement and that it has exercised and will continue to exercise, in carrying out the design of the Highway Capital Works, including any street lighting works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to projects of similar size and scope to those comprising the Highway Capital Works. In particular and without limiting the generality of the foregoing the Technical Services Provider covenants with the Street Lighting Services Provider that it has carried out and will carry out and complete the design of the Highway Capital Works, including any street lighting works, in accordance with the Technical Services Agreement and duly observe and perform all its duties and obligations thereunder so as not to cause the Street Lighting Services Provider any Losses.
- 4.2 Upon the expiration of 12 years from the date of completion of any capital works completed in accordance with any capital works contract, the liability of the Technical Services Provider under this deed shall cease and determine, save in relation to any claims made by the Street Lighting Services Provider against the Technical Services Provider and notified by the Street Lighting Services Provider to the Technical Services Provider in writing prior thereto.

5 DESIGN DATA

- 5.1 The Technical Services Provider shall make available to the Street Lighting Services Provider free of charge (and hereby irrevocably licences the Street Lighting Services Provider to use) all data used in the preparation of designs and specification (Design Data) of Highway Capital Works that might reasonably be required by the Street

Lighting Services Provider The Technical Services Provider shall obtain all necessary licences, permissions and consents necessary for it to make the Design Data available to the Street Lighting Services Provider on these terms, for the purposes of the design or construction of the Highway Capital Works and/or the operation, maintenance or improvement of the Highway Capital Works (Approved Purposes), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly

5 2 The Technical Services Provider

5 2 1 hereby grants to the Street Lighting Services Provider, free of charge, an irrevocable non-exclusive and transferable (subject to the restrictions continued in clause 7 of this Deed) licence to use the Intellectual Property Rights which are or become vested in the Technical Services Provider for the Approved Purposes, and

5 2 2 shall (where any Intellectual Property Rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4 2 1 above to the Council,

in both cases, solely for the Approved Purposes

5 3 The Technical Services Provider warrants to the Street Lighting Services Provider that he has used the standard of skill, care and diligence as set out in clause 3 1 to see that the Design Data (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Highway Capital Works will not infringe the rights of any third party

6 INSURANCE

6 1 The Technical Services Provider hereby covenants with the Street Lighting Services Provider to

6 1 1 take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) for any one claim and in the aggregate together with unlimited reinstatements of the limit and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Technical Services Provider's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Technical Services Provider's own claims record or other acts, omissions, matters or things peculiar to the Technical Services Provider will be deemed to be within the reasonable rates,

6 1 2 provide evidence (as and when reasonably required by the Street Lighting Services Provider) satisfactory to the Street Lighting Services Provider of the Professional Indemnity Insurance (referred to in clause 6 1 1) being in full force and effect from the date of the Technical Services Agreement (such evidence to include details of the cover),

6 1 3 provide the Street Lighting Services Provider with notice of

6 1 3 1 any cancellation of the Professional Indemnity Insurance (referred to in clause 6 1) not less than thirty (30) days prior to the relevant cancellation date, and

6.1.3.2 any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant changes or suspension;

6.1.4 inform the Street Lighting Services Provider as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 6.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Street Lighting Services Provider as the Street Lighting Services Provider may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and

6.1.5 indemnify the Street Lighting Services Provider in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 6.1.1.

7 CLAIMS FOR LOSSES

7.1 If:

7.1.1 a Service Provider is in breach of its obligations under this Agreement; or

7.1.2 a Service Provider is in breach of its obligations under its Partnership Agreement,

(a Breaching Party) and, in either case such breach causes another Service Provider (a Claiming Party) to suffer any Loss then the Breaching Party shall be obliged to compensate the Claiming Party pursuant to this Agreement for such Loss, subject to and in accordance with this clause 7.

7.2 If a Service Provider wishes to pursue a claim under clause 7 then such Service Provider shall as soon as reasonably practicable after becoming aware of the incident or event giving rise to such claim serve notice on the other Service Provider (with a copy to the Council) setting out in as much detail as is reasonably practicable the relevant facts and basis of alleged liability but, for the avoidance of doubt, such Service Provider shall not be required to notify the other Service Provider of the quantum or expected quantum of the claim until such claim is actually brought.

7.3 The parties to the claim shall meet and/or otherwise discuss within five (5) Business Days of service of notice of a claim under clause 7.2 and use reasonable endeavours in good faith to agree to settle the claim and the reasonable details of such settlement.

7.4 If a Claiming Party fails to serve notice and/or to provide information in respect of a claim under clause 7.1 as required under clause 7.2, then that Claiming Party's entitlement to receive compensation or other relief as may be appropriate in all the circumstances shall be reduced by the consequences of any such failure on that Claiming Party's part.

7.5 Each of the Service Providers agrees that it will not resist any claim brought against it by the Council under the relevant Partnership Agreement on the ground of any breach of this Agreement by the other Service Provider.

8 NOTICES

Any notice to be given by any party 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 4.45 pm on any day it will be deemed to be served on the next Business 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 45pm on a Business Day and otherwise on the next Business Day

9 ASSIGNMENT

The benefit of and the rights of the Street Lighting Services Provider under this deed may be assigned without the consent of the Technical Services Provider on two occasions only and the Street Lighting Services Provider will notify the Technical Services Provider in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Technical Services Provider 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 hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss

10 STREET LIGHTING SERVICES SERVICE PROVIDER'S REMEDIES

The rights and benefits conferred upon the Street Lighting Services Provider by this deed are in addition to any other rights and remedies it may have against the Technical Services Provider including without prejudice to the generality of the foregoing any remedies in negligence

11 INSPECTION OF DESIGN DATA

The Technical Services Provider's liabilities under this deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which the Street Lighting Services Provider may make or procure to be made for its benefit or on its behalf

12 SUB-CONTRACTORS

Following a written request from the Council the Technical Services Provider will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in a form reasonably satisfactory to the Council in favour of any person in whose favour the Technical Services Agreement obliges the Technical Services Provider to give or procure the giving of such a warranty

13 APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts

14 THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Technical Services Provider acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

The Common Seal of
Trafford Borough Council
was hereunto affixed in the presence of:

Signature of duly authorised officer

Full name (Block Capitals)

Position/title

EXECUTED AS A DEED by the Street Lighting Services Provider acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

8405

SCHEDULE 8

SPECIAL CONDITIONS – TECHNICAL SERVICES

SCHEDULE 8: SPECIAL CONDITIONS – TECHNICAL SERVICES

Part 1 - Definitions

- 1 In these Technical Services Special Conditions, words and expressions shall have the meaning given in Schedule 1 of this Agreement or the Technical Services Specification unless defined below, or as the context otherwise requires:

Adoption Records means records relating to the adoption of any highway

Capital Programme means the Capital Programme (Highways) and/or the Capital Programme (Property)

Capital Programme (Highways) means, in respect of each Agreement Year, the programme in respect of Capital Works (Highways) as approved pursuant to part 5 of these Technical Services Special Conditions

Capital Programme (Property) means, in respect of each Agreement Year, the programme in respect of Capital Works (Property) as approved pursuant to part 7 of these Technical Services Special Conditions

Capital Works means Capital Works (Highways) and/or Capital Works (Property)

Capital Works (Property) means Minor Property Works, Medium Works or Major Works in respect of the Council's Property Estate which shall, for the avoidance of doubt, include any schools under Council control within the Area

Capital Works (Highways) means any of the following

- (a) planned maintenance which the Highways Services Provider is not obliged to carry out without capital funding,
- (b) carriageway resurfacing,
- (c) preventative Highways and Bridges maintenance,
- (d) Bridges and highway improvement schemes, and
- (e) bridges and highway structures maintenance,

each to be set out in a Capital Programme (Highways),

Compliance Certificate means a certificate issued pursuant to paragraph 37.8 (Certificate of Compliance)

Defect means any defect in any Highway Network Part, a property forming part of the Council Property Estate or anything installed on, adjoining to or under any part of the Highway Network or the Council Property Estate which is attributable to

- (a) defective design,

- (b) defective workmanship or defective materials plant or machinery used in the performance of the Capital Works having regard to Good Industry Practice and to appropriate British or European Union standards and codes of practice current at the date of the performance of the Capital Works;
- (c) the use of materials in the construction of any Highway Network Part or any property forming part of the Council Property Estate which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of the Highway Network Part or works carried out to the Council Property Estate;
- (d) defective installation of anything on or to any Highway Network Part or part of the Council Property Estate;
- (e) defective preparation of the area of the Highway Network on which any Capital Works (Highways) are performed or a property forming part of the Council Property Estate to which Capital Works (Property) are performed

Defects Liability Period means in relation to any Capital Works, the period commencing on the Completion of the Capital Works and ending twelve (12) months following the Completion of the Capital Works unless otherwise specified by the Council (acting reasonably)

Design Services means the production and/or procurement of design solutions in respect of any requirements identified by the Service Provider in role delivering the Highway Technical Services, including but not limited to design solutions in respect of:

- (a) Street Lighting;
- (b) Highway Works Contracts;
- (c) Traffic Related Schemes;
- (d) Flood Risk Management
- (e) Capital Works (Property);
- (f) Capital Works (Highways); and
- (g) Minor Property Works;

Diversionsary Works means works which require the diversion of utilities media (including without limitation pipes, cables and communications) to facilitate the provision of the Highways Services

Existing Arrangements means the building contract and supporting warranty from Shepherd of which the Council is a beneficiary in respect of the Town Hall

Highway Works Contracts shall include any agreements relating to the following:

- (a) planned maintenance works;
- (b) preventative maintenance works;
- (c) carriageway resurfacing works;

- (d) highway improvement schemes, and
- (e) Adoption Agreements or Planning Agreements

HMEP Guidance means guidance in respect on any highway matter outlined in the publications produced as part of the Highways efficiency programme (HMEP)

Integrated Transport Capital Programme means Traffic and Transport related schemes financed from capital

Land Matters means any and all title information in relation to the Council Property Estate and the Highway Network including any Property Documents, which the Service Provider will be relying on in order to deliver the Technical Services

Lump Sum Payment means the payment of any amounts due to the Service Provider from the Council under paragraph 34 (Minor Property Works) in one payment due following the issue of a Compliance Certificate of the relevant property

Maintaining Local Land and Property Gazetteer and LSG Maintenance means the function that is set out in paragraph 4.10.3 in the Technical Services Specification. This is the address data base maintained by the Local Authority

Major Works means works with an estimated value in excess of the OJEU threshold

Medium Works means works with an estimated value in excess of ~~£100,000~~ but less than the OJEU threshold

Minor Property Works means Minor Works in respect of any element of the Council's Property Estate

Minor Highway Works means works in respect of the Highway Network with an estimated value of less than ~~£100,000~~

Monthly Payment Schedule means the schedule setting out details of the monthly payments due to the Service Provider from the Council under paragraph 34 (Minor Property Works) in a series of payments on completion of works as identified in the relevant Proposal and Proposal Fee

Planning Agreement means any agreement to be entered into between the Council and a third party in respect of the satisfaction of any s278 order

Provider Direct Agreement means the direct agreement to be entered into between the Service Provider, the Council and an incoming Highways Services Provider and/or an incoming Street Lighting Services Provider in respect of the duty of care owed by the Services Provider substantially in the form set out at part 1 of Annex 2 in respect of an incoming Highways Service Provider and at part 2 of Annex 2 in respect of an incoming Street Lighting Services Provider

Strategic Planning means the Council's process of defining its strategy, or direction, and making decisions on allocating its resources to pursue this strategy

Street Naming and Numbering ("SNN") has the meaning given in the Technical Services Specification

