

DATED

THE SECRETARY OF STATE FOR TRANSPORT (1)

[PROVIDER] (2)

Model ([])

**CONDITIONS OF CONTRACT FOR
THE ASSET SUPPORT CONTRACT**

CONDITIONS OF CONTRACT FOR ASC CONTRACT

CONTENTS AMENDMENT SHEET

Amend. No.	Issue Date	Amendments	Initials	Date
0	March 2013	First Issue	SOS	22/03/13
1	April 2013	Footnote added to Clause 87.1 Clause 87.2 and 87.3 deleted	SOS	09/04/13
2	May 2013	Insert additional Definitions in Clause 11.1 (130) and (131), with following definitions renumbered Delete Footnote in Clause 87.1 Insert Clauses 87.2 to 87.6.	SOS	07/05/13
3	May 2013	Minor amendment to Identified and defined terms (114) Amendment to Clauses 21.4, 59.1 and 87.4 Clause 3.8 renumbered and clause 3.8.2 inserted in Annex – Form of Lease Clause 3.28 inserted in Annex – Form of Lease	SOS	28/05/13
4	June 2013	Clause 11.1 - Insert additional term at point 8, all subsequent items renumbered. Clause 11.1 - Amend terms (57), (68),	SOS	12/06/13

		<p>(139)</p> <p>Clause 14.4 amended</p> <p>Clause 56.1 – Additional bullet points added.</p> <p>Clause 60.1 (1) amended to include reference to Regional Technology Network (Midlands)</p> <p>Clause 63.8 amended to include reference to Regional Technology Network.</p> <p>Clause 70.3 – Insert new clause all subsequent clause renumbered.</p> <p>Clause 72 – Insert ‘and materials’ to title. Delete clause 72.1, and insert two additional clauses</p> <p>Clause 74.3 amended</p> <p>Clause 87.5, minor amendments</p> <p>Minor text amendments throughout document</p>		
5	June 2013	<p>Clause 63.1 – Insert text “Where a compensation event affects the Defined Cost of the Lump Sum Duties, the assessment is made on the basis that the words “Equipment which is used for Lump Sum Duties and” are treated as having been omitted from paragraph 2 of the Schedule of Cost Components.”</p>	SOS	20/06/13

TABLE OF CONTENTS

CORE CLAUSES	1
1 GENERAL.....	1
10 Actions	1
11 Identified and defined terms.....	2
12 Interpretation and the Law	21
13 Communications.....	22
14 The <i>Service Manager</i>	25
15 Network Board	26
16 Access to and use of the Area Network, the Regional Technology Network (Midlands), the Traffic Technology Systems (Midlands) and other areas	27
17 Early warning	28
18 Ambiguities and inconsistencies	29
19 Euro (e) functionality	29
2 THE <i>PROVIDER'S</i> MAIN RESPONSIBILITIES.....	31
20 Providing the Services.....	31
21 Schemes carried out by Contractors	31
22 Care and Diligence	32
23 Authorised Functions	32
24 People	33
25 Co-operation with the <i>Employer</i> and Others	35
26 Subcontracting.....	36
27 Health and Safety	39
28 Instructions	40
29 Discrimination	41
29A Salt.....	42
3 TIME	44
30 Contract Period and extensions	44
31 Annual Commercial Plan	45
32 Programme	46
33 Timing of Schemes.....	47
34 Notification of Completion	47
35 Expiry of Contract Period.....	48
36 TUPE.....	48
37 Pensions.....	50
4 QUALITY MANAGEMENT, AUDIT AND REPORTING.....	55
40 Quality Management	55
41 Audit and Quality Management Points	56
42 Correcting Nonconformities	58
43 Records.....	60
5 PAYMENT.....	61
50 <i>Provider's</i> invoices.....	61

51	Payment	63
52	Prices for Schemes carried out by the <i>Provider</i>	66
53	Continual improvement	68
54	Innovations	69
55	Price Adjustment for Inflation.....	72
56	Price for Services Provided to Date.....	73
57	Defined Cost.....	77
58	Adjustment of <i>fee percentages</i>	77
59	Project Bank Account.....	78
6	COMPENSATION EVENTS	80
60	Compensation events.....	80
61	Notifying compensation events	85
62	Quotations for compensation events	87
63	Assessing compensation events.....	88
64	The <i>Service Manager's</i> assessment.....	89
65	Implementing compensation events	90
7	TITLE	91
70	<i>Employer's</i> title to Materials	91
71	Use of Premises	91
72	Removing Equipment.....	92
73	<i>Employer's</i> Vehicles	92
74	Objects and materials within the Area Network and/or the Regional Technology Network (Midlands)	93
75	Intellectual Property Rights.....	94
76	<i>Employer's</i> Stocks.....	95
8	RISKS AND INSURANCE	96
80	<i>Employer's</i> risks.....	96
81	The <i>Provider's</i> risks.....	98
82	Indemnity	98
83	Indemnified Claims	98
84	Insurance cover.....	99
85	Insurance policies	101
86	If the <i>Provider</i> does not insure	101
87	Claims against third parties	102
9	DISPUTES AND TERMINATION	104
88	Dispute resolution.....	104
89	The Adjudicator.....	104
90	The adjudication	105
91	Review by the <i>tribunal</i>	107
92	Termination	108
93	Reasons for termination.....	108
94	Procedures on termination.....	110
95	Payment on termination.....	111
	SCHEDULE 1 - SCHEDULE OF COST COMPONENTS	113
	SCHEDULE 2 - EMPLOYER'S PREMISES	118

ANNEX - FORM OF LEASE	120
1 Definitions and interpretation.....	122
2 Letting terms	125
3 Tenant's covenants	126
4 Landlord's covenants	132
5 Lease conditions	132
6 Status of tenancy	134
7 Exclusion of security of tenure.....	134
8 Options to determine	135
9 Landlord's licence to occupy	136
10 Landlord requiring leaseback	137
11 Implied rights of enforcement by third parties excluded.....	138
SCHEDULE 1 TO THE LEASE Part 1 Description of the Premises [<i>To be completed by Area teams</i>]	139
Part 2 Rights granted.....	143
Part 3 Reservations.....	143
Part 4 Encumbrances [<i>To be completed by Area teams</i>]	144
SCHEDULE 2 List of Improvements	147
SCHEDULE 3 - ADJUDICATOR'S APPOINTMENT	149
SCHEDULE 4 - TRUST DEED.....	152
SCHEDULE 5 - JOINING DEED.....	154
SCHEDULE 6.....	156
FORM OF PARENT COMPANY GUARANTEE	149

CORE CLAUSES**1 GENERAL****10 Actions**

- 10.1 The *Employer*, the *Provider* and the *Service Manager* shall act as stated in this contract and in a spirit of mutual trust and co-operation.
- 10.2 Neither the *Provider* nor (where the *Provider* is an unincorporated joint venture) any Consortium Member assigns, transfers or charges the benefit of this contract or any part of it, nor any benefit or interest in or under it, without the prior agreement of the *Employer*.
- 10.3 A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only where expressly provided in this contract or if the term and the person or organisation are stated in the Contract Data. The *Provider* acknowledges that such persons or organisations have such rights of enforcement.
- 10.4 The *Provider* and anyone employed by him or acting on his behalf complies with the *Employer's* Anti Bribery Code of Conduct and the *Employer's* Anti Fraud Code of Conduct (collectively the "Codes"), both of which have been signed by the *Provider*. This obligation to comply with the Codes remains throughout the term of this contract except that the obligations in paragraph 4 of the *Employer's* Anti Bribery Code of Conduct and paragraph 3 of the *Employer's* Anti Fraud Code of Conduct remain for a period of not less than twelve years from the date of termination or expiry of this contract.
- 10.5 There is no Change in Control without the consent of the *Employer*.
- 10.6 If required by the *Service Manager*, the *Provider* gives to the *Employer* a guarantee by the requisite parent company of the *Provider's* performance in the form set out in Schedule 6. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date. For the purposes of this clause 10.6, where the *Provider* is
- a Consortium, "requisite parent company" is each Consortium Member's requisite parent company or

- owned by a Consortium, “requisite parent company” is each Consortium Member or (at the discretion of the *Employer*) its respective requisite parent company.