Schedule of Rates means a pricing mechanism agreed between the Parties in respect of the delivery of the Technical Services which individually prices items of works. Such items shall then be used to "work up" a proposal to deliver the required works on the relevant scheme and to calculate the cost of such works, using any appropriate industry guidance or standards available at the time

Traffic Related Schemes means cycle schemes, pedestrian facilities including improvements to road crossings, and minor alterations to the existing infrastructure to improve movement of traffic and pedestrians, line marking changes to improve traffic flow and safety

Value for Money means that a proposal meets the requirements in Annex 1 to these Technical Services Special Conditions

Void Properties means any property within the Council Property Estate which is not occupied

Part 2 - Mobilisation

2 Mobilisation

2.1 Subject to paragraph 2.3, the Service Provider shall notify to the Council, in writing, not later than seven (7) Business Days prior to the Service Commencement Date (or such later date as specified in the Mobilisation Plan) that all of the following have been effected

- (a) all statutory notifications have been made and Necessary Consents obtained, to the extent required by law, to enable the Service Provider to commence or procure the commencement of the Technical Services;
- (b) the Contact Centre which the Service Provider is required to operate and maintain as part of the Customer Relations Management and the Management Information System are operational and capable of performing the functions required of them pursuant to the Technical Services Specification (to the extent necessary for the Service Provider to properly commence performance of the Technical Services);
- (c) there are sufficient stock, personnel, office space and storage space including as set out in the Method Statements to permit the Service Provider to comply with the Service Provider's obligations under this Agreement (to the extent necessary for the Service Provider to properly commence performance of the Technical Services), and
- (d) the requirements in paragraph 2.2 have been met

2.2 Subject to paragraph 2.3, prior to commencement of the Technical Services (or such later date as specified in the Mobilisation Plan) the Service Provider shall have:

- (a) established an office within the Council Area,
- (b) entered into its sub-contracts with all Key Sub-Contractors to the extent not entered into by the Agreement Date and provided executed Collateral Warranties,
- (c) appointed the Service Provider Representative(s) (who shall have shadowed their equivalent Council counter-parts for a period of at least one (1) month) and notified the Council of the same,
- (d) made all statutory notifications and obtained all Necessary Consents, to the extent required by Law, so that the Service Provider is able to commence or procure the commencement of the Technical Services,
- (e) ensured that all Transferring Employees have received appropriate induction training;
- (f) an operational Contact Centre is in place that is capable of performing the functions set out in the Technical Services Specification so that the Service Provider is properly able to commence the performance of the Technical Services,
- (g) appointed those persons who are to be the representatives of the Service Provider on the Partnership Board and notified the Council of the same;
- (h) taken delivery of the Initial Transferring Assets from the Council in accordance with Clause 60 of the Agreement (Transferring Assets and Exclusive Assets),

- (i) satisfied itself, through the completion of a suitable level of due diligence, as to the scope of the Technical Services and in particular the condition of the Council Property Estate to which the Property Management Services apply;
- (j) carried out due diligence in respect of all Land Matters to establish whether the Service Provider has the required access rights to deliver the Technical Services;
- (k) established the Management Information System in accordance with the Technical Services Specification; and
- (l) produced a Customer Charter and a Stakeholder Plan.

2.3 Notwithstanding the provisions of paragraphs 2.1 and 2.2, in relation to activities which are not required under the Mobilisation Plan to be completed prior to the Service Commencement Date, the Service Provider shall complete all actions required by the Mobilisation Plan by the date specified in the Mobilisation Plan.

Part 3 – Business Continuity Planning

2.4 The Service Provider shall keep the Business Continuity Plan up to date in accordance with Clause 17 of the Agreement so as to ensure that it corresponds and responds to developments and/or changes in risks and circumstances, including, but not limited to, the following:

- (a) Exceptionally Inclement Weather (including heavy snow, flooding and high winds),
- (b) the loss of access to premises, and
- (c) failure of technologies including Vehicles and Equipment

Part 4 - Highways Technical Services

3 General

- 3.1 The Service Provider shall, on behalf of the Council, manage the design and strategic delivery of the Highway Technical Services in respect of the Highway Network in accordance with the terms of the Agreement, the Technical Services Specification and the provisions of this Part 4.
- 3.2 In performing the Highway Technical Services the Service Provider shall, and shall ensure that any Sub-Contractor shall, exercise a level of reasonable care and skill such that would be expected of any competent contractor and suitably qualified professional carrying out such services.
- 3.3 The Service Provider shall, at all times, prioritise the delivery of the Highways Technical Services on behalf of the Council ahead of any services which it has been commissioned to perform for any Third Party.
- 3.4 The Council shall retain responsibility for all Strategic Planning in respect of the Highway Network.
- 3.5 Any and all reports, papers and proposals to be provided by the Service Provider in the exercise of its functions under this Part 4 shall be presented to the Council Representative for review and sign off in accordance with the Review Procedure before submission to any third party (including the Highways Services Provider and/or Street Lighting Services Provider) or publication (such consent not to be unreasonably withheld or delayed).

4 Highways Technical Services – overarching obligations

- 4.1 The Service Provider shall carry out the functions of the Council as the Local Highway Authority (LHA) as required under the Highways Act. Such functions shall include, but not be limited to:
- (a) review and update of the Highway Policies on an annual basis;
 - (b) carry out the asset management functions of the Council in accordance with the Technical Services Specification;
 - (c) procure the design and project management of any works or maintenance contracts in respect of Capital Works (Highways) on the Highway Network,
 - (d) Street Lighting Design as specified in the Technical Services Specification;
 - (e) dealing with Public Rights of Way as specified in the Technical Services Specification;
 - (f) interface and liaison with stakeholders;
 - (g) the maintenance and update of Highway Records;
 - (h) traffic and network management;
 - (i) develop and implement any Integrated Transport Capital Programme;
 - (j) ensure that the Highway Network complies with all relevant Legislation, Guidance, regulations and orders;

(k) provide a Structural Consultancy Service, and

(l) developing suitable flood management proposals relating to flooding and drainage to ensure statutory compliance.

4.2 In complying with the obligations set out in this paragraph 4 the Service Provider shall use all reasonable care and skill as would be expected of a competent and suitably qualified professional with relevant experience and qualifications in delivering the Highway Technical Services.

4.3 The Service Provider's performance of the Highway Technical Services shall be measured against the Performance Indicators and any Performance Deductions arising there from shall be applied in accordance with the Payment Mechanism

5 Development Control

5.1 Vehicle and Incident Information

The Service Provider shall, if requested by the Council provide

(a) access to such information, records or databases that it holds relating to

(i) current or past vehicular traffic flow on the Highway Network;

(ii) vehicular traffic flow forecasts for the Highway Network, or

(iii) Incident records,

as the Council may require to be provided for the purpose of making any land use planning or development control decisions or policy; and

(b) the estimated cost of carrying out specified highway works where the Council expects to be able to recharge the costs of carrying out specified works as part of a planning or highway function.

5.2 Prohibition on entering into agreements

Except where approved under Clause 22 of this Agreement, the Service Provider shall not enter into commitments with third parties to provide or procure for the benefit of that third party, any land or buildings or any works relating to the Highway Network without the prior written consent of the Council. The Council may, from time to time, authorise the Service Provider to enter into commitments in relation to the provision or procurement of works relating to the Highway Network either individually, by reference to a class of works or parties or land benefiting and on either a terminable or time limited basis provided that

(a) the Council may set conditions and restrictions in any authorisation granted,

(b) the Service Provider shall at all times act in accordance with the Method Statements

6 Highway Policies

- 6.1 In accordance with paragraph 7.2 of the Technical Services Specification, the Service Provider shall be responsible for reviewing the Highway Policies on an annual basis and providing to the Council a report with any recommendations to improve efficiency.
- 6.2 No amendments to any Highway Policy shall be made without the Council's prior written consent.
- 6.3 Compliance by the Service Provider with any Highway Policy is not evidence of compliance with its obligations in respect of the delivery of the Highway Technical Services.
- 6.4 As part of the Service Provider's responsibilities in relation to Highway Policies, the Service Provider shall be required to formulate any bids for additional funding opportunities of which it becomes aware and which may require reference to any Highway Policy.

7 Contracting Out of Functions

7.1 Costs of Works

The Service Provider shall be responsible for all costs of, and shall make all payments due to Statutory Undertakers in connection with, any Diversionary Works provided that:

- (a) subject to paragraph 7.1(b) and paragraph (c), the Council shall pay to the Service Provider within twenty (20) Business Days of receipt by the Council, any monies actually received by it from any Statutory Undertaker in respect of the Highway Network pursuant to any provision of NRSWA (and the Council shall use reasonable endeavours to recover such monies), the Regulations or the Codes of Practice, other than fees relating to Sample Inspections;
- (b) if a contribution is made to the Council pursuant to Paragraph 78 of NRSWA then payment shall only be made to the Service Provider if the contribution relates to costs actually incurred, or likely to be incurred, by the Service Provider during the Agreement Period and the Service Provider shall pay to the Council any contribution received if the contribution relates to costs incurred or likely to be incurred outside the Agreement Period;
- (c) at the request of the Service Provider, the Council shall use reasonable endeavours to recover and pay to the Service Provider (other than charges pursuant to Paragraph 74A) of NRSWA all sums due to the Council as Street Council in respect of the Highway Network pursuant to NRSWA, the Regulations or Codes of Practice and the Service Provider shall reimburse to the Council all costs (including administrative costs, general staff costs and overheads) incurred by the Council in pursuing payment of such sums.

7.2 Street Works Register

The Service Provider shall:

- (a) provide to the keeper of the Street Works Register such information as may be prescribed pursuant to Sections 53 and 54 of NRSWA and such other information of which it becomes aware as is eligible for registration;

- (b) make any payment or payments to such party as may be required pursuant to Paragraph 53(5) of NRSWA,
- (c) maintain at all times a terminal linked to the Street Works Register for the purposes of giving and receiving notices and information affecting the Highway Network and the surrounding road network

8 Asset Management

8.1 General

- (a) The Service Provider shall review, update and maintain the Transport Asset Management Plan (TAMP) in accordance with the requirements set out in the Technical Services Specification.
- (b) In producing the TAMP the Service Provider shall make proposals to the Council in respect of ways in which the regulatory compliance of the Highway Network could be managed in a more efficient manner and how compliance, by reference to the HMEP Guidance, may be achieved whilst also creating savings for the Council (**Highways Efficiency Savings**)
- (c) The Council shall, at its absolute discretion, consider any such proposed Highways Efficiency Savings in good faith and, where the Council agrees that the Highways Efficiency Savings are achievable the Council shall consent to the implementation of the same with any Highways Efficiency Savings allocated between the Parties in accordance with the Gain Share Mechanism
- (d) Where, at any time, the Council (acting reasonably) requires a more detailed analysis of the condition of the Assets relating to the Highway Networks, the Service Provider shall provide the same in a timely manner.

8.2 Design Services in respect of the Highway Network

- (a) The Service Provider shall procure the commissioning of any Design Services in respect of the Highway Network on behalf of the Council (including where necessary the appointment of any Third Party) in accordance with the Technical Services Specification and the relevant Method Statement
- (b) In the commissioning of any Design Services the Service Provider shall ensure that
 - (i) the relevant person carries out the Design Services with the reasonable care and skill as would be expected of a competent and suitably qualified professional with the relevant experience,
 - (ii) the relevant person has valid Insurance in place, more particularly to include Professional Indemnity Insurance,
 - (iii) any proposed design offers best value to the Council as well as meeting all Legislative requirements, and
 - (iv) any appointment shall contain a warranty, in a form approved by the Council, to be capable of assignment or novation to the Council on request.

8.3 Highway Records

The Service Provider shall be responsible for maintaining, updating and amending all Highway Records in accordance with the requirements in paragraph 7.8 of the Technical Services Specification.

9 Traffic, Transportation and Road Safety

9.1 The Service Provider shall be responsible for fulfilling the statutory traffic management obligations of the Council as a Local Highway Authority which shall include compliance with:

- (a) the TMA;
- (b) the Highways Act;
- (c) the TCPA;
- (d) the Road Traffic Regulation Act 1988; and
- (e) the RTA;

each as updated and amended from time to time.

9.2 The Service Provider shall develop and implement the Council's Integrated Transport Capital Programme.

9.3 In complying with the Council's statutory traffic management obligations the Service Provider shall implement and amend all relevant Traffic Regulation Orders and develop and manage any Traffic Management Plans all in accordance with the Technical Services Specification.

9.4 Provision of Information in relation to Traffic Regulation Orders

Whether or not paragraph 29 (Exercise of Statutory Powers by Council) applies the Service Provider shall comply with all requirements in respect of the management and administration of TROs in accordance with the Technical Services Specification.

10 Flood Risk and Drainage

10.1 The Service Provider shall be responsible for the performance of the Council's statutory functions under the following legislation:

- (a) the Flood and Water Management Act 2010;
- (b) the Flood Risk Regulations 2009; and
- (c) Land Drainage Act 1991,

as the Lead Local Flood Authority as set out in the Technical Services Specification.

10.2 The Service Provider shall undertake the functions of the Council as a Sustainable Drainage Approving Body and perform those functions in accordance with the Technical Services Specification.

103 The Service Provider shall be responsible for the development and maintenance of a domestic drainage complaints system and liaising with the environmental health service, and any other such bodies, in developing strategies to address flooding risks and issues as provided for in the Technical Services Specification

11 Professional Indemnity Insurance

11.1 The Service Provider, in the appointment of any external advisors, Sub-Contractors or Third Parties to deliver any of the Technical Services and/or the Structural Consultancy Service to the Council in accordance with these Technical Services Special Conditions and the Technical Services Specification, shall ensure that there is a minimum level of professional indemnity insurance in place in accordance with clause 43.11 (Professional Indemnity Insurance) of the Agreement

11.2 Any appointment of a professional under these Technical Services Special Conditions within which it is proposed that the professional indemnity insurance falls below the requirements of clause 43.11 of the Agreement, shall be referred to the Council who shall, at their absolute discretion, consent in writing to the amended level of appointment

12 Indemnity

12.1 Where the Service Provider, in the performance of the Services, either.

- (a) appoints an external advisor or Sub-Contractor to carry out any of the Highway Technical Services as set out in these Technical Services Special Conditions, or
- (b) following the Agreement Date, provides any advice to a Third Party in their capacity as the Service Provider under this Agreement,

the Service Provider shall.

- (c) ensure that the requirements of the Council take priority over any Third Party such that the delivery of the Highway Technical Services shall not be in any way impacted by external obligations of the Service Provider, and
- (d) indemnify the Council and any Council Related Party against any Losses sustained in respect of the Highway Technical Services as a result of any act, fault or omission of the external advisor, Sub-Contractor or Third Party

Part 5—Procurement and Management of Capital Works (Highways)

13 Budget for Capital Works (Highways)

- 13.1 The Service Provider shall throughout each Agreement Year seek out and identify opportunities for Capital Works (Highways), particularly those which could lead to revenue savings or income generation.
- 13.2 The Service Provider shall inform the Council, within one (1) Business Day of becoming aware of a requirement for emergency capital works in relation to the Highways Network.
- 13.3 By the end of November each Agreement Year, the Council shall provide the Service Provider with details of the Council's proposed budget in respect of Capital Works (Highways) in respect of the following Agreement Year, including details of the Council's priorities and objectives and any particular schemes the Council wishes to take place in the relevant period (Highways Capital Budget).
- 13.4 The Council gives no warranty as to the level (if any) of its capital budget in any Agreement Year or at all.
- 13.5 The Service Provider using any and all information in respect of the Highway Network gathered in the Service Provider's capacity as the provider of the Highways Services (or, if the Service Provider is no longer the Highways Services Provider, the Council shall procure that any replacement Highways Services Provider undertake in terms similar to the obligations set out in paragraph 21.1 of the Highways Services Special Conditions to provide all information that the Service Provider reasonably requires to enable it to fulfill its obligations under this Part 5), shall provide a draft programme as part of the Annual Programme for Capital Works (Highways) for the following Agreement Year, comprising as a minimum, the following details in accordance with the relevant Method Statement:
- (a) details of proposed works to be carried out, categorised as Minor Works, Medium Works and/or Major Works;
 - (b) a proposed timetable for completion of each package of works;
 - (c) an estimate of its costs for carrying out the relevant works, with a full breakdown of its costs using the agreed Schedule of Rates in relation to the same, to be provided on the basis of Open Book Accounting and which must demonstrate Value for Money and remain open for acceptance at any time during the following Agreement Year;
 - (d) details of the proposed tender process to be followed in respect of any Medium Works and/or Major Works;
 - (e) to the extent possible, in respect of any Medium Works and/or Major Works details of the proposed members of the Professional Team and the forms of any appointments and Collateral Warranties in relation to them to the extent they are not already in existence; and
 - (f) proposed payment arrangements in relation to the relevant works provided that:
 - (i) for works with a value of less than £500,000 the Service Provider's proposal must be on the basis of a lump sum on completion (Lump Sum Payment);

- (ii) in relation to works with a value [REDACTED] the Service Provider's proposal shall include monthly payment based on the value of work carried out in the relevant month,

each to be known as the Proposal Fee;

prepared in accordance with Good Industry Practice and Legislation, and reflecting the Service Provider's proposals for the most effective use of available capital funding by the Council in order to maximise the benefit to the Council of the relevant Capital Works (Highways), being a draft Capital Programme (Highways)

13.6 Where the Council does not, acting reasonably, accept that the draft Capital Programme (Highways) offers Value for Money the Council may

- (a) request that the Service Provider redrafts the proposed Capital Programme (Highways), or
- (b) notwithstanding Clause 8 (Exclusivity) of the Agreement, if following a period of sixty (60) Business Days the Parties cannot agree the terms of the draft Capital Programme (Highways), the Council shall have the right to either deliver the Capital Works (Highways) itself or to seek tenders from Third Parties in order to deliver the Capital Works (Highways).

13.7 The Service Provider shall provide the Council with all information and assistance requested by the Council in relation to the development of the programme, including amending the programme as required. The final programme approved by the Council (if any) shall be the Capital Programme (Highways)

14 Design of Capital Works (Highways)

14.1 In respect of the procurement of any Capital Works (Highways) the Service Provider shall be responsible for the project management and design of the relevant Capital Works, and such design shall be carried out in accordance with this paragraph 14. (Design of the Capital Works (Highways))

14.2 The Service Provider shall procure the commissioning of, including where necessary the appointment of any Third Party, any Design Services in respect of the Capital Works (Highways) on behalf of the Council in accordance with the relevant Method Statement

14.3 In the commissioning of any Design Services the Service Provider shall ensure that

- (a) the relevant person carries out the Design Services with the reasonable care and skill as would be expected of a competent and suitably qualified professional with the relevant experience;
- (b) the relevant person has valid Insurance in place, more particularly to include Professional Indemnity Insurance;
- (c) any proposed design offers best value to the Council, as well as meeting all Legislative requirements; and
- (d) any appointment shall contain a warranty, in a form approved by the Council, to be capable of assignment or novation to the Council on request.

14.4 Where the Service Provider designs the Capital Works (Highways) or provides Design Services, producing all relevant Design Data and either the Highways Services Provider or the Street Lighting Services Provider relies on such Design Services or Design Data in the performance of their obligations, the Service Provider shall owe the Highways Services Provider and the Street Lighting Services Provider (as applicable) a duty of care. If either the Highways Services Provider or the Street Lighting Services Provider incurs any Losses due to poor design each will be required to claim against the Service Provider to resolve the issue, and the Council shall have no liability to the Highways Services Provider or the Street Lighting Services Provider in respect of the same.

14.5 The Service Provider (in its capacity as Technical Services Provider) shall enter into the Provider Direct Agreement with any replacement Highways Services Provider or replacement Street Lighting Services Provider (as applicable). Accordingly, if the Service Provider (in its capacity as Technical Services Provider) causes any Losses to the incoming Highways Services Provider or Street Lighting Services Provider by its failure to comply with its design or other obligations, then the incoming Highways Services Provider or Street Lighting Services Provider will be required to claim under the Provider Direct Agreement against the Services Provider, and the Council shall have no liability to the Service Provider in respect of the same.

14.6 The design of each element of Capital Works (Highways) shall be subject to the approval of the Council in accordance with the Review Procedure.

15 Procurement of Capital Works (Highways)

15.1 Subject to paragraph 17.2, the Service Provider shall be responsible for the procurement, project management, design and delivery of any Capital Works (Highways) in accordance with the Capital Programme (Highways). In procuring the Capital Works (Highways) the Service Provider shall at all times comply, and take all steps necessary to ensure that the Council is able to comply, with all relevant Procurement Regulations.

15.2 In relation to Minor Works, the Service Provider shall request a proposal from the Highways Service Provider, and shall appoint the Highways Services Provider to carry out such Minor Works in accordance with the requirements of the Capital Programme (Highways) and in accordance with the Highways Services Agreement provided that the Service Provider shall not appoint the Highways Services Provider to carry out any Minor Works if:

- (a) its estimate for the Minor Works exceeds the budgeted amount in the Capital Programme (Highways);
- (b) the Highways Services Provider has not demonstrated Value for Money; and/or
- (c) the Council has not given its consent and approved the final terms of the specification and price proposed by the Highways Services Provider.

15.3 In relation to Medium Works or Major Works, the Service Provider shall comply with all relevant obligations applicable to the Council under the Procurement Regulations and therefore shall:

- (a) run a formal tender process, which as a minimum shall be a fair, reasonable and transparent process, inviting proposals from at least three (3) tenderers (of which only one (1) tenderer may be connected with the Service Provider) commensurate with the value and complexity of the works;

- (b) ensure that any tender process is addressed to the relevant section of the market and is given as wide an audience as possible through advertisement in the appropriate forum;
- (c) propose a detailed tender process and timetable, including outline evaluation criteria, to the Council for its approval, and
- (d) draft all procurement and contractual documentation in relation to any tender process for the Council's approval

15.4 The Service Provider shall keep the Council informed at each stage of the procurement, having regard to the Council's internal audit processes. As part of the Service Provider's liaison with the Council the Service Provider shall, as requested by the Council, provide the Council with regular reports on the progress of any tender process for presentation to the Elected Members, Governance Board and/or Executive Board in a form to be specified by the Council

15.5 The Service Provider shall not select a winning bidder for any contract without the Council's written consent formalised, where the value of the tender requires, through the relevant Council statutory requirements. In seeking such consent, the Service Provider must demonstrate that the required Procurement Regulations have been followed, and that requirements in relation to Value for Money and quality of service have been satisfied. Any recommendation to the Council shall include a formal written report setting out the grounds on which the proposed bidder offers a Value for Money solution, supported with comprehensive evidence

16 Overarching Principles

16.1 In respect of the procurement, management and delivery of the Capital Programme (Highways), the Service Provider shall

- (a) act in good faith at all times,
- (b) take all steps necessary to prevent conflicts of interest between it and the Council, and be responsible for ensuring that no conflict of interest arises or exists during the procurement, management and delivery of the Capital Programme (Highways);
- (c) have regard to, and act in accordance with, the Council's objectives to achieve value for money and maximum efficiency in the provision of Services, and developing openness and trust between the Service Provider and the Council; and
- (d) keep confidential and not disclose information relating to the affairs of the Council to which any member of the Service Provider's Personnel has access as a consequence of providing the Technical Services

17 Information barriers

17.1 If the Service Provider (including in its capacity as Highways Services Provider or Street Lighting Services Provider) submits or intends to submit a bid to deliver any works as part of the Capital Programme (Highways) to the Council, the Service Provider shall

- (a) act at all times in accordance with the Overarching Principles set out in paragraph 17,

- (b) establish a bid team that is separate from, and does not include, any Key Staff or other Personnel who are involved in the procurement of the relevant works;
- (c) provide the Council with a list of members of the Service Provider's staff who will be involved in the bid team and the evaluation of the bid;
- (d) procure confidentiality undertakings from each member of Key Staff Professional Team or Personnel involved in the evaluation of the relevant bid; and
- (e) establish secure and effective information barriers to ensure that confidential information stored in any form by the Service Provider and its Personnel relating to the Council, the Technical Services or the Capital Programme (Highways) is not accessible to the bid team.