11 Identified and defined terms

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

- (1) Accepted Price is the contract price for a Scheme being constructed by a Contractor.
- (2) Activity Schedule is a priced activity schedule prepared in accordance with Section B of the Pricing Schedule for each Scheme constructed by the *Provider*.
- (3) The Adjudicator is an adjudicator appointed in accordance with clause 91 to decide disputes in accordance with this contract.
- (4) Annual Commercial Plan is the plan to be prepared by the *Provider* for each Financial Year falling wholly or partly within the Contract Period as detailed in the Service Information.
- (5) Appointed Actuary is the actuary appointed to the Provider’s Pension Plan from time to time in accordance with Section 47 of the Pensions Act 1995 and the regulations made under it.
- (6) The Area Network is the part of the motorway and trunk road network and the associated buildings, infrastructure and amenities for which the Highways Agency (in its capacity as an executive agency on behalf of the *Employer*) is responsible which are within the area boundaries identified in the Network Information at the Contract Date, as later changed by an instruction issued under this contract.
- (7) Area Network Alteration Schedule is the document of that name referred to in the Contract Data Part Two in which the *Provider*
 - sets out how changes to the Prices will be assessed and
 - identifies changes to his resource levels including the number and type of Employer’s Vehicles he requires to Provide the Services

which apply if the *Service Manager* instructs that the alterations to the Area Network, set out in the Network Information, will take effect.

(8) Regional Technology Network Alteration Schedule is the document of that name referred to in the Contract Data Part Two in which the *Provider*

- sets out how changes to the Prices will be assessed and
- identifies changes to his resource levels including the number and type of *Employer's Vehicles* he requires to Provide the Services

which apply if the *Service Manager* instructs that the alterations to the Regional Technology Network, set out in the Network Information, will take effect.

(9) Area Service Alteration Schedule is the document of that name referred to in the Contract Data Part Two in which the *Provider*

- sets out how changes to the Prices will be assessed and
- identifies changes to his resource levels which will apply, including the number and type of *Employer's Vehicles* he requires to Provide the Services

if the *Service Manager* gives an instruction changing any element of the Service Information listed in the Area Service Alteration Schedule.

(10) Asset Maintenance and Operational Requirements is the document of that name and listed in Annex 18 of the Service Information which sets out the Performance Requirements for the maintenance and operation of the Area Network.

(11) Associated Company is

- a Principal Design Consultant,
- a Consortium Member or
- any company, corporation, partnership, joint venture or other entity which directly or indirectly controls, is controlled by or is under common control with the *Provider* or a Consortium Member. The word "control" in this context means the ability or entitlement to exercise, directly or indirectly, at

least 50 per cent of the voting rights attributable to the shares or other interest in the controlled company, corporation, partnership, joint venture or other entity and the words “control” and “controlled” are construed accordingly.

- (12) Authorised Functions are the statutory functions of the *Employer* which the *Provider* is authorised to exercise under this contract as specified in the Service Information.
- (13) The Authorisation is a document authorising the *project bank* to make payments to the *Provider* and Named Suppliers.
- (14) Category Management Services are the Services in Annex 29 of the Service Information in respect of the Category Purchase Agreements identified in the Network Information.
- (15) Category Purchase Agreement is a framework agreement which is established or may be established by the *Employer* for common requirements across its asset management and wider expenditure plan under which the *Provider* and Others may enter into contracts with Category Suppliers.
- (16) Category Suppliers are parties to a Category Purchase Agreement with the *Employer*.
- (17) CDM Regulations are the Construction (Design and Management) Regulations 2007.
- (18) Change in Control means, in relation to the *Provider*, where Control is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the Contract Date hold Control save where the person who obtains Control was a company within the same group of companies as the *Provider* prior to the obtaining of Control and remains in the same group of companies as the *Provider* following the obtaining of Control. For the purposes of this provision, where the *Provider* is or is owned by a Consortium, “*Provider*” shall be construed as also referring separately to each Consortium Member.
- (19) Code of Practice is any code of practice issued under section 45 of the Freedom of Information Act 2000 or pursuant to powers contained in the Environmental

Information Regulations 2004.

- (20) Completion is when a Scheme has been constructed by the *Provider* in accordance with the requirements of the Service Information.
- (21) Consortium means a consortium of two or more persons or organisations who together
- i) comprise the *Provider* by way of an unincorporated joint venture or
 - ii) comprise all the members of any Incorporated Joint Venture Party which is the *Provider*.
- (22) Consortium Member means an organisation or person which is a member of a Consortium.
- (23) Construction Period is the agreed period for the construction of a Scheme.
- (24) The Contract Date is the date when this contract came into existence.
- (25) Contract Dispute is a dispute between the Parties under or in connection with this contract.
- (26) Contract Period is the *contract period* or any extended period fixed under this contract.
- (27) Contract Year is (as the case may be) the period commencing on the *access date* or each anniversary of the *access date* and ending 12 months later.
- (28) Contractor is a contractor or a number of contractors other than the *Provider* engaged by the *Employer* (whether pursuant to a framework arrangement or otherwise) to construct Schemes.
- (29) Control has the meaning set out in section 1124 Corporation Tax Act 2010
- (30) Data Protection Acts are the Data Protection Act 1998 and any other laws or regulations relating to privacy or personal data.
- (31) Defined Cost is
- the amount of payments due to Subcontractors for work which is

subcontracted without taking account of amounts deducted for

- payments to Others and
- the supply of equipment, supplies and services included in the charge for overhead costs incurred within the Working Areas in this contract and
- the cost of the components in Schedule 1 for other work

provided always that where a unit rate in the schedule of rates in the Pricing Schedule is zero nil or blank the amount of payments due for and/or the cost of providing the relevant parts of the Services are deemed to be zero

less

- the cost of preparing quotations for compensation events where the work affected forms part of the Lump Sum Duties and
- Disallowed Cost.

(32) Design Factors are the amounts and percentages for each type and value of Scheme set out in Part A and Part B of Appendix C of the Pricing Schedule.

(33) Design Period is the period identified at the end of Stage 1 of Annex 20 of the Service Information for the duration of activities to be undertaken before construction of a Scheme commences.

(34) Design Services are the Services in Phase 2A and Phase 2B of Stage 2 of Annex 20 of the Service Information in respect of a Scheme.

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

- is not justified by the *Provider's* accounts and records,
- should not have been paid to a Subcontractor or Supplier in accordance with his contract,
- was incurred only because the *Provider* did not
 - follow a Process or Procedure stated in his Quality Plan or

- give an early warning notice which this contract required him to give or
 - was incurred in connection with additional audits of the *Provider's* quality management system carried out by or on behalf of the *Service Manager*
- and the cost of
- work or remedial action caused by the *Provider's* failure to exercise reasonable skill, care and diligence in the design carried out by the *Provider* for a Scheme,
 - Materials not used (after allowing for reasonable wastage) unless resulting from a change to the Service Information,
 - resources not used (after allowing for reasonable availability and utilisation),
 - conducting the defence of an Indemnified Claim,
 - preparation for and conduct of an adjudication or proceedings of the *tribunal*,
 - the design or development of an Efficiency Improvement and
 - the design or development of an Innovation (including the development of business cases).
- (36) Disclosure Request is a request for information relating to this contract received by the *Employer* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.
- (37) Discrimination Acts are the Equality Act 2010 and any predecessor statutes.
- (38) Documents are data (including Personal Data), records, reports, documents, manuals, designs, drawings, plans, specifications and other works or materials of any nature in any form or medium (excluding proprietary software).
- (39) Efficiency and Reform Group Supplier Feedback Services are the feedback services established by Government from time to time in connection with the

purposes of making Government more efficient and reforming the way public services are provided.

- (40) Efficiency Improvements are changes to Processes and/or Procedures and/or Materials selected by the *Provider* and Subcontractors for incorporation into the Services which are expected by the *Provider* to enable the lump sum prices in Section A of the Pricing Schedule and the rates in Section B of the Pricing Schedule to be reduced whilst maintaining compliance with all the requirements of this contract.
- (41) The Emergency Services are representatives of the police, ambulance or fire services or other bodies having statutory powers to issue instructions following an Incident when engaged in an action either on the Area Network or which affects the safe progress of traffic on the Area Network.
- (42) Employer's Premises are the office space, compounds, depots and storage facilities made available by the *Employer* for the use of the *Provider* during the Contract Period as specified in the Network Information.
- (43) Employer's Stocks are
- the items of equipment listed in the Network Information provided by the *Employer* for use by the *Provider* in Providing the Services and
 - any items of equipment replaced by items provided by the *Employer* in accordance with the Service Information for use by the *Provider* in Providing the Services.
- (44) Employer's Vehicles are the vehicles identified in Annex 7 of the Service Information.
- (45) Employment Business means an employment business as defined by the Conduct of Employment Agencies and Employment Businesses Regulations 2003 SI 2003/3319.
- (46) Employment Costs are all costs and emoluments arising under the terms and conditions of employment of the Transferring Employees or the Staff (as the case may be), including basic pay, shift allowances, bonus payments, on call payments, overtime, car costs, telephone rental, travel and subsistence

payments, maternity pay, sick pay, pension contributions and income tax and national insurance contributions.