17.2 The Service Provider shall consult with the Council at key points during the tender process and shall not award the relevant contract without the Council's written consent. The Council may (at its discretion) decide to run elements of the tender process in-house, and for each tender process will provide the following services which the Service Provider must use:

- (a) legal advice through Legal Services;
- (b) procurement administration using a web-based portal for communication with Bidders.

17.3 The Service Provider shall be responsible for ensuring that all programmes of work are delivered efficiently and effectively to agreed timetables and budgets and that such programmes demonstrate continuous improvement of processes, quality and cost.

Part 6 - Property Management Services

18 Legal Matters

- 18.1 Where in providing the Property Management Services, the Service Provider becomes aware of any claim being brought against the Council or the Service Provider in their capacity as the agent of the Council, the Service Provider shall notify the Council of such claim as soon as reasonably practicable upon becoming aware of the same (**Notice of Claim**)
- 18.2 On receipt of any Notice of Claim the Council shall then determine whether to take conduct of such Claim or whether to request that the Service Provider takes conduct of the claim
- 18.3 In the event that the Council requests that the Service Provider takes conduct of a claim then the Service Provider shall be required to manage the claim in accordance with Clause 42 of this Agreement.
- 18.4 The Council shall, at any point, have the right to require that conduct of a claim is returned to the Council

19 The Administrative Estate

- 19.1 On the expiry of any Existing Arrangements, the benefit of any warranties or guarantees currently held by the Council shall be assigned to the Service Provider who shall then be required to continue to maintain the Administrative Estate in accordance with the terms of the Existing Arrangements

20 The Commercial Let Estate

- 20.1 To the extent that any additional support is required in respect of the management of the Commercial Let Estate the Service Provider shall be responsible for identifying and providing the same. If such additional support is deemed to be outside the scope of the Property Management Services the Service Provider shall report the additional requirements to the Council who shall, at their discretion, seek alternative professional support or request that the Service Provider source such professional support as required

21 The Community Estate

- 21.1 The Service Provider shall, as part of its obligations under Part 4, seek to engage with the community and dispose of the Community Estate (subject to the Council's written approval)

22 Residential Estate

- 22.1 In relation to the Residential Estate the Service Provider shall.
- (a) manage any correspondence from tenants;
 - (b) collect ground rents or rent as appropriate;
 - (c) advise the Council in respect of any rent reviews, lease renewals or disposals, and
 - (d) use any other aspect of the Property Management Service to ensure that the Residential Estate is properly managed in accordance with the Council's obligations as a landlord, particularly in relation to statutory compliance

23 Structural Stability Investigations

23.1 The Service Provider shall, through the Structural Consultancy Service, ensure that the Council Property Estate is regularly inspected and reports are produced as to the condition, use, statutory compliance and utilisation of the Council Property Estate as more particularly described in the Technical Services Specification.

23.2 Any reports resulting from the Structural Consultancy Service shall be used to inform any FM Services which the Service Provider shall then provide to the relevant properties.

24 SLA Premises Scheme Management

24.1 The Service Provider shall, in accordance with the Technical Services Specification, manage the SLA based Property, Mechanical and Electrical and Energy Management Scheme. Such management shall include the negotiation of contributions from the participant schools on an annual basis.

25 Condition Surveys and Records

25.1 The Service Provider shall, on an ongoing basis, provide a robust regime of inspections and surveys of the condition of the Council Property Estate, in accordance with the guidelines set out in paragraph 11.4 of the Technical Services Specification. The results of such inspections and condition surveys shall be used to determine the FM Services requirements in respect of the Council Property Estate on an annual basis.

25.2 Any data collected or collated as part of the Service Provider's obligations shall remain the property of the Council.

26 Emergency Reactive Maintenance Service

26.1 The Emergency Reactive Maintenance Service shall be accessed through the Contact Centre and shall provide a pro-active and timely response to any emergency issue which occurs in respect of any property which forms part of the Council's Property Estate.

27 Void Management

27.1 The Service Provider is required to manage any Void Properties within the Council Property Estate in accordance with the Corporate Asset Strategy set out at Appendix 10 of the Technical Services Specification.

Part 7 – Procurement and Management of Capital Works (Property)

28 Budget for Capital Works (Property)

- 28.1 The Service Provider shall throughout each Agreement Year seek out and identify opportunities for Capital Works (Property), particularly those which could lead to revenue savings or income generation
- 28.2 The Service Provider shall inform the Council within one (1) Business Day of becoming aware of a requirement for emergency capital works in relation to the Estate.
- 28.3 By the end of November each Agreement Year, the Council shall provide the Service Provider with details of the Council's proposed budget in respect of Capital Works (Property) in respect of the following Agreement Year, including details of the Council's priorities and objectives and any particular schemes the Council wishes to take place in the relevant period (Property Capital Budget)
- 28.4 The Council gives no warranty as to the level (if any) of its capital budget in any Agreement Year or at all
- 28.5 The Service Provider using any and all information in respect of the Estate gathered in the Service Provider's capacity as the provider of the Property Management Services, shall provide a draft programme as part of the Annual Programme for Capital Works (Property) for the following Agreement Year, comprising as a minimum, the following details in accordance with the relevant Method Statement
- (a) details of proposed works to be carried out categorised as Minor Works, Medium Works and/or Major Works,
 - (b) proposed timetable for completion of each package of works;
 - (c) an estimate of its costs for carrying out the relevant works, with a full breakdown of its costs using the agreed Schedule of Rates in relation to the same, to be provided on the basis of Open Book Accounting and which must demonstrate Value for Money and remain open for acceptance at any time during the following Agreement Year,
 - (d) details of the proposed tender process to be followed in respect of any Medium Works and/or Major Works,
 - (e) to the extent possible, in respect of any Medium Works and/or Major Works details of the proposed members of the Professional Team and the forms of any appointments and Collateral Warranties in relation to them to the extent they are not already in existence; and
 - (f) proposed payment arrangements in relation to the relevant property works provided that:
 - (i) for works with a value of less than ~~£250,000~~ the Service Provider's proposal must be on the basis of a lump sum on completion (Lump Sum Payment);
 - (ii) in relation to works with a value ~~of less than £250,000~~ the Service Provider's proposal shall include monthly payments based on the value of the work carried out that month,

each to be known as the **Proposal Fee**;

prepared in accordance with Good Industry Practice and Legislation, and reflecting the Service Provider's proposals for the most effective use of available capital funding by the Council in order to maximise the benefit to the Council of the relevant Capital Works (Property), being a draft **Capital Programme (Property)**.

28.6 Following receipt of the draft Capital Programme (Property), the Council shall within twenty (20) Business Days respond to the Service Provider with details of whether it approves the programme, and provide requests for further information or amendments, and the Parties shall then work together in order to allow the Council to approve a programme.

28.7 Where the Council does not, acting reasonably, accept that the draft Capital Programme (Property) offers Value for Money the Council may:

- (a) request that the Service Provider redrafts the proposed Capital Programme (Property); or
- (b) notwithstanding Clause 8 (Exclusivity) of the Agreement, if following a period of sixty (60) Business Days the Parties cannot agree the terms of the draft Capital Programme (Property), the Council shall have the right to either deliver the Capital Works (Property) itself or to seek tenders from Third Parties in order to deliver the Capital Works (Property).

28.8 The Service Provider shall provide the Council with all information and assistance requested by the Council in relation to the development of the programme, including amending the programme as required. The final programme approved by the Council (if any) shall be the **Capital Programme (Property)**.

29 **Design of Capital Works (Property)**

29.1 In respect of the procurement of any Capital Works (Property) the Service Provider shall be responsible for the project management and design of the relevant Capital Works (Property), and such design shall be carried out in accordance with this paragraph 29 (Design of the Capital Works (Property)).

29.2 The Service Provider shall procure the commissioning of, including where necessary the appointment of any Third Party, any Design Services in respect of the Capital Works (Property) on behalf of the Council in accordance with the relevant Method Statement.

29.3 In the commissioning of any Design Services the Service Provider shall ensure that:

- (a) the relevant person carries out the Design Services with the reasonable care and skill as would be expected of a competent and suitably qualified professional with the relevant experience;
- (b) the relevant person has valid Insurance in place, more particularly to include Professional Indemnity Insurance;
- (c) any proposed design offers best value to the Council as well as meeting all Legislative requirements; and

- (d) any appointment shall contain a warranty, in a form approved by the Council, to be capable of assignment or novation to the Council on request.

29.4 The design of each element of Capital Works (Property) shall be subject to the approval of the Council (as part of the approval of the Annual Programme)

30 Procurement of Capital Works (Property)

30.1 Subject to paragraph 33.2, the Service Provider shall be responsible for the procurement, project management, design and delivery of any Capital Works (Property) in accordance with the Capital Programme (Property). In procuring the Capital Works (Property) the Service Provider shall at all times comply, and take all steps necessary to ensure the Council is able to comply, with all relevant Procurement Regulations

30.2 In relation to Minor Property Works, Part 8 of these Technical Services Special Conditions shall apply.

30.3 In relation to Medium Works or Major Works, the Service Provider shall comply with all relevant obligations applicable to the Council under the Procurement Regulations therefore shall

- (a) run a formal tender process, which as a minimum shall be a fair, reasonable and transparent process, inviting proposals from at least three (3) tenderers (within which only one (1) tenderer may be connected with the Service Provider) commensurate with the value and complexity of the works,
- (b) ensure that any tender process is addressed to the relevant section of the market and is given as wide an audience as possible through advertisement in the appropriate forum,
- (c) propose a detailed tender process and timetable, including outline evaluation criteria, to the Council for its approval, and
- (d) draft all procurement and contractual documentation in relation to any tender process for the Council's approval

30.4 The Service Provider shall keep the Council informed at each stage of the procurement, having regard to the Council's internal audit processes. As part of the Service Provider's liaison with the Council the Service Provider shall, as requested by the Council, provide the Council with regular reports on the progress of any tender process for presentation to the Elected Members, Governance Board and/or Executive Board in a form to be specified by the Council.

30.5 The Service Provider shall not select a winning bidder for any contract without the Council's written consent formalised, where the value of the tender requires, through the relevant Council statutory requirements. In seeking such consent, the Service Provider must demonstrate that the required Procurement Regulations have been followed, and that requirements in relation to Value for Money and quality of service have been satisfied. Any recommendation to the Council shall include a formal written report setting out the grounds on which the proposed bidder offers a Value for Money solution, supported with comprehensive evidence

31 Overarching Principles

31.1 In respect of the procurement, management and delivery of the Capital Programme (Property), the Service Provider shall:

- (a) act in good faith at all times;
- (b) take all steps necessary to prevent conflicts of interest between it and the Council, and be responsible for ensuring that no conflict of interest arises or exists during the procurement, management and delivery of the Capital Programme (Property);
- (c) have regard to, and act in accordance with, the Council's objectives to achieve value for money and maximum efficiency in the provision of Services, and developing openness and trust between the Service Provider and the Council; and
- (d) keep confidential and not disclose information relating to the affairs of the Council to which any member of the Service Provider's Personnel has access as a consequence of providing the Technical Services.

32 Information barriers

32.1 If the Service Provider submits or intends to submit a bid to deliver any works as part of the Capital Programme (Property) to the Council and the evaluation of such a bid on behalf of the Council shall form part of the Technical Services, the Service Provider shall:

- (a) act at all times in accordance with the Overarching Principles set out in paragraph 32;
- (b) establish a bid team that is separate from, and does not include, any Key Staff Professional Team or other Personnel;
- (c) provide the Council with a list of members of the Service Provider's staff who will be involved in the bid team and the evaluation of the bid;
- (d) procure confidentiality undertakings from each member of Key Staff, Professional Team or Personnel involved in the evaluation of the relevant bid; and
- (e) establish secure and effective information barriers to ensure that confidential information stored in any form by the Service Provider and its Personnel relating to the Council, the Technical Services or the Capital Programme (Property) is not accessible to the bid team.

32.2 The Service Provider shall consult with the Council at key points during the tender process and shall not award the relevant contract without the Council's written consent. The Council may (at its discretion) decide to run elements of the tender process in-house, and for each tender process will provide the following services which the Service Provider must use:

- (a) legal advice through Legal Services;
- (b) procurement administration using a web-based portal for communication with Bidders.

32.3 The Service Provider shall be responsible for ensuring that all programmes of work are delivered efficiently and effectively to agreed timetables and budgets and that such programmes demonstrate continuous improvement of processes, quality and cost.

- 32.4 As part of the Service Provider's role in respect of the Capital Works Programme, the Service Provider shall also work with the schools in the Council Area to manage their capital budget and deliver any Capital Works in line with Department for Education guidelines and school requirements and in accordance with the Technical Services Specification
- 32.5 The Service Provider shall be responsible for ensuring that all programmes of work are delivered efficiently and effectively to agreed timetables and budgets and that such programmes demonstrate continuous improvement of processes, quality and cost.

Part B – Performance of Minor Property Works

33 Minor Property Works

33.1 No later than end of February each Agreement Year, the Council (or the Technical Services Service Provider) shall provide the Service Provider with a draft Capital Programme (Property) with details of Minor Property Works which the Council proposes to be carried out during the following Agreement Year.

33.2 The Council gives no warranty as to the value or type of works covered in each Capital Programme (Property) or that any such programme will apply in any Agreement Year.

33.3 The Service Provider shall maintain, from the Service Commencement Date until all liability in respect of Minor Property Works has ceased, Contractor's All Risks Insurance.

33.4 As part of the Annual Programme the Service Provider shall respond providing, in relation to each element of Minor Property Works in the Capital Programme (Property) a proposal which provides, as a minimum, the following details (a Proposal):

- (a) an estimate of its costs for carrying out the relevant works, with a full breakdown of its costs using the agreed Schedule of Rates in relation to the same, to be provided on the basis of Open Book Accounting and which must demonstrate Value for Money and remain open for acceptance at any time during the following Agreement Year;
- (b) a proposed timetable for completion of the relevant works;
- (c) proposed payment arrangements in relation to the relevant works, provided that:
 - (i) for works with a value of less than [REDACTED] the Service Provider's proposal must be on the basis of a lump sum on completion (**Lump Sum Payment**);
 - (ii) in relation to works with a value between [REDACTED] the Service Provider's proposal shall include monthly payments based on the value of the work carried out that month,

each to be known as the **Proposal Fee**;

- (d) details of any required Road Section Closures, where applicable;
- (e) any temporary modifications to, or suspension of, Traffic Regulation Orders, where applicable;
- (f) details of any Necessary Consents;
- (g) details of any potential impact on the performance of the Property Management Services together with proposals to mitigate such impact; and
- (h) any other matters required in accordance with the Method Statements.

33.5 Within twenty (20) Business Days following receipt of a Proposal, the Council shall respond either :

- (a) requesting further information, in which case the Service Provider shall provide the same within five (5) Business Days, or
- (b) confirming the Proposal is accepted, in which case the Service Provider shall proceed to carry out the relevant Minor Property Works in accordance with paragraph 34 below

33 6 Notwithstanding Clause 8 (Exclusivity) of the Agreement, if following a period of sixty (60) Business Days the Parties cannot agree the terms of the draft Proposal in respect of Minor Property Works, the Council shall have the right to either deliver the Minor Property Works itself or to seek tenders from third parties in order to deliver the Minor Property Works

34 Performance of Minor Property Works

34 1 The Service Provider shall carry out, or procure the carrying out, of the design (including the preparation of Design Data) and construction, completion and testing of the Minor Property Works so that

- (a) the Minor Property Works or the relevant part of the Minor Property Works shall be completed in accordance with the terms of the Proposal,
- (b) the Minor Property Works shall fully comply with and meet all the requirements of the Agreement, the Technical Services Specification (where applicable), Good Industry Practice, all Necessary Consents, all applicable Council Policies and all applicable Legislation in effect as at the Completion Date;
- (c) new materials only shall be used in carrying out the Minor Property Works (unless the Council agrees otherwise in writing and all goods used or included in the Minor Property Works shall be of satisfactory quality, and there shall not be used or included in the Minor Property Works any products or materials not in conformity with Relevant British or European Union Standards or codes of practice or which, at the time of use, are widely known to contractors, Service Providers or members of the relevant design profession within the European Union to be deleterious to health and safety or to the durability of the Highway Network and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used,
- (d) all persons employed in connection with the performance of the Minor Property Works shall be skilled and experienced in their several professions, trades and callings or adequately supervised,
- (e) all aspects of the Minor Property Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Minor Property Works in accordance with these Technical Services Special Conditions and having regard to the activities which are being carried out at the Council Property Estate and having regard to the safety of the public or any Council Related Party likely to be, or capable of being, affected by the carrying out of the Minor Property Works or the relevant aspect of the Minor Property Works, and
- (f) prior to the relevant Completion Date the Minor Property Works are maintained in good order, kept in a safe condition and protected from damage, and the Council Property Estate is secured against trespassers (where reasonably practicable) and clean and tidy so far as practicable, having regard to the nature of the Minor Property Works

35 Defects Liability

- 35.1 Any Defects for which the Service Provider is responsible which appear within the Defects Liability Period shall be specified by the Council in a schedule of Defects which shall be delivered to the Service Provider as an instruction of the Council to make good the Defects listed not later than ten (10) Business Days after the expiration of the Defects Liability Period, and within a reasonable time after the receipt of such schedule, the Defects specified shall be made good by the Service Provider at no cost to the Council.
- 35.2 Notwithstanding paragraph 35.1, the Council may, whenever it considers it necessary so to do, provided it is not later than ten (10) Business Days after the expiration of the Defects Liability Period, issue instructions requiring any Defect for which the Service Provider is responsible which appears within the Defects Liability Period to be made good and the Service Provider shall within a reasonable time (and in any event within a period of ten (10) Business Days or such longer period as the Parties may, acting reasonably, agree) after receipt of such instructions comply with the same at no cost to the Council.
- 35.3 In cases of urgency the Council's instructions under paragraphs 35.1 and 35.2 may require any matter to be made good within such period of time specified in the instruction as the circumstances shall require, and the provisions of paragraphs 35.1 and 35.2 shall be applied by reference to such reduced time period.
- 35.4 If the Service Provider fails to comply with an instruction issued pursuant to paragraph 35.1 or paragraph 35.2 within ten (10) Business Days of the relevant instruction or such longer period as may be agreed or where paragraph 35.3 applies such reduced period of time as is reasonable, the Council may itself carry out or employ and pay others to carry out the necessary making good of any Defect, recovering from the Service Provider the costs and losses incurred as a result of such Defect and making good the same as a debt.
- 35.5 When all Defects which the Council may have required to be made good under paragraphs 35.1 and 35.2 have been made good, the Council's Representative shall issue a certificate to that effect, which certificate shall not be unreasonably delayed or withheld, and completion of making good defects shall be deemed for all the purposes of this Agreement to have taken place on the day stated in such notice (the Certificate of Completion of Making Good Defects) provided that the Council's Representative shall not be required to issue any Certificate of Completion of Making Good Defects any earlier than 14 days after the expiry of the Defects Liability Period. The issue of any Certificate of Completion of Making Good Defects shall not affect the continuing liability of the Service Provider in respect of any Defects.
- 35.6 The Council may retain a sum of up to [REDACTED] of the payment due to the Service Provider in relation to the relevant works to make good under paragraphs 35.1 and 35.2 relating to any Capital Works (Property) in accordance with paragraph 37 (Payment for Capital Works) (a Retention).
- 35.7 The Council shall pay the Service Provider:
- (a) the first half of the Retention to the Service Provider within twenty (20) Business Days of a Completion Certificate being issued in accordance with paragraph 37 (Certification of Minor Property Works) in relation to the relevant works relating to the Highway Network; and

- (b) the second half of the Retention to the Service Provider within twenty (20) Business Days of a Certificate of Completion of Making Good Defects in relation to the relevant works relating to the Highway Network.

36 Liability for Capital Works

36.1 The maximum aggregate liability of the Service Provider to the Council in contract, tort, negligence, breach of statutory duty or otherwise arising under or in connection with the relevant Minor Property Works (including, but not limited to, in relation to Losses) shall, in relation only to Losses in respect of which the Service Provider is not required to maintain insurance in accordance with this Agreement, not exceed an amount equal to 100% of the value of the relevant Minor Property Works.

36.2 For the avoidance of doubt, the liability of the Service Provider under paragraph 36.2 shall not count towards the Service Provider Liability Cap.

37 Certification of Minor Property Works

37.1 Notification by the Service Provider to the Council

The Service Provider shall give at least five (5) Business Days' notice in writing to the Council Representative on each occasion that the Service Provider intends to inspect and certify (for the purposes of final assessment and issue of a Compliance Certificate) the relevant Minor Property Works. Such notice shall specify the location and time at which the inspection is to be carried out.

37.2 Inspections

The Council shall notify the Service Provider that the Council Representative and/or any nominee of the Council may attend the Service Provider's inspection and carry out such assessments or inspections to satisfy himself or themselves that the Service Provider has carried out the inspection in accordance with the Method Statements and met the requirements of these Technical Services Special Conditions, including without limitation any requirements set out in the Technical Services Specification. The Council shall use reasonable endeavours to procure that the person(s) attending any assessments or inspections shall not delay the inspection or adversely affect the Service Provider's ability to perform its obligations under these Technical Services Special Conditions.

37.3 Written confirmation

The Service Provider shall, within two (2) Business Days of completion of the relevant inspection, confirm to the Council in writing, whether or not it believes that a Compliance Certificate may be issued in respect of the relevant Minor Property Works (subject to any Snagging Items) and, if applicable, submit to the Council a draft Snagging List.

37.4 Non-Compliance

If the Council does not agree with the Service Provider's written confirmation and/or draft Snagging List issued pursuant to paragraph 37.3 then the Council shall, within five (5) Business Days of receipt, notify the Service Provider accordingly, giving details of the affected Minor Property Works and the grounds of non-compliance of the Minor Property Works (which, to the extent considered appropriate by the Council, may include information relating to any inspections carried out by the Council or any nominee of the Council). Following any such notification, the Service Provider shall,

as soon as possible, consider the details of the notification and confirm whether or not it agrees with the Council's notification.