- (47) Equipment is items of plant, machinery and equipment provided by the *Provider* and used by him to Provide the Services.
- (48) Failure is one of the failures numbered 1 - 14 and listed in the *quality table*.
- (49) The Fee is the sum of the amounts calculated by applying the *subcontracted fee percentage* to the Defined Cost of subcontracted work and the *direct fee percentage* to the Defined Cost of other work.
- (50) The Fee Schedule is the schedule setting out the breakdown of the *subcontracted fee percentage* and the *direct fee percentage* into their component elements, supported by data showing how each element of each *fee percentage* has been calculated. The Fee Schedule is in the document which the Contract Data states it is in.
- (51) Financial Year is (as the case may be)
- the period commencing on the Contract Date and ending on 31 March next following it,
 - a period of twelve months commencing on the expiry of the previous Financial Year or
 - in the case of the Financial Year in which the Contract Period expires, the period commencing on the expiry of the previous Financial Year and ending on the expiry of the Contract Period.
- (52) Forward Programme is the programme produced by the *Employer* that identifies Schemes for the current and future Financial Years and includes allocated and approved expenditure where available.
- (53) GAD Certificate is the certificate issued by the Government Actuary's Department in respect of the Provider's Pension Plan (or any pension scheme established or nominated by a Subcontractor) confirming the broad comparability of the Provider's Pension Plan (or the replacement scheme) to the Original Scheme.

- (54) Government is Her Majesty's Government of the United Kingdom.
- (55) HADECS Supplier is a supplier of Highways Agency digital enforcement camera systems to the *Employer*.
- (56) Incident is
- an unforeseen event which directly or indirectly affects the Area Network and causes or has the potential to cause disruption to the free flow of traffic on the Area Network or threatens the safety of the public or is an immediate or imminent threat to the long term integrity of any part of the Area Network or to land adjacent to the Area Network or likely to be affected by events on the Area Network,
 - breakdown or damage rendering the communications installations serving the Area Network or any part of them inoperable or
 - any other unplanned occurrence necessitating traffic control measures.
- (57) Incoming Provider is any supplier appointed by the *Employer* to Provide the Services or part of them (or services similar to the Services or part of them) in relation to the Area Network and/or the Regional Technology Network (Midlands) and/or the Traffic Technology Systems (Midlands) (or part of any of them) in place of the *Provider*.
- (58) Incorporated Joint Venture Party means a company limited by shares, a company limited by guarantee, a limited liability partnership or any other legal entity.
- (59) Indemnified Claim is a claim made by a third party against the *Employer* in respect of a matter which is at the *Provider's* risk under this contract.
- (60) Information Systems are the systems specified in the Service Information for the collection and storage of information regarding the trunk road network (including the Area Network and the Traffic Technology Systems (Midlands)) or any revised systems introduced by the *Employer* or the *Provider* (with the *Employer's* approval) from time to time.
- (61) Innovation is a change to the Performance Requirements proposed by the

Provider which has not previously been adopted by the *Employer* in the Area Network or elsewhere (whether by way of a departure from standards or otherwise) and which (if implemented by the *Employer*) is expected to provide a significant long-term benefit to the *Employer* in terms of

- reducing the cost of the Services to the *Employer*,
- improving the quality or effectiveness of delivery of the Services or
- otherwise enhancing the achievement of the *Employer's* vision, goals and key objectives.

- (62) Intellectual Property Rights are any current and future legal and equitable interests in patents, trade marks, design rights, copyright, know-how and other similar rights, whether or not registered or capable of registration.
- (63) Lease is the lease to be granted to the *Provider* in the manner set out in, and substantially in the form annexed to, Schedule 2.
- (64) Local Government Pension Scheme is the pension scheme governed by the Local Government Pension Scheme Regulations (SI 1997/1612) as amended from time to time.
- (65) Lump Sum Duties are those of the Services which are set out in Section A of the Pricing Schedule.
- (66) Management Factor is the percentage for Schemes set out in Part C of Appendix C of the Pricing Schedule.
- (67) Management Services are the Services in Annex 9 of the Service Information in respect of a Scheme.
- (68) Materials are items supplied by the *Provider* in the course of Providing the Services and intended to be included in the Area Network.
- (69) Mobilisation Period is the period from the *starting date* to the *access date*.
- (70) Named Suppliers are *named suppliers* unless later changed in accordance with this contract.

- (71) National Reserve Fleet are the Employer's Vehicles listed in the Network Information or the Service Information in respect of which the *Service Manager* may give instructions in accordance with clause 73.2.
- (72) Network Board is the board to be established by the Parties to oversee the management of the Area Network and the RTMC (Midlands) and the delivery of the *Employer's* objectives within the Area Network and in respect of the Traffic Technology Systems (Midlands).
- (73) Network Information is information which is in the document of that name referred to in the Contract Data Part One and which describes the Area Network, the Regional Technology Network (Midlands) and Traffic Technology Systems (Midlands) and their surroundings and provides information pertaining to them, to the *Employer's* assets and to the provision of the Services.
- (74) New Employees are employees of the *Provider* engaged in Providing the Services who are not Transferring Employees and are first employed by the *Provider* after the *starting date*.
- (75) NLA is The Newspaper Licensing Agency Limited.
- (76) Nonconformity has the meaning given to it in ISO 9000.
- (77) Original Scheme means the Local Government Pension Scheme or such other public service pension scheme as was applicable.
- (78) Operational Performance Indicators are measures of performance of part of the Services in respect of
- a service that our customers can trust,
 - setting the standard for delivery,
 - roads being the safest in the world,
 - delivering sustainable solutions and
 - the Area Network being a dynamic and resilient asset

for which thresholds, targets and/or weightings will be set by the *Employer* on or

before the *access date*.

- (79) Operational Winter Period is a period commencing on 1 October in any year and ending on the 30 April in the following year.
- (80) OPI Matrix sets out the thresholds, targets and/or weightings and scores for achieving the same set by the *Employer* in respect of the Operational Performance Indicators.
- (81) Others are people or organisations who are not the *Employer*, the *Service Manager*, the *Adjudicator*, the *Provider* or any employee, Subcontractor or Supplier of the *Provider*.
- (82) Outgoing Provider is any agent or contractor appointed by the *Employer* or Others to carry out works or provide services similar to the Services in relation to the Area Network and/or the Traffic Technology Systems (Midlands) during the period immediately prior to the *access date*.
- (83) Outgoing Provider's Pension Scheme is the registered pension scheme or schemes operated by an Outgoing Provider immediately prior to the *access date* which has been certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Original Scheme.
- (84) Overall Score is the score calculated every three months in accordance with the OPI Matrix.
- (85) Package Order is a Package Order as defined in a Category Purchase Agreement.
- (86) The Parties are the *Employer* and the *Provider* and a Party is either of them.
- (87) Performance Requirement is the required standard for performance of the Services as specified in the Service Information.
- (88) Personal Data is information received by the *Provider* in relation to this contract, which relates to living individuals who can be identified
- from that information or

- from that information combined with other details in (or likely to come into) the possession of the *Employer*.
- (89) Preliminaries are any items of work included in Series 100: Preliminaries of the Method of Measurement for Highways Works published by The Stationery Office current at the Contract Date.
- (90) Premises Document is the *premises document* including any changes made in accordance with this contract.
- (91) The Price for Services Provided to Date has the meaning given in clause 56.1.
- (92) The Price for Work Done to Date for a Scheme is
- if the Scheme is constructed by the *Provider*, the Defined Cost of the work which has been constructed by the *Provider* excluding the Defined Cost of the Services in Stages 1 and 2 of Annex 20 of the Service Information plus the resulting Fee, or
 - if the Scheme is constructed by a Contractor, the final actual construction cost as determined in accordance with the terms of the contract between the *Employer* and the Contractor under which the Scheme was constructed.
- (93) The Prices are
- the monthly lump sum amounts set out in the schedule to Section A of the Pricing Schedule adjusted in accordance with Section A of the Pricing Schedule for Lump Sum Duties performed during the *contract period*. The Prices for the Lump Sum Duties in any extended years to the *contract period* are deemed to be the lump sum amounts for the last 12 months in the schedule to Section A of the Pricing Schedule adjusted in accordance with the Pricing Schedule,
 - the lump sum amounts stated in Section A of the Pricing Schedule for the mobilisation and demobilisation duties stated in the Service Information,