37.5 Rectification

Where the Service Provider agrees with the Council's notification given pursuant to paragraph 37.4, the Service Provider shall, as soon as possible, take such steps as it considers necessary to ensure that the relevant Minor Property Works are rectified and a Compliance Certificate may be issued in respect of the same. The Service Provider shall notify the Council on completion of the relevant steps and the provisions of paragraphs 37.1 to 37.4 (inclusive) shall apply until the Council accepts the Service Provider's written confirmation or the matter is referred to the Dispute Resolution Procedure.

37.6 Disagreement with Council notice

Where the Council has served notice pursuant to paragraph 37.4 but the Service Provider does not agree with the Council's notification, the parties shall use their reasonable endeavours in good faith to reach agreement by discussion, but if no agreement is reached either party may refer the matter to the Dispute Resolution Procedure.

37.7 Delay to Completion

Where the Council has served notice pursuant to paragraph 37.4 and either the Service Provider agrees with the Council's notification or a Dispute is in progress, the relevant Minor Property Works shall not be treated as being compliant for the purposes of this Agreement (and no Compliance Certificate shall be issued) until such date that it is agreed or determined that the relevant Minor Property Works are compliant (subject to any Snagging Items).

37.8 Certificate of Compliance

Upon the agreement between the Council and the Service Provider that the relevant Minor Property Works have been carried out in compliance with the requirements of the Technical Services Specification, the Service Provider shall issue to the Council a Compliance Certificate together with a Snagging List.

37.9 Rectification of Snagging Items

Where a Snagging List has been issued pursuant to paragraph 37.8, the Service Provider shall rectify the Snagging Items within twenty (20) Business Days of the date of issue of the Snagging List.

37.10 Failure to Complete Snagging

Where the Service Provider fails to rectify the Snagging Items in accordance with the provisions of paragraph 37.9, then the Council shall be entitled to serve written notice on the Service Provider requiring such works to be carried out within twenty (20) Business Days of receipt of such notice, failing which the Council shall be entitled to carry out necessary works to rectify the Snagging Items and the Service Provider shall pay the Council's costs and expenses reasonably and properly incurred in the carrying out of such works within twenty (20) Business Days of receipt of an invoice from the Council.

37 11 No effect on Service Provider's Obligations

The issue of any Compliance Certificate in no way affects the obligations of the Service Provider under this Agreement, including without limitation in respect of any failure by the Service Provider to meet the requirements of the Technical Services Specification.

38 Payment for Minor Property Works

38 1 Payment

The Council shall pay the Service Provider for the carrying out of the Minor Property Works either

- (a) where the Minor Property Works are commissioned in accordance with paragraph 33 4(c)(i) of the Technical Services Special Conditions via a Lump Sum Payment on receipt by the Council of a valid Compliance Certificate, or
- (b) where the Minor Property Works are commissioned in accordance with paragraph 33 4(c)(ii) of these Technical Services Special Conditions through monthly payments in accordance with the Monthly Payment Schedule

38 2 The Service Provider shall provide the Council with:

- (a) an application for payment showing the amount the Service Provider considers to be payable, together with a summary of (where relevant) any amounts previously paid,
- (b) where paragraph 38 1(a) applies, a copy of the relevant Compliance Certificate, and
- (c) any additional information the Council reasonably requires

38.3 Notice of payment due to the Service Provider

Within ten (10) Business Days after receipt by the Council of the Service Provider's application for payment in accordance with paragraph 38 2 the Council will give notice to the Service Provider specifying the sum that the Council considers to be or to have been due at the payment due date in respect of that payment and the basis on which that sum is calculated being the amount claimed by the Service Provider which is not disputed by the Council and shall pay that amount to the Service Provider by the final date for payment referred to in paragraph 38.6 (Final date for payment) Any failure to reach agreement shall be resolved in accordance with the Dispute Resolution Procedure.

38 4 Notice of withholding payment

At least five (5) Business Days before the final date for payment of any amount due to the Service Provider, the Council shall give notice to the Service Provider (a **Pay Less Notice**) of any amounts claimed by the Service Provider that the Council in accordance with these Technical Services Special Conditions either objects to and is seeking to withhold or of any amount that the Council is owed by the Service Provider (including any amounts previously overpaid to the Service Provider) which the Council is seeking to withhold. Any notice shall specify

- (a) the sum that the Council considers to be due on the date that the notice is served, and
- (b) the basis on which that sum is calculated.

38.5 Date when payment due

The payment of the sums due to the Service Provider in accordance with paragraph 38.3 (Notice of payment due to the Service Provider) will be due ten (10) Business Days after the receipt by the Council of the Service Provider's application for payment in accordance with paragraph 38.2. In the case of any VAT payable to the Service Provider, the VAT shall be due 14 days after receipt by the Council of a valid VAT invoice.

38.6 Final date for payment

The final date for payment of any sums referred to in paragraphs 38.5 (Date when payment due) and 38.8 (Final statement and Repayment) shall be ten (10) Business Days after the date the relevant payment became due.

38.7 Not used

38.8 Final statement and Repayment

Not later than three (3) Months after the issue of the Certificate of Completion of Making Good Defects in accordance with clause 35.5, the Service Provider shall provide to the Council a breakdown of:

- (a) all the payments made to the Service Provider during the period of these Technical Services Special Conditions; and
- (b) any further payments due to the Service Provider in accordance with these Technical Services Special Conditions, together with a full explanation of any additional payments due, over and above previously agreed payments in respect of completed works including the balance of the Proposal Fee.
- (c) Paragraph 38.3 (Notice of payment due to the Service Provider) to 38.6 (Final date for payment) shall apply in respect of any sum which the Service Provider claims is due pursuant to this paragraph 38.8.

38.9 VAT

All sums payable by or to the Council or the Service Provider are exclusive of VAT. In the case of any VAT payable, the VAT shall be due 14 days after receipt by the receiving party of a valid VAT invoice.

38.10 Interest on late payments

If the Council is late in making any payment due to the Service Provider in accordance with these Technical Services Special Conditions (which for the avoidance of doubt shall not include any amounts referred to in any notice of withholding of payment in accordance with paragraph 38.4 (Notice of withholding payment) unless it is subsequently determined that any such amount should not have been withheld), the Council shall pay interest on the amount of the late payment at the rate of 2% above LIBOR from the final date for payment of that amount until the date on which the relevant payment is received by the Service Provider.

38.5 Date when payment due

The payment of the sums due to the Service Provider in accordance with paragraph 38.3 (Notice of payment due to the Service Provider) will be due ten (10) Business Days after the receipt by the Council of the Service Provider's application for payment in accordance with paragraph 38.2. In the case of any VAT payable to the Service Provider, the VAT shall be due 14 days after receipt by the Council of a valid VAT invoice.

38.6 Final date for payment

The final date for payment of any sums referred to in paragraphs 38.5 (Date when payment due) and 38.8 (Final statement and Repayment) shall be ten (10) Business Days after the date the relevant payment became due.

38.7 Not used

38.8 Final statement and Repayment

Not later than three (3) Months after the Issue of the Certificate of Completion of Making Good Defects in accordance with clause 35.5, the Service Provider shall provide to the Council a breakdown of:

- (a) all the payments made to the Service Provider during the period of these Technical Services Special Conditions; and
- (b) any further payments due to the Service Provider in accordance with these Technical Services Special Conditions, together with a full explanation of any additional payments due, over and above previously agreed payments in respect of completed works including the balance of the Proposal Fee.
- (c) Paragraph 38.3 (Notice of payment due to the Service Provider) to 38.6 (Final date for payment) shall apply in respect of any sum which the Service Provider claims is due pursuant to this paragraph 38.8.

38.9 VAT

All sums payable by or to the Council or the Service Provider are exclusive of VAT. In the case of any VAT payable, the VAT shall be due 14 days after receipt by the receiving party of a valid VAT invoice.

38.10 Interest on late payments

If the Council is late in making any payment due to the Service Provider in accordance with these Technical Services Special Conditions (which for the avoidance of doubt shall not include any amounts referred to in any notice of withholding of payment in accordance with paragraph 38.4 (Notice of withholding payment) unless it is subsequently determined that any such amount should not have been withheld), the Council shall pay interest on the amount of the late payment at the rate of ~~5%~~ above LIBOR from the final date for payment of that amount until the date on which the relevant payment is received by the Service Provider.



Part 9 – Exercise of Statutory Powers by the Council

39 Exercise of Statutory Powers

Whenever the exercise by the Council of any statutory power is essential to enable the Service Provider to perform any obligation under these Technical Services Special Conditions, the following provisions of this paragraph 39 shall apply.

39.1 Request by Service Provider

- (a) If the Service Provider believes that the exercise by the Council of any statutory power is essential to enable the Service Provider to perform any obligation under these Technical Services Special Conditions, the Service Provider shall give written notice to that effect to the Council and such notice shall:
- (i) clearly specify the action requested of the Council, the duty of the Service Provider under these Technical Services Special Conditions in respect of which such action is requested and the reasons why such action by the Council is required;
 - (ii) indicate the time by which the requested action is required; and
 - (iii) set out any recommendation by the Service Provider in respect of the requested action.
- (b) No later than fifteen (15) Business Days after receipt of the notice referred to in paragraph 39.1(a), the Council shall acknowledge receipt of such notice and shall give its estimate of the date on which it will respond on the merits of the request, which date shall be as soon as reasonably practicable in the circumstances, taking into consideration, among other things, any requirement for consultation with the public or other Interested parties in connection with such request. No such estimate shall be binding on the Council.
- (c) The Council shall consider on its merits in accordance with its statutory duties any request for action contained in the notice referred to in paragraph 39.1(a). Without limiting the discretion of the Council in responding to any such request, the Council shall, in reaching any such decision, give consideration, among other things, to the matters set out in paragraph 39.2. The decision of the Council on the merits of the request shall not be subject to review under the Dispute Resolution Procedure.

39.2 Matters to be considered by Council

The considerations referred to in paragraph 39.1(c) are the following:

- (a) whether the Council has the statutory power to take the action requested by the Service Provider pursuant to paragraph 39.1;
- (b) whether there is any alternative course available to the Service Provider (and the cost of such alternative course) which would not require action by the Council;
- (c) the effect the requested action would have on the interests of any third parties;
- (d) whether the timing and substance of the request is such as to enable the Council to consider the merits of the request in accordance with the principles of procedural fairness (taking into

account where appropriate the necessity or desirability of consultation with other interested parties); and

- (e) whether the action requested would have any implications for safety, either of any third parties or members of the public

39.3 Unreasonableness of Council

Subject to paragraph 39.4, if.

- (a) in the exercise of its discretion, the Council refuses to take the action requested, or
- (b) the Council unreasonably delays in taking the action requested (unreasonableness being assessed in the context of the processes which the Council must properly go through in order to arrive at its decision, including any mandatory or proper discretionary consultation periods and the like, and the burden of proof shall be upon the Service Provider to prove in any dispute under the Dispute Resolution Procedure that delay has been unreasonable for this purpose),

then such refusal or delay shall constitute an Excusing Cause and the provisions of paragraph 34 (Excusing Causes) shall apply

39.4 Duty to Mitigate

The Service Provider shall not be relieved of its liability pursuant to paragraph 39.3 to the extent such liability could have been avoided by the Service Provider taking all steps necessary to mitigate the effects of the refusal or delay of the Council to take the requested action but was not so avoided because the Service Provider failed to take such steps

39.5 Secretary of State/Court consent

If the Council, in the exercise of its discretion, decides that it wishes to seek to exercise such statutory power requested by the Service Provider pursuant to paragraph 39.1 and the consent, confirmation or order of the Secretary of State or any order of the Court is required for the exercise by the Council of such statutory power

- (a) then the Council shall, as soon as reasonably practicable in the circumstances, apply for such consent, confirmation or order,
- (b) the decision of the Secretary of State or the Court shall not be subject to review under the Dispute Resolution Procedure and the Council shall not be obliged to exercise any right of appeal of such decision,
- (c) if the Secretary of State or the Court refuse to give or make any consent, confirmation or order then if the refusal renders impossible (and not merely more expensive) the Service Provider's performance of these Technical Services Special Conditions (as a whole) or has a fundamental effect on the rights and obligations of the Service Provider under these Technical Services Special Conditions, then the Council shall issue a Change to address such impossibility or fundamental effect.