- the Target Sums calculated in accordance with Section B of the Pricing Schedule for Schemes constructed by the *Provider*,
 - the Design Factors applied to the final Price for Work Done to Date for Schemes excluding the amount for Preliminaries,
 - the Management Factor applied to the final Price for Work Done to Date for Schemes,
 - the Defined Cost plus the Fee for the Services listed in Section D of the Pricing Schedule and
 - the amounts obtained by multiplying the rates in the Preliminaries section of Section B of the Pricing Schedule as adjusted in accordance with the Pricing Schedule by the quantities provided for the RTMC Contractor (Midlands), HADECS Suppliers and VMS Suppliers.
- (94) The Pricing Schedule is the document of that name referred to in the Contract Data Part One.
- (95) Principal Design Consultant is any consultant to whom the *Provider* subcontracts any design work comprised in the Services identified as such in the Contract Data or any replacement consultant notified by the *Provider* to the *Service Manager*.
- (96) Procedure has the meaning given to it in ISO 9000.
- (97) Process has the meaning given to it in ISO 9000.
- (98) Procurement Period is the period commencing when the *Provider* commences the Management Services and ending when it is estimated a contract will be entered into by the *Employer* with a Contractor.
- (99) Programme is the overall programme prepared by the *Provider* showing how the *Provider* intends to Provide the Services.
- (100) Project Bank Account is the account used to receive payments from the *Employer* and make payments to the *Provider* and Named Suppliers.

- (101) Prospective Tenderer is any person or corporate body who applies to be included on a tender list to become an Incoming Provider.
- (102) Provider's Alternative Pension Plan is the pension scheme established or nominated by the *Provider* (or, where the *Provider* is an unincorporated joint venture, the Consortium Member who employs the relevant Transferring Employee) for the purposes of clause 37.7 and which satisfies the conditions set out in clause 37.8.
- (103) Provider's Pension Plan is the pension scheme established or nominated by the *Provider* (or, where the *Provider* is an unincorporated joint venture, the Consortium Member who employs the relevant Transferring Employee) for the purposes of clause 37.1 and which satisfies the conditions set out in clause 37.2.
- (104) Provider's Premises are premises provided by the *Provider* and/or Associated Companies (but not by other Subcontractors) and which are used for Providing the Services, but excluding
- Temporary Accommodation and
 - premises providing head office functions supporting the provision of the Services.
- (105) To Provide the Services means to do the work necessary to perform the Services in accordance with this contract and all incidental work, services and actions which this contract requires and Providing the Services is constructed accordingly.
- (106) Quality Management Points are points accrued by the *Provider* in accordance with the *quality table*.
- (107) Quality Plan has the meaning given to it in ISO 9000.
- (108) Quality Statement is the statement of that name referred to in the Contract Data Part Two detailing the *Provider's* proposals for the management and resourcing of the Services.
- (109) Regional Technology Network (Midlands) is the part of the motorway and trunk

road network and the associated buildings, infrastructure and amenities for which the *Employer* is responsible which are identified in the Network Information as the Regional Technology Network (Midlands).

(110) Related Dispute is a dispute under or in connection with a contract with the RTMC Contractor (Midlands), a Contractor, a Subcontractor or a Supplier.

(111) Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute.

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

(113) RTMC (Midlands) is the contract between the *Employer* and the RTMC Contractor (Midlands) under which the RTMC Contractor (Midlands) carries out services on the Traffic Technology Systems (Midlands) and in respect of which the *Provider* carries out the Services in Annex 26 of the Service Information.

(114) The RTMC Contractor (Midlands) is the contractor under the RTMC (Midlands).

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

- enhancing the assets forming part of the Area Network (excluding the Employer's Premises),
- replacing assets forming part of the Area Network that have reached the end of their economically viable life or
- repairing or enhancing the condition of roads outside the Area Network used by the *Employer* as diversion routes

and works required to make good loss or damage to the Area Network caused by vehicles driven by third parties, where the *Provider's* initial assessment of the forecast Defined Cost plus Fee (including the cost of any Employer's Stocks but excluding costs payable to Statutory Bodies and value added tax) of the making good exceeds £10,000, but excluding

- the repair of defects as defined in the Asset Maintenance and Operational Requirements save where such repair is approved as a Scheme in accordance with Annex 20 of the Service Information,
 - the repair or replacement of Employer's Stocks and
 - the Services in Section D of the Pricing Schedule.
- (116) Scheme Budget Cost is the budget for a Scheme as determined at the end of Stage 1 of Annex 20 of the Service Information excluding the cost of any Employer's Stocks, design and management costs, land costs, costs payable to Statutory Bodies and value added tax.
- (117) Schemes Budget is the total budget allocated by the *Employer* for the execution of Schemes in the current or any future Financial Year.
- (118) Section 278 Scheme is a Scheme which is or is to be constructed by the *Employer* or on behalf of the *Employer* pursuant to an agreement with a Contractor or other third party under sections 6 or 278 of the Highways Act 1980 or is being contributed to by a third party under sections 274 or 274A of the Highways Act 1980.
- (119) The Service Information is the document of that name referred to in the Contract Data Part One which
- specifies and describes the Services,
 - states any constraints on how the *Provider* Provides the Services and
 - identifies the Performance Requirements applicable to each of the Services.
- (120) Services are the duties to be performed by the *Provider* under this contract.
- (121) Services Budget is the *Employer's* approved budget for the carrying out of the Services during each Financial Year falling wholly or partly within the Contract Period (as notified by the *Employer* to the *Provider*) and incorporates that part of the Schemes Budget for Schemes to be constructed by the *Provider* during the relevant Financial Year.

- (122) SME is
- a Supplier or
 - a subcontractor to a Supplier
- and
- is autonomous,
 - is a European Union enterprise not owned or controlled by a non-European Union parent company,
 - for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
 - for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
 - for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.
- (123) Staff are employees employed by the *Provider* or an Associated Company or any Subcontractor to Provide the Services at any time.
- (124) Statutory Body is a person or corporate body who has a statutory right or a right pursuant to a licence granted under any statute to place or maintain any apparatus (including any pipe, conduit, sewer, drain or tunnel) on, under or over the Area Network or to inspect, adjust, repair, alter, renew, reposition or remove such apparatus.
- (125) Strategic Salt Stockpile means salt stocks owned by the *Employer* and stockpiled at various locations in the United Kingdom.
- (126) A Subcontractor is

- a person or organisation (other than an employee or contract worker engaged by the *Provider* or an Associated Company) who has a contract with the *Provider* or an Associated Company to provide part of the Services or to supply Materials which the person or organisation has wholly or partly designed specifically for the Services or
 - a Category Supplier to whom the *Provider* has issued a Package Order under a Contract Purchase Agreement.
- (127) A Supplier is a person or organisation who has a contract to provide the supply of Equipment, supplies and/or services necessary to Provide the Services.
- (128) Target Sum is the total of the Prices for a Scheme constructed by the *Provider*.
- (129) Temporary Accommodation is accommodation created by the *Provider* which is used solely for the construction of Schemes constructed by the *Provider*.
- (130) Threshold is the *threshold* unless altered in accordance with this contract.
- (131) Third Party Claims Defined Cost is the Defined Cost of items (a), (b) and (c) specified in paragraph 2 of Appendix A to Annex 23 of the Service Information.
- (132) Third Party Claims Overhead is the amount calculated by applying the *third party claims overhead percentage* to the Third Party Claims Defined Cost.
- (133) Traffic Management Services for the RTMC Contractor (Midlands), HADECS Suppliers and VMS Suppliers are the traffic management Services set out in the Service Information.
- (134) Traffic Officers are the traffic officers employed by the *Employer* and acting in that capacity, whether based on the Area Network or in any traffic control centre or police control office.
- (135) Traffic Technology Systems (Midlands) are the systems which the RTMC Contractor (Midlands) manages, monitors and maintains and are identified in the Network Information.
- (136) Transferring Employees are employees of an Outgoing Provider (or of a subcontractor of an Outgoing Provider) employed for the carrying out of work or

the provision of services similar to the Services in relation to the Area Network and the Traffic Technology Systems (Midlands) during the period immediately prior to the *access date*, other than employees who object to the transfer of their employment to the *Provider* (or, where the *Provider* is an unincorporated joint venture, any Consortium Member).

- (137) Trust Deed is an agreement between the *Employer*, the *Provider* and Named Suppliers substantially in the form in Schedule 4 which contains provisions for administering the Project Bank Account.
- (138) TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- (139) TUPE Information is information provided by the *Provider* or a Subcontractor in relation to any relevant Staff in response to a request by the *Employer* under clause 36.3, including the information which a transferor is obliged to provide to a transferee pursuant to regulation 11(2) of TUPE and any other information of the type set out (in relation to the Transferring Employees) in paragraph 12 of the Network Information.
- (140) VMS Supplier is a supplier of variable message signs to the *Employer*.
- (141) Working Areas are
- the Area Network,
 - the Regional Technology Network (Midlands),
 - Employer's Premises outside the Area Network and the Regional Technology Network (Midlands) and
 - Temporary Accommodation.

12 Interpretation and the Law

12.1 In this contract, except where the context shows otherwise

- words in the singular also mean in the plural and the other way round,
- words in the masculine also mean in the feminine and neuter and the other way round,

- references to a document include any revision made to it in accordance with this contract,
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it,
- references to a British, European or International standard include any current relevant standard that replaces it and
- references to persons or organisations will be construed so as to include bodies corporate, unincorporated associations, partnerships and any other legal entity.

12.2 This contract is governed by the law of England and Wales.

12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.

12.4 This contract is the entire agreement between the Parties.

13 Communications

13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the English language.

13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.

13.3 If this contract requires the *Service Manager* or the *Provider* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.

13.4 The *Service Manager* may extend the *period for reply* to a communication if the *Service Manager* and the *Provider* agree to the extension before the reply is due. The *Service Manager* notifies the *Provider* of the extension which has been agreed.

- 13.5 A notification which this contract requires is communicated separately from other communications.
- 13.6 The *Service Manager* may withhold acceptance of a submission by the *Provider*. If he withholds acceptance, he states his reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Provider's* submission fully. Withholding acceptance for a reason stated in this contract is not a compensation event.
- 13.7 Neither the *Provider* nor anyone employed by him or acting on his behalf
- gives information concerning the subject matter of this contract for publication in the press or on radio, television, screen, electronically or any other media or
 - publishes or circulates any photographs of the Area Network or the Traffic Technology Systems (Midlands) or any part of them or any Incident (other than as necessary to Provide the Services)
- without the written consent of the *Service Manager*. The *Provider* conducts any liaison with the media in accordance with the Service Information.
- 13.8 The *Provider* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person
- the terms of this contract
 - the terms including the rates and prices in or in a contract procured under a Category Purchase Agreement and
 - any confidential or proprietary information (including Personal Data) provided to or acquired by the *Provider* in the course of Providing the Services
- except that the *Provider* may disclose information
- to its legal or other professional advisers,
 - to anyone employed by it or acting on its behalf as needed to enable the *Provider* to Provide the Services,
 - where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to

disclosure the *Provider* consults the *Service Manager* and takes full account of the *Service Manager's* views about whether (and if so to what extent) the information should be disclosed,

- which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
- which is in the public domain at the time of disclosure other than due to the fault of the *Provider* or
- with the consent of the *Service Manager*.

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

13.10 Where the *Service Manager* supplies the *Provider* with press cuttings provided to the *Employer* under the terms of the *Employer's* licence with NLA, the *Provider* does not reproduce the cuttings or forward them to any third party unless the *Provider* has first entered into an agreement with NLA authorising it to do so.

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

13.12 The *Provider* acknowledges that the *Employer* is obliged to publish this contract in accordance with the Cabinet Office's Efficiency Reform Group Transparency - Publication of New Central Government Contracts of December 2010, or any later revision, except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Employer* consults with the *Provider* before deciding whether information is exempt, but the *Provider* acknowledges that the *Employer* is responsible for determining in his absolute discretion whether any of the content of this contract is exempt and has the final decision. The *Provider* co-operates with and assists the *Employer* to publish this contract in accordance with the *Employer's* obligation.

13.13 The *Provider* acknowledges that the *Employer* may receive Disclosure Requests and that the *Employer* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request.

Where practicable, the *Employer* consults with the *Provider* before doing so in accordance with the relevant Code of Practice. The *Provider* uses its best endeavours to respond to any such consultation promptly and within any deadline set by the *Employer* and acknowledges that it is for the *Employer* to determine whether or not such information should be disclosed.

13.14 When requested to do so by the *Service Manager*, the *Provider* promptly provides information in its possession relating to this contract and assists and co-operates with the *Employer* to enable the *Employer* to respond to a Disclosure Request within the time limit set out in the relevant legislation.

13.15 The *Provider* promptly passes any Disclosure Request which it receives to the *Service Manager*. The *Provider* does not respond directly to a Disclosure Request unless instructed to do so by the *Service Manager*.

13.16 The Official Secrets Act 1989 applies to this contract from the *starting date* until the date when all the items of work commenced by the *Provider* prior to the expiry of the Contract Period have been completed. The *Provider* notifies his employees and Subcontractors of their duties under this Act.

14 The Service Manager

14.1 Acceptance and/or approval by the *Service Manager* or the *Employer* of

- a communication from the *Provider*,
- any design or work carried out by the *Provider*,
- the *Provider's* Quality Plan or
- the persons named in the Quality Plan or any replacement persons

does not change the *Provider's* obligations or relieve the *Provider* from compliance with its obligations under this contract.

14.2 The *Service Manager*, after notifying the *Provider*, may delegate any of his actions and may cancel any delegation. A reference to an action of the *Service Manager* in this contract includes an action by his delegate.

14.3 The *Service Manager* may give an instruction to the *Provider* which changes

- the Service Information or
- the Threshold, but within the *threshold range*.

14.4 The *Service Manager* may at any time issue an instruction changing the extent of the Area Network or the Regional Technology Network (Midlands) or the Traffic Technology Systems (Midlands). A reason for changing the extent of the Regional Technology Network (Midlands) is that the *Employer* wishes to appoint another supplier to manage that part of the Regional Technology Network (Midlands) that lies outside the Area Network. Where the change results from a Scheme constructed by a Contractor, the instruction takes effect on the date the relevant works are completed. In other cases, unless the Parties agree otherwise, the instruction takes effect on the date stated or the date three months after it is received, whichever is later.

14.5 The *Employer* may replace the *Service Manager* after he has notified the *Provider* of the name of the replacement.

15 Network Board

15.1 The constitution and terms of reference of the Network Board are set out in Annex 10 of the Service Information. The *Employer* and the *Provider* each appoint prior to the *starting date* and keep appointed representatives to the Network Board as specified in the Contract Data. The Parties co-operate within the Network Board as necessary to facilitate the discharge of its functions under this contract.

15.2 Each Party obtains the approval of the other Party before replacing any member of the Network Board. A reason for not approving the proposed replacement is that he is not of equivalent status to the person being replaced.

15.3 The Network Board may co-opt Subcontractors and Others to attend meetings and to provide such information and assistance as the Network Board may from time to time require.

15.4 The Network Board meets prior to the *starting date* and thereafter every three months or more frequently as the members of the Network Board may agree.

- 15.5 The Network Board is authorised to carry out the actions stated in this contract as being for the Network Board, subject to any financial or contractual limits specified in the Contract Data or any other financial or contractual limits imposed from time to time and notified to the other Party.
- 15.6 The Network Board is not authorised to change the terms or method of operation of this contract.
- 15.7 The Network Board may recommend to the Parties that the terms or method of operation of this contract are changed. A change takes effect only if it is recorded in
- a memorandum signed by persons authorised to do so on behalf of the Parties (who may or may not be their representatives on the Network Board) or
 - an instruction given by the *Service Manager* in accordance with this contract and which the *Service Manager* is authorised to give.
- 15.8 If the Network Board is unable to reach unanimous agreement on any matter, the *Employer* may decide on the matter. The *Service Manager* notifies the *Provider* of the *Employer's* decision.
- 16 Access to and use of the Area Network, the Regional Technology Network (Midlands), Traffic Technology Systems (Midlands) and other areas**
- 16.1 The *Employer* allows access to and use of each part of the Area Network, the Regional Technology Network (Midlands) and the Traffic Technology Systems (Midlands) to the *Provider* as necessary to Provide the Services, subject to any limitations set out in the Network Information. Access and use is allowed on or before the later of the *access date* and the date for access shown on the Programme.
- 16.2 The *Provider* liaises as necessary with the *Employer* and Others responsible for the management and maintenance of roads and systems adjacent to or serving the Area Network, the Regional Technology Network (Midlands) and the Traffic Technology Systems (Midlands) or otherwise as stated in the Service Information in order to enable the *Provider* to Provide the Services and the RTMC Contractor (Midlands) to perform its obligations under the RTMC (Midlands). The *Provider* provides the RTMC Contractor (Midlands) with the Services in the Service

Information to enable it to perform its obligations under the RTMC (Midlands). The *Employer* assists the *Provider* in liaising with Others as required.