Annex 1: Value for Money

VfM shall be assessed in accordance with the following principles, in the event that the Proposal was subject to general benchmarking principles the proposed services would offer Value for Money taking into account the following assumptions in respect of the Service Provider:

- (a) the Service Provider:
 - (i) being the incumbent Highways Services Provider, has existing knowledge of the Highway Network and therefore, would require limited due diligence; or (as applicable)
 - (ii) being the incumbent Technical Services Provider, has existing knowledge of the Estate and therefore, would require limited due diligence
- (b) relevant:
 - (i) Highways Equipment, Apparatus, plant and any other equipment or materials required in order to perform the Capital Works (Highways) are either already in the possession of the Service Provider or can be acquired at short notice; or (as applicable)
 - (ii) relevant equipment, resources or materials required in order to perform the Capital Works (Property) are either already in the possession of the Service Provider or can be acquired at short notice;
- (c) suitably qualified, experienced and capable employees are currently engaged by:
 - (i) the Service Provider (or the Highway Service Provider) in the delivery of the Highways Services and can be utilised in the performance of the Capital Works (Highways); or (as applicable);
 - (ii) the Service Provider in the delivery of the Technical Services and can be utilised in the performance of the Capital Works (Property);
- (d) as the Service Provider is delivering the Highways Services they shall be best placed to understand any upcoming maintenance works, Road Closures, TROs or other statutory matters which may impact on the delivery the Capital Highway (Works) and can therefore, take steps to mitigate such impact to maximise efficiency of delivery

Open Market means the wider market in the Area relating to the provision of Comparable Services;

Value for Money (VfM) means in accordance with the principles set out above, the Proposal in respect of the Capital Works (Highways) or Capital Works (Property) where assessed against the Open Market would offer the most economically advantageous tender for the delivery of the Capital Works (Highways) or Capital Works (Property) (as applicable)

Annex 2: Provider Direct Agreement

Part 1: Highways Services Provider Direct Agreement

Dated

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TECHNICAL SERVICES PROVIDER (1)

TRAFFORD BOROUGH COUNCIL (2)

HIGHWAYS SERVICES PROVIDER (3)

DIRECT AGREEMENT
relating to the provision of design services in relation to
the highways network

THIS DEED is dated

2015

BETWEEN:

- (1) **Technical Services Provider** (registered in England and Wales under company number) whose registered office is at (Technical Services Provider),
- (2) **TRAFFORD BOROUGH COUNCIL** whose principal office is situated at Trafford Town Hall, Talbot Road, Stretford, Greater Manchester M32 0TH (**Council**), which expression includes its permitted successors in title and assigns, and
- (3) **Highways Services Provider** (registered in England and Wales under company number) whose registered office is at (Highways Services Provider)

BACKGROUND

- (A) By a partnership agreement dated [] 2015 (**Technical Services Agreement**) the Council has appointed the Technical Services Provider to perform, amongst other services, certain design and technical services in relation to the Highway Network (as defined therein)
- (B) By a partnership agreement dated [] 2015 (**Highways Services Agreement**) the Council has appointed the Highways Services Provider to carry out cyclical and reactive maintenance works in relation to the Highway Network
- (C) Pursuant to part 7 of the Technical Services specification contained in Schedule 2 (*Specification*) to the Technical Services Agreement, the Technical Services Provider shall design, or procure the design of, certain works of a capital nature in relation to the Highway Network (**Highway Capital Works**)
- (D) Pursuant to part 9 of the Highways Services specification contained in Schedule 2 to the Highways Services Agreement, the Highways Services Provider shall carry out from time to time Highway Capital Works as required by the Council and as designed and specified by the Technical Services Provider
- (E) The Technical Services Provider is obliged under the Technical Services Agreement to give a warranty in this form in favour of the Highways Services Provider.

1 DEFINITIONS AND INTERPRETATIONS

In this deed unless the context otherwise requires, any defined term in this deed shall have the same meaning given to such term in the ♦ and the following terms shall have the following meanings:

Partnership Agreement means either the Technical Services Agreement or the Highways Service Agreement as the context requires,

Service Provider means either the Highways Services Provider or the Technical Services Provider as the context requires.

2 OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1 00) by the Highways Services Provider to the Technical Services Provider, receipt of which the Technical Services Provider acknowledges.

3 GENERAL

- 3.1 Each of the Service Providers acknowledges to the other Service Provider that it has received and examined the specifications contained within the other Partnership Agreement and acknowledges to the other Service Provider that a breach of its Partnership Agreement may

cause Losses to the other Service Provider in connection with the performance of its Partnership Agreement.

3.2 Each of the Service Providers shall undertake its obligations and exercise its rights under this Agreement and under its Partnership Agreement in such a way as not to interfere with, hinder or delay the other Service Provider in complying with its obligations under its Partnership Agreement.

3.3 Each of the Service Providers undertakes to the other to consult and co-operate when performing any of its obligations under its Partnership Agreement that affect or are likely to affect the other Service Provider's performance of its contractual obligations under its Partnership Agreement, provided that such consultation and co-operation is consistent with the Service Provider's obligations under its Partnership Agreement and does not require the Service Provider to incur any additional material cost.

3.4 Subject to clause 3.3, each Service Provider shall act in good faith towards the other at all times and generally provide such assistance and co-operation as may be reasonably considered appropriate in order to assist the others to perform their obligations under their Partnership Agreement, provided always that no Service Provider shall be required to extend such co-operation to the extent that it would then be performing obligations of another Service Provider. Notwithstanding the generality of the foregoing, each of the Service Providers shall:

3.4.1 where any information has been reasonably requested by the other as being required to assist it in performing its obligations under its Partnership Agreement (and provided such information is not commercially sensitive), then it shall provide such information to the other as soon as is reasonably practicable in the circumstances; and

3.4.2 provide notice of, and permit the other Service Provider to attend, any meetings (either with the Council or any other third party) that may be reasonably considered to be of interest to, or to have any material impact upon, the other (save for meetings with sub-contractors that are of a commercially sensitive or confidential nature).

4 TECHNICAL SERVICES PROVIDER'S WARRANTY AND LIABILITY

4.1 The Technical Services Provider warrants to the Highways Services Provider that it has carried out and will continue to carry out its duties under the Technical Services Agreement in accordance with the Technical Services Agreement and that it has exercised and will continue to exercise, in carrying out the design of the Highway Capital Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to projects of similar size and scope to those comprising the Highway Capital Works. In particular and without limiting the generality of the foregoing the Technical Services Provider covenants with the Highways Services Provider that it has carried out and will carry out and complete the design of the Highway Capital Works in accordance with the Technical Services Agreement and duly observe and perform all its duties and obligations thereunder so as not to cause the Highways Services Provider any Losses.

4.2 Upon the expiration of 12 years from the date of completion of any capital works completed in accordance with any capital works contract, the liability of the Technical Services Provider under this deed shall cease and determine, save in relation to any claims made by the Highways Services Provider against the Technical Services Provider and notified by the Highways Services Provider to the Technical Services Provider in writing prior thereto.

5 DESIGN DATA

5.1 The Technical Services Provider shall make available to the Highways Services Provider free of charge (and hereby irrevocably licences the Highways Services Provider to use) all data

used in the preparation of designs and specification (Design Data) of Highway Capital Works that might reasonably be required by the Highways Services Provider. The Technical Services Provider shall obtain all necessary licences, permissions and consents necessary for it to make the Design Data available to the Highways Services Provider on these terms, for the purposes of the design or construction of the Highway Capital Works and/or the operation, maintenance or improvement of the Highway Capital Works (Approved Purposes), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

5.2 The Technical Services Provider

5.2.1 hereby grants to the Highways Services Provider, free of charge, an irrevocable non-exclusive and transferable (subject to the restrictions continued in clause 7 of this Deed) licence to use the Intellectual Property Rights which are or become vested in the Technical Services Provider for the Approved Purposes; and

5.2.2 shall (where any Intellectual Property Rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.2.1 above to the Council,

in both cases, solely for the Approved Purposes

5.3 The Technical Services Provider warrants to the Highways Services Provider that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Design Data (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Highway Capital Works will not infringe the rights of any third party.

6 INSURANCE

6.1 The Technical Services Provider hereby covenants with the Highways Services Provider to.

6.1.1 take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) for any one claim and in the aggregate together with unlimited reinstatements of the limit and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Technical Services Provider's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Technical Services Provider's own claims record or other acts, omissions, matters or things peculiar to the Technical Services Provider will be deemed to be within the reasonable rates,

6.1.2 provide evidence (as and when reasonably required by the Highways Services Provider) satisfactory to the Highways Services Provider of the Professional Indemnity Insurance (referred to in clause 6.1.1) being in full force and effect from the date of the Technical Services Agreement (such evidence to include details of the cover);

6.1.3 provide the Highways Services Provider with notice of

6.1.3.1 any cancellation of the Professional Indemnity Insurance (referred to in clause 6.1) not less than thirty (30) days prior to the relevant cancellation date, and

6.1.3.2 any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant changes or suspension;

6.1.4 inform the Highways Services Provider as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 6.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Highways Services Provider as the Highways Services Provider may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and

6.1.5 indemnify the Highways Services Provider in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 6.1.1.

7 CLAIMS FOR LOSSES.

7.1 If:

7.1.1 a Service Provider is in breach of its obligations under this Agreement; or

7.1.2 a Service Provider is in breach of its obligations under its Partnership Agreement,

(a Breaching Party) and, in either case such breach causes another Service Provider (a Claiming Party) to suffer any Loss then the Breaching Party shall be obliged to compensate the Claiming Party pursuant to this Agreement for such Loss, subject to and in accordance with this clause 7.

7.2 If a Service Provider wishes to pursue a claim under clause 7 then such Service Provider shall as soon as reasonably practicable after becoming aware of the incident or event giving rise to such claim serve notice on the other Service Provider (with a copy to the Council) setting out in as much detail as is reasonably practicable the relevant facts and basis of alleged liability but, for the avoidance of doubt, such Service Provider shall not be required to notify the other Service Provider of the quantum or expected quantum of the claim until such claim is actually brought.

7.3 The parties to the claim shall meet and/or otherwise discuss within five (5) Business Days of service of notice of a claim under clause 7.2 and use reasonable endeavours in good faith to agree to settle the claim and the reasonable details of such settlement.

7.4 If a Claiming Party fails to serve notice and/or to provide information in respect of a claim under clause 7.1 as required under clause 7.2, then that Claiming Party's entitlement to receive compensation or other relief as may be appropriate in all the circumstances shall be reduced by the consequences of any such failure on that Claiming Party's part.

7.5 Each of the Service Providers agrees that it will not resist any claim brought against it by the Council under the relevant Partnership Agreement on the ground of any breach of this Agreement by the other Service Provider.

8 NOTICES

Any notice to be given by any party 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 4.45 pm on any day it will be deemed to be served on the next Business 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 45pm on a Business Day and otherwise on the next Business Day

9 ASSIGNMENT

The benefit of and the rights of the Highways Services Provider under this deed may be assigned without the consent of the Technical Services Provider on two occasions only and the Highways Services Provider will notify the Technical Services Provider in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Technical Services Provider 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 hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss

10 HIGHWAYS SERVICES SERVICE PROVIDER'S REMEDIES

The rights and benefits conferred upon the Highways Services Provider by this deed are in addition to any other rights and remedies it may have against the Technical Services Provider including without prejudice to the generality of the foregoing any remedies in negligence

11 INSPECTION OF DESIGN DATA

The Technical Services Provider's liabilities under this deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which the Highways Services Provider may make or procure to be made for its benefit or on its behalf.