16A Adding to the Working Areas

16A.1 The *Provider* may submit a proposal for adding an area on a temporary or permanent basis to the Working Areas to the *Service Manager* for acceptance. A proposal for a temporary addition states the time period during which the addition is to be effective and if accepted the added area ceases to be part of the Working Area on the expiry of the stated time period. A reason for not accepting is that

- the proposed area is not necessary for Providing the Services,
- the time period for a temporary addition is longer than necessary or
- the proposed area is used for work not in this contract.

17 Early warning

17.1 The *Provider* and the *Service Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the Defined Cost of Schemes being constructed by the *Provider*,
- increase the total of the Prices,
- affect the progress or performance of the Services or
- impair the performance of the Area Network and/or the Traffic Technology Systems (Midlands) in use.

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

17.2 If either the *Service Manager* or the *Provider* considers that a matter notified is sufficiently important to require a risk reduction meeting, he may instruct the other to attend. Either the *Service Manager* or the *Provider* may instruct other people to attend if the other agrees.

- 17.3 At a risk reduction meeting those who attend co-operate in
- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
 - seeking solutions that will bring advantage to all those who will be affected,
 - deciding on the actions which will be taken and who, in accordance with this contract, will take them and
 - deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
- 17.4 The *Service Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Provider*. If the decision needs a change to the Service Information, the *Service Manager* instructs the change at the same time as he issues the revised Risk Register.

18 Ambiguities and inconsistencies

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

19 Euro (e) functionality

- 19.1 The *Provider* Provides the Services in such a way that the Services
- would not be prejudiced by the implementation of the Euro:

- comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97;
- are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro; and
- are in accordance with the *Employer's* requirements both for Sterling and for the Euro.

2 THE PROVIDER'S MAIN RESPONSIBILITIES

20 Providing the Services

20.1 The *Provider* Provides the Services

- in accordance with the Service Information,
- in compliance with all laws, statutes, regulations, by-laws, directives, rules and government orders applicable to the *Employer*, *Provider* or the Services to the extent that they are applicable to any part of the Services,
- in compliance with all special requirements of any Statutory Body listed in the Network Information and
- in accordance with the other requirements of this contract.

20.2 Subject to clauses 20.3, 21.4 and 41.10, the *Provider* when instructed by the *Service Manager* constructs all Schemes which have a Target Sum below or equal to the Threshold.

20.3 The *Service Manager* may notify the *Provider* (whether following a tender exercise or otherwise) that a Scheme with a Target Sum below the Threshold is to be constructed by a Contractor and not by the *Provider*, provided that the total value of such Schemes notified in any Financial Year does not exceed 5% of the Schemes Budget for that Financial Year. A notification that a Scheme is to be constructed by a Contractor is not a compensation event. A notification is not given later than the end of Phase 2A of a Scheme (as defined in paragraph 20.4.1 of Annex 20 to the Service Information). The *Provider* when instructed by the *Service Manager* performs all or part of the Services in Annex 9 to the Service Information for a Scheme constructed by a Contractor.

21 Schemes constructed by Contractors

21.1 Unless the *Employer* agrees, neither the *Provider* nor any Associated Company may tender for or accept an appointment as Contractor.

21.2 An Associated Company may act as a subcontractor to a Contractor.

- 21.3 The *Employer* appoints any Contractor on the basis of the most up to date edition of the model contract used by the *Employer* for the selected procurement method.
- 21.4 The *Employer* may at his sole discretion appoint Others to perform all or part of the services in Annex 20 to the Service Information in relation to a Section 278 Scheme and/or a Contractor to construct a Section 278 Scheme irrespective of its estimated cost.
- 21.5 The *Service Manager* may instruct the *Provider* to perform all or part of the Services in Annex 9 of the Service Information for any Scheme and may instruct the *Provider* to perform other services for a Section 278 Scheme.

22 Care and Diligence

- 22.1 The *Provider* carries out the Services required by this contract in a good and workmanlike manner and in compliance with the requirements specified in the Service Information and so as to ensure that the *Employer's* statutory obligations in respect of the condition of the Area Network and the Traffic Technology Systems (Midlands) are fulfilled.
- 22.2 The *Provider* obtains approval of his design from the *Employer*, the *Service Manager* or Others where required by the Service Information and within the timescales stated in the Service Information.

23 Authorised Functions

- 23.1 The *Employer* authorises the *Provider* to exercise the Authorised Functions in respect of the Area Network for the Contract Period pursuant to the Contracting Out (Highway Functions) Order 2009.
- 23.2 The *Provider* exercises the Authorised Functions in accordance with the principles of administrative law governing the conduct of the *Employer*.
- 23.3 The *Provider* indemnifies the *Employer* against claims, proceedings, compensation and associated costs arising from the wrongful exercise or failure to exercise any of the Authorised Functions by the *Provider*.
- 23.4 The *Employer* may at any time withdraw or revoke the *Provider's* authorisation to exercise any Authorised Function.

23.5 If an authorisation to exercise any Authorised Function expires or is withdrawn or revoked by the *Employer*, the *Provider* co-operates with the *Employer* as necessary to facilitate a transfer to the *Employer* or a replacement nominated by the *Employer*.

23.6 The *Provider* informs any interested third parties that it is authorised to exercise the Authorised Functions.

23.7 The *Provider* does not subcontract or delegate to any other person the exercise of any Authorised Function.

24 People

24.1 The *Provider* either employs each key person named to do the job for him stated in the Quality Plan or employs a replacement person who has been accepted by the *Service Manager*. The *Provider* submits the name, relevant qualifications and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.

24.2 The *Provider* undertakes

- security checks in respect of Staff and
- training of Staff

as specified in the Service Information.

24.3 The *Provider* complies with and ensures that any Subcontractor complies with the *Employer's* policies relating to bullying and harassment. Where the *Employer* has reasonable grounds for considering that the presence or conduct of any of the Staff or other person, save for the *Employer's* employees or agents, at any location relevant to the performance of the Services is undesirable or in breach of the aforementioned *Employer's* policies then the *Employer* may refer the matter to the Network Board for a recommendation for corrective action.

24.4 Having made a referral to the Network Board and in the event that the Network Board is unable to reach unanimous agreement and/or the presence or conduct referred to in clause 24.3 continues the *Service Manager* may, having stated his

reasons, instruct the *Provider* to remove an employee or other person engaged in Providing the Services. The *Provider* immediately, or within such other time period as the *Service Manager* specifies, arranges that the employee or person has no further connection with Providing the Services.

24.5 The *Provider* takes all reasonable steps to ensure that for every £20,000,000 (twenty million pounds) paid to the *Provider* under this contract at least one employee employed to Provide the Services (which may include employees of the *Provider*, any Subcontractor or Supplier of the *Provider*) is on a formal apprenticeship programme under which he gets on and off the job training and gains a nationally recognised qualification. The *Provider* makes available to its employees employed To Provide the Services, information about the Government's apprenticeship programme and wider skills opportunities.

24.6 The *Provider* takes all reasonable steps to provide work experience placements for 14 to 16 year olds, work experience/work trial placements for other ages, student sandwich/gap year placements and graduate placements in relation to this contract.

24.7 For the purposes of this contract and the Data Protection Acts

- the *Employer* is the Data Controller and
- the *Provider* is the Data Processor.

24.8 The *Provider* processes the Personal Data in accordance with (and so as not to put the *Employer* in breach of) the Data Protection Acts and only to the extent necessary for the purpose of performing its obligations under this contract.

24.9 The *Provider* has in place for so long as it holds the Personal Data

- appropriate technical and organisational measures (having regard to the nature of the Personal Data) to protect the Personal Data against accidental, unauthorised or unlawful processing, destruction, loss, damage, alteration or disclosure and
- adequate security programmes and Procedures to ensure that unauthorised persons do not have access to the Personal Data or to any equipment used to process the Personal Data.

- 24.10 The *Provider* immediately notifies the *Service Manager* if it receives
- a request from any person whose Personal Data it holds to access his Personal Data or
 - a complaint or request relating to the *Employer's* obligations under the Data Protection Acts.
- 24.11 The *Provider* assists and co-operates with the *Employer* in relation to any complaint or request received, including
- providing full details of the complaint or request,
 - complying with the request within the time limits set out in the Data Protection Acts and in accordance with the instructions of the *Service Manager* and
 - promptly providing the *Service Manager* with any Personal Data and other information requested by him.
- 24.12 The *Provider* does not process the Personal Data outside the European Economic Area without the agreement of the *Service Manager*. Where the *Service Manager* agrees, the *Provider* complies with the instructions of the *Service Manager* and provides an adequate level of protection to any Personal Data in accordance with the eighth data protection principle set out in Schedule 1 to the Data Protection Act 1998.
- 24.13 The *Provider* complies with the requirements of the *Employer* in relation to the storage, dispatch and disposal of the Personal Data in any form or medium.
- 24.14 The *Provider* immediately notifies the *Service Manager* on becoming aware of any breach or potential breach of clauses 24.8 to 24.13 or of the Data Protection Acts.

25 Co-operation with the *Employer* and Others

- 25.1 The *Provider* co-operates with Others in obtaining and providing information which they need in connection with the Area Network and/or the Traffic Technology Systems (Midlands).

- 25.2 The *Provider* co-operates with Others and provides access to the Area Network and/or the Traffic Technology Systems (Midlands) and facilities for them as stated in the Service Information or as instructed by the *Service Manager* from time to time.
- 25.3 The *Employer*, the *Service Manager* and the *Provider* co-operate in carrying out the actions set out in the Risk Register.
- 25.4 The *Provider* co-operates with Others appointed by the *Employer* to manage and carry out works on the Area Network and/or the Regional Technology Network (Midlands). The *Provider* provides Others appointed to manage and carry out works on the Area Network and/or the Regional Technology Network (Midlands) with information about the Services and attends meetings as requested by these Others to discuss any issues that relate to the carrying out of works on the Area Network and/or the Regional Technology Network (Midlands).
- 25.5 As set out in the Service Information, the *Provider* liaises with the Traffic Officers and provides information to them as required to enable them to perform their duties.
- 25.6 The *Provider* registers the Area Network or, where that is not possible, the site of any Scheme constructed by the *Provider* under the Considerate Constructor Scheme operated by Construction Umbrella Bodies (Holdings) Limited.
- 25.7 In Providing the Services, the *Provider* complies with the Considerate Constructor Scheme's Code of Practice.
- 25.8 The *Provider* assists Construction Umbrella Bodies (Holdings) Limited to develop the Considerate Constructor Scheme so that it applies to contracts for works or services similar to those which the *Provider* carries out under this contract.

26 Subcontracting

- 26.1 If the *Provider* subcontracts any part of the Services, he is responsible for Providing the Services as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Provider's*.
- 26.2 The *Provider* submits the name of each Subcontractor to the *Service Manager* before the Subcontractor commences work.

26.3 The conditions of contract for each subcontract with a Subcontractor are to include

- provisions embodying the principles of supply chain management set out in the Quality Plan,
- an obligation on the Subcontractor to work with the *Provider* to assist the *Employer* to achieve its key objectives for the maintenance, operation and improvement of the Area Network and the Traffic Technology Systems (Midlands) and to seek continual improvement in the delivery of the Services,
- an obligation on the Subcontractor to keep detailed cost records in the same format and containing the same details and for the same period, as the *Provider* is required to keep, and to make the records available to the *Provider* and the *Employer* and his representatives (including the *Service Manager*) on request,
- obligations substantially similar to those in clause 29,
- an obligation on the Subcontractor to ensure that title in Equipment and Materials passes to the *Provider* not later than when the *Provider* pays the Subcontractor for them,
- a term requiring (at the *Employer's* option) the assignment or novation of the subcontract to the *Employer* or an Incoming Provider following the termination of this contract,
- a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation,
- an obligation on the Subcontractor to achieve continual improvement in the delivery of the subcontracted part of the Services and as a minimum and to implement the Processes in Annex 14 of the Service Information,
- an obligation on the Subcontractor to review its Processes, Procedures and Materials selected by the Subcontractor for incorporation into the Services to identify potential improvements to the *Provider* such that the *Provider* can meet its obligations under clause 53.1,

- a term requiring the *Provider* to pay the Subcontractor within a specified period not exceeding 19 days after the due date in this contract. The amount due includes but is not limited to, work which the Subcontractor has completed from the previous assessment date up to the current assessment date in this contract,
- a term requiring the Subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract, and
- a provision requiring the Subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Provider*.

For the purposes of this clause 26.3 the due date in this contract is the date upon which a payment becomes due in accordance with clause 51.5. The *Provider* notifies noncompliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Services and includes this provision in each subcontract and requires Subcontractors to include the same provision in each subsubcontract.

26.4 The conditions of contract with each Supplier and Employment Business are to include

- a term requiring the *Provider* to pay the Supplier or Employment Business within a specified period not exceeding 19 days after the due date in this contract. The amount due includes but is not limited to, supplies or services which the Supplier or Employment Business has completed from the previous assessment date up to the current assessment date in this contract,
- a term requiring the Supplier or Employment Business to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the due date in this contract, and
- a provision requiring the Supplier or Employment Business to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Provider*.

For the purposes of this clause 26.4 the due date in this contract is the date upon which a payment becomes due in accordance with clause 51.5. The

Provider notifies noncompliance with the timescales for payment through the Efficiency and Reform Group Supplier Feedback Services and includes this provision in each subcontract with a Supplier or Employment Business and requires Suppliers and Employment Businesses to include the same provision in each subsubcontract.

- 26.5 If a Subcontractor is not a Named Supplier or the *Employer* gives a notice under clause 51.1 notifying the *Provider* that payment will be made otherwise than in accordance with clause 59.7, the *Provider*, upon request from the *Service Manager*, provides to the *Service Manager* details of the date of every invoice from each Subcontractor and the date upon which the amount due in respect of each such invoice was paid to the Subcontractor.
- 26.6 The *Service Manager* may, having stated his reasons, instruct the *Provider* to remove a Subcontractor. The *Provider* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with this contract.
- 26.7 If the *Provider* subcontracts any part of the Services to an Associated Company, the Defined Cost of the work subcontracted is assessed in accordance with Schedule 1 and this contract as if the work had not been subcontracted unless otherwise agreed by the *Service Manager*.
- 26.8 Following termination of a Category Purchase Agreement, the *Service Manager* may instruct the *Provider* to terminate all or any contracts with the Category Supplier and the *Provider* terminates such contracts in accordance with such instruction.
- 26.9 For each SME employed on the Services, the *Provider* reports to the *Service Manager* each quarter from the *starting date* until the date when all the items of work commenced by the *Provider* prior to the expiry of the Contract Period have been completed
- the name of the SME,
 - the class of SME (medium, small or micro),
 - the value of the contract undertaken by the SME,

- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

26.10 The *Provider* acknowledges that the *Employer* may

- publish the information supplied under clause 26.9, along with the *Provider's* name and this contract name and
- pass the information supplied under clause 26.9 to any Government Department who may then publish it along with the names of the SMEs, the *Provider's* name and this contract name.

26.11 The *Provider* ensures that the conditions of contract for each Supplier who is an SME include

- a term allowing the *Employer* to publish the information supplied under clause 26.9 and
- obligations substantially similar to those set out in clauses 26.9 to 26.11.

26.12 The *Provider* ensures that the conditions of contract for each Supplier include a requirement that the conditions of contract for any subsubcontractor engaged by the Supplier who is an SME include obligations substantially similar to those set out in clause 26.11.

27 Health and Safety

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

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

28 Instructions

28.1 The *Provider* obeys an instruction which is in accordance with this contract and is given to him by the *Service Manager*.

28.2 Where so required by the Service Information, the *Provider* obeys an oral instruction given by Highways Agency Traffic Officers and the Emergency

Services following an Incident. The *Provider* notifies the *Service Manager* of an instruction given by the Emergency Services following an Incident at the earliest suitable opportunity.

- 28.3 Following an Incident, the *Service Manager* may instruct the *Provider* to
- stop Providing the Services (or part of them),
 - remove Equipment and Materials from the Area Network and/or the Regional Technology Network (Midlands) and/or
 - take such other actions as are necessary to enable the Area Network and/or the Traffic Technology Systems (Midlands) (or part of them) to be brought back into use by traffic as soon as possible and to minimise disruption to the free flow of traffic on the Area Network and/or the Regional Technology Network (Midlands).
- 28.4 If the *Service Manager* instructs the *Provider* to stop Providing the Services (or part of them) following an Incident, the *Employer* may himself provide or procure from another *Provider* such services as are required to enable the Area Network and/or the Traffic Technology Systems (Midlands) (or part of them) to be brought back into use by traffic and to minimise disruption to the free flow of traffic on the Area Network and/or the Regional Technology Network (Midlands). The *Employer* bears the cost of such services, unless the Incident was due to an act or default of the *Provider* or would not have occurred if the *Provider* had Provided the Services in accordance with this contract.