12 SUB-CONTRACTORS

Following a written request from the Council the Technical Services Provider will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in a form reasonably satisfactory to the Council in favour of any person in whose favour the Technical Services Agreement obliges the Technical Services Provider to give or procure the giving of such a warranty

13 APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts

14 THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Technical Services Provider acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

The Common Seal of
Träfförä Bōrough Council
was hereunto affixed in the presence of:

Signature of duly authorised officer

Full name (Block Capitals)

Position/title

EXECUTED AS A DEED by the Highways Services Provider acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

Part 2: Street Lighting Services Provider Direct Agreement

Dated

20

TECHNICAL SERVICES PROVIDER (1)

TRAFFORD-BOROUGH-COUNCIL (2)

STREET LIGHTING SERVICES PROVIDER (3)

DIRECT AGREEMENT
relating to the provision of design services in relation to
the street lighting

THIS DEED is dated

2015

BETWEEN:

- (1) **Technical Services Provider** (registered in England and Wales under company number) whose registered office is at (**Technical Services Provider**);
- (2) **TRAFFORD BOROUGH COUNCIL** whose principal office is situated at Trafford Town Hall, Talbot Road, Stretford, Greater Manchester M32 0TH (**Council**), which expression includes its permitted successors in title and assigns), and
- (3) **Street Lighting Services Provider** (registered in England and Wales under company number) whose registered office is at (**Street Lighting Services Provider**)

BACKGROUND

- (A) By a partnership agreement dated [] 2015 (**Technical Services Agreement**) the Council has appointed the Technical Services Provider to perform, amongst other services, certain design and technical services in relation to the Highway Network (as defined therein)
- (B) By a partnership agreement dated [] 2015 (**Street Lighting Services Agreement**) the Council has appointed the Street Lighting Services Provider to carry out cyclical and reactive maintenance works in relation to street lighting on the Highway Network.
- (C) Pursuant to the Technical Services specification contained in Schedule 2 (*Specification*) to the Technical Services Agreement, the Technical Services Provider shall design, or procure the design of, certain works of a capital nature in relation to the Highway Network (**Highway Capital Works**) including the design of street lighting.
- (D) Pursuant to the Street Lighting Services specification contained in Schedule 2 to the Street Lighting Services Agreement, the Street Lighting Services Provider shall carry out from time to time street lighting works as part of the Highway Capital Works as required by the Council and as designed and specified by the Technical Services Provider
- (E) The Technical Services Provider is obliged under the Technical Services Agreement to give a warranty in this form in favour of the Street Lighting Services Provider

1 DEFINITIONS AND INTERPRETATIONS

In this deed unless the context otherwise requires, any defined term in this deed shall have the same meaning given to such term in the ♦ and the following terms shall have the following meanings:

Partnership Agreement means either the Technical Services Agreement or the Highways Service Agreement as the context requires,

Service Provider means either the Street Lighting Services Provider or the Technical Services Provider as the context requires

2 OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1 00) by the Street Lighting Services Provider to the Technical Services Provider, receipt of which the Technical Services Provider acknowledges

3 GENERAL

- 3.1 Each of the Service Providers acknowledges to the other Service Provider that it has received and examined the specifications contained within the other Partnership Agreement and acknowledges to the other Service Provider that a breach of its Partnership Agreement

may cause Losses to the other Service Provider in connection with the performance of its Partnership Agreement.

3.2 Each of the Service Providers shall undertake its obligations and exercise its rights under this Agreement and under its Partnership Agreement in such a way as not to interfere with, hinder or delay the other Service Provider in complying with its obligations under its Partnership Agreement.

3.3 Each of the Service Providers undertakes to the other to consult and co-operate when performing any of its obligations under its Partnership Agreement that affect or are likely to affect the other Service Provider's performance of its contractual obligations under its Partnership Agreement, provided that such consultation and co-operation is consistent with the Service Provider's obligations under its Partnership Agreement and does not require the Service Provider to incur any additional material cost.

3.4 Subject to clause 3.3, each Service Provider shall act in good faith towards the other at all times and generally provide such assistance and co-operation as may be reasonably considered appropriate in order to assist the others to perform their obligations under their Partnership Agreement, provided always that no Service Provider shall be required to extend such co-operation to the extent that it would then be performing obligations of another Service Provider. Notwithstanding the generality of the foregoing, each of the Service Providers shall:

3.4.1 where any information has been reasonably requested by the other as being required to assist it in performing its obligations under its Partnership Agreement (and provided such information is not commercially sensitive), then it shall provide such information to the other as soon as is reasonably practicable in the circumstances; and

3.4.2 provide notice of, and permit the other Service Provider to attend, any meetings (either with the Council or any other third party) that may be reasonably considered to be of interest to, or to have any material impact upon, the other (save for meetings with sub-contractors that are of a commercially sensitive or confidential nature).

4 TECHNICAL SERVICES PROVIDER'S WARRANTY AND LIABILITY

4.1 The Technical Services Provider warrants to the Street Lighting Services Provider that it has carried out and will continue to carry out its duties under the Technical Services Agreement in accordance with the Technical Services Agreement and that it has exercised and will continue to exercise, in carrying out the design of the Highway Capital Works, including any street lighting works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to projects of similar size and scope to those comprising the Highway Capital Works. In particular and without limiting the generality of the foregoing the Technical Services Provider covenants with the Street Lighting Services Provider that it has carried out and will carry out and complete the design of the Highway Capital Works, including any street lighting works, in accordance with the Technical Services Agreement and duly observe and perform all its duties and obligations thereunder so as not to cause the Street Lighting Services Provider any Losses.

4.2 Upon the expiration of 12 years from the date of completion of any capital works completed in accordance with any capital works contract, the liability of the Technical Services Provider under this deed shall cease and determine, save in relation to any claims made by the Street Lighting Services Provider against the Technical Services Provider and notified by the Street Lighting Services Provider to the Technical Services Provider in writing prior thereto.

5 DESIGN DATA

5 1 The Technical Services Provider shall make available to the Street Lighting Services Provider free of charge (and hereby irrevocably licences the Street Lighting Services Provider to use) all data used in the preparation of designs and specification (**Design Data**) of Highway Capital Works that might reasonably be required by the Street Lighting Services Provider. The Technical Services Provider shall obtain all necessary licences, permissions and consents necessary for it to make the Design Data available to the Street Lighting Services Provider on these terms, for the purposes of the design or construction of the Highway Capital Works and/or the operation, maintenance or improvement of the Highway Capital Works (**Approved Purposes**), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

5 2 The Technical Services Provider.

5.2.1 hereby grants to the Street Lighting Services Provider, free of charge, an irrevocable non-exclusive and transferable (subject to the restrictions continued in clause 7 of this Deed) licence to use the Intellectual Property Rights which are or become vested in the Technical Services Provider for the Approved Purposes; and

5 2 2 shall (where any Intellectual Property Rights are or become vested in a third party) use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 4.2.1 above to the Council,

in both cases, solely for the Approved Purposes.

5 3 The Technical Services Provider warrants to the Street Lighting Services Provider that he has used the standard of skill, care and diligence as set out in clause 3 1 to see that the Design Data (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Highway Capital Works will not infringe the rights of any third party.

6 INSURANCE

6 1 The Technical Services Provider hereby covenants with the Street Lighting Services Provider to.

6.1 1 take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) for any one claim and in the aggregate together with unlimited reinstatements of the limit and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Technical Services Provider's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Technical Services Provider's own claims record or other acts, omissions, matters or things peculiar to the Technical Services Provider will be deemed to be within the reasonable rates,

6 1 2 provide evidence (as and when reasonably required by the Street Lighting Services Provider) satisfactory to the Street Lighting Services Provider of the Professional Indemnity Insurance (referred to in clause 6 1.1) being in full force and effect from the date of the Technical Services Agreement (such evidence to include details of the cover),

6.1.3 provide the Street Lighting Services Provider with notice of

6.1.3.1 any cancellation of the Professional Indemnity Insurance (referred to in clause 6 1) not less than thirty (30) days prior to the relevant cancellation date; and

6.1.3.2 any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant changes or suspension;

6.1.4 inform the Street Lighting Services Provider as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 6.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Street Lighting Services Provider as the Street Lighting Services Provider may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and

6.1.5 indemnify the Street Lighting Services Provider in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 6.1.1.

7 CLAIMS FOR LOSSES

7.1 If:

7.1.1 a Service Provider is in breach of its obligations under this Agreement; or

7.1.2 a Service Provider is in breach of its obligations under its Partnership Agreement,

(a Breaching Party) and, in either case such breach causes another Service Provider (a Claiming Party) to suffer any Loss then the Breaching Party shall be obliged to compensate the Claiming Party pursuant to this Agreement for such Loss, subject to and in accordance with this clause 7.

7.2 If a Service Provider wishes to pursue a claim under clause 7 then such Service Provider shall as soon as reasonably practicable after becoming aware of the incident or event giving rise to such claim serve notice on the other Service Provider (with a copy to the Council) setting out in as much detail as is reasonably practicable the relevant facts and basis of alleged liability but, for the avoidance of doubt, such Service Provider shall not be required to notify the other Service Provider of the quantum or expected quantum of the claim until such claim is actually brought.

7.3 The parties to the claim shall meet and/or otherwise discuss within five (5) Business Days of service of notice of a claim under clause 7.2 and use reasonable endeavours in good faith to agree to settle the claim and the reasonable details of such settlement.

7.4 If a Claiming Party fails to serve notice and/or to provide information in respect of a claim under clause 7.1 as required under clause 7.2, then that Claiming Party's entitlement to receive compensation or other relief as may be appropriate in all the circumstances shall be reduced by the consequences of any such failure on that Claiming Party's part.

7.5 Each of the Service Providers agrees that it will not resist any claim brought against it by the Council under the relevant Partnership Agreement on the ground of any breach of this Agreement by the other Service Provider.

8 NOTICES

Any notice to be given by any party 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 4.45 pm on

any day it will be deemed to be served on the next Business 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 45pm on a Business Day and otherwise on the next Business Day.

9 ASSIGNMENT

The benefit of and the rights of the Street Lighting Services Provider under this deed may be assigned without the consent of the Technical Services Provider on two occasions only and the Street Lighting Services Provider will notify the Technical Services Provider in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Technical Services Provider 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 hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss

10 STREET LIGHTING SERVICES SERVICE PROVIDER'S REMEDIES

The rights and benefits conferred upon the Street Lighting Services Provider by this deed are in addition to any other rights and remedies it may have against the Technical Services Provider including without prejudice to the generality of the foregoing any remedies in negligence

11 INSPECTION OF DESIGN DATA

The Technical Services Provider's liabilities under this deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which the Street Lighting Services Provider may make or procure to be made for its benefit or on its behalf

12 SUB-CONTRACTORS

Following a written request from the Council the Technical Services Provider will (unless it has already done so) procure that its sub-contractors execute a deed of collateral warranty in a form reasonably satisfactory to the Council in favour of any person in whose favour the Technical Services Agreement obliges the Technical Services Provider to give or procure the giving of such a warranty

13 APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

14 THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Technical Services Provider acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

The Common Seal of
Trafford Borough Council
was hereunto affixed in the presence of:

Signature of duly authorised officer

Full name (Block Capitals)

Position/title

EXECUTED AS A DEED by the Street Lighting Services Provider acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