29 Discrimination

- 29.1 The *Provider* (and, where the *Provider* is an unincorporated joint venture, each Consortium Member) does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Discrimination Acts.
- 29.2 Where possible in Providing the Services, the *Provider* co-operates with and assists the *Employer* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.

- 29.3 Where any employee or Subcontractor employed by the *Provider* or other person on behalf of the *Provider* or a Subcontractor is required to carry out any activity on the Area Network and/or the Traffic Technology Systems (Midlands) or alongside the *Employer's* employees in any Employer's Premises, the *Provider* ensures that each such employee or Subcontractor or other person, save for the *Employer's* employees or agents, complies with the *Employer's* employment policies and codes of practice relating to discrimination and equal opportunities.
- 29.4 The *Provider* notifies the *Service Manager* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Provider* or a Consortium Member under the Discrimination Acts in connection with this contract and
- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
 - attends (and permits a representative from the *Employer* to attend) any associated meetings,
 - promptly allows access to any relevant documents and information and
 - cooperates fully and promptly with the investigatory body, court or tribunal.
- 29.5 The *Provider* indemnifies the *Employer* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Employer* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Provider* or a Consortium Member.

29A Salt

- 29A.1 In the event that there is a scarcity in the market generally of the salt required to Provide the Services the *Provider* may request that the *Employer* makes salt available to the *Provider* from the Strategic Salt Stockpile to enable the *Provider* to meet its obligations in respect of the Severe Winter Service as set out in the Service Information. The *Employer* may in its absolute discretion agree to make a quantity of salt ("the Agreed Quantity") available. A refusal or failure by the *Employer* to agree to provide all or any salt requested does not relieve the *Provider* of any of its obligations under this contract. If the *Employer* agrees to

make salt available then, and only then, the provisions of clauses 29A.2 to 29A.4 apply.

29A.2 The *Employer* instructs the contractor or contractors managing the Strategic Salt Stockpile to make available the Agreed Quantity of salt to the *Provider*. The *Employer* gives no warranties as to the quality of the salt.

29A.3 The *Provider* makes arrangements with such contractor or contractors for the delivery or collection of the salt and for the payment of any haulage costs incurred by such contractor or contractors. The *Provider* indemnifies the *Employer* any costs which the *Employer* is obliged to pay in respect of such haulage.

29A.4 The *Provider* pays to the *Employer* an amount equal to the higher of the market rate for salt multiplied by the tonnage of the Agreed Quantity or the amount paid by the *Employer* for the salt made available.

29A.5 If at any time the *Service Manager*, having regard to the *Provider's* current and planned salt stock levels, current usage and weather forecasts, anticipates that the *Provider* may not be able to meet its obligations in respect of the Severe Winter Service as set out in the Service Information, the *Service Manager* may issue an instruction to the *Provider* to take delivery of such quantity of salt from the Strategic Salt Stockpile as the *Service Manager* considers reasonable and to pay to the *Employer* the haulage costs of such delivery and an amount equal to the higher of the market rate for salt multiplied by the tonnage of the salt delivered or the amount paid by the *Employer* for the salt delivered.

29A.6 An agreement pursuant to clause 29A.1 or an instruction pursuant to clause 29A.5 is not a compensation event.

3 TIME

30 Contract Period and extensions

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

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

30.2 The *contract period* is extended in accordance with clauses 30.3 - 30.13. The earning or granting of an extension does not prejudice the *Employer's* right to terminate this Contract.

30.3 Extensions to the Contract Period are earned, granted or lost in increments of one quarter of a Contract Year.

30.4 Subject to clause 30.10 extensions are earned and lost as follows:

- for each quarter of a Contract Year where the Overall Score is in excess of 120, one extension is earned;
- for each quarter of a Contract Year where the Overall Score is below 80, one extension is lost,
- where the Overall Score in any quarter of a Contract Year is between 80 and 120 inclusive, extensions are neither earned nor lost
- where the Overall Score in each of any 3 of 4 consecutive quarters irrespective of the Contract Year or Contract Years in which they fall is less than 80, all extensions already earned are lost.

The "Extension Pot" is the cumulative number of extensions earned and lost and may be a negative number.

30.5 Neither the *contract period* nor the Contract Period are extended by virtue of an extension being earned.

- 30.6 Subject to clauses 30.10 and 30.11, extensions are granted from the Extension Pot by the *Employer* giving notice to the Provider of the grant of an extension to the *contract period* or the Contract Period as the case may be.
- 30.7 The maximum number of extensions which may be granted from the Extension Pot does not exceed the number of extensions in the Extension Pot at the time of the grant.
- 30.8 If following the grant of an extension the number in the Extension Pot becomes a negative number the *Employer* may give notice to the *Provider* that the Contract Period is reduced by up to the number of negative extensions provided always that the Contract Period is not reduced below the *contract period*.
- 30.9 When extensions are granted the number of extensions in the Extension Pot is reduced by the number granted and if the Contract Period is reduced the number of extensions in the Extension Pot is increased accordingly.
- 30.10 The *Provider* does not earn any extensions and the *Employer* does not notify the *Provider* of any extension or further extension to the *contract period* later than 18 months before the expiry of the Contract Period.
- 30.11 If the *contract period* is extended by less than the *extension period*, the *Employer* may further extend the *contract period* so that the total period of extension does not exceed the *extension period*.
- 30.12 The *Employer* is not obliged to grant any extensions if in its absolute discretion it determines that an extension is not in the interests of its operational requirements.
- 30.13 Irrespective of the number of extensions earned or lost the Contract Period will not be reduced below the *contract period*.

31 Annual Commercial Plan

- 31.1 The *Provider* prepares and submits to the *Service Manager* the Annual Commercial Plan for each Financial Year falling wholly or partly within the Contract Period not later than six weeks prior to
- the *access date* (in the case of the Financial Year in which the *access date* occurs) and

- the commencement of each subsequent Financial Year.
- 31.2 The *Provider* prepares the Annual Commercial Plan in accordance with the procedure set out in the Service Information and monitors and updates it in accordance with the Service Information.
- 31.3 The *Service Manager* may reject the Annual Commercial Plan if
- the forecast total of the Prices for the activities specified in it exceeds the Services Budget,
 - it is inconsistent with the Forward Programme or the Programme or
 - (in the case of the Annual Commercial Plan for the second and subsequent Financial Years) it does not include the full amount of any performance improvements accepted by the *Service Manager* or agreed by the Network Board.
- 31.4 If the *Service Manager* rejects the Annual Commercial Plan, he gives his reasons and the *Provider* adjusts the Annual Commercial Plan so that the reasons no longer apply. Otherwise the Annual Commercial Plan is not changed for any reason.
- 31.5 The *Provider* amends his Quality Plan to incorporate any Procedures included in the Annual Commercial Plan for any Financial Year.

32 Programme

- 32.1 The *Provider* submits to the *Service Manager* an initial Programme within four weeks of the Contract Date.
- 32.2 The *Provider* submits a revised Programme to the *Service Manager*
- after the preparation of each Annual Commercial Plan,
 - if the Forward Programme is changed,
 - if any part of the Services shown on the Programme is delayed for any reason,
 - within the *period for reply* after the *Service Manager* has instructed him to and, in any case,

- at no longer intervals than the intervals specified in the Contract Data during the Contract Period.

32.3 Each Programme

- includes a level of detail consistent with the stage of planning of each specified operation at the time when it is prepared,
- incorporates and is consistent with any relevant Annual Commercial Plan and
- includes details of the Schemes identified in the current version of the Forward Programme.

32.4 The *Provider* shows on each revised Programme

- the actual progress of each specified operation and its effect upon the timing of the remainder of the Services,
- the effects of implemented compensation events and of notified early warning matters,
- how the *Provider* plans to deal with any delays and
- any other changes which the *Provider* proposes to make to the Programme.

33 Timing of Schemes

33.1 The *Service Manager* may instruct the *Provider* that a Scheme is to be brought forward or deferred. The Prices are recalculated using the rates applicable at the time the Scheme is actually constructed.

33.2 The *Provider* may propose to the *Employer* that a Scheme is brought forward into an earlier Financial Year or deferred to a later Financial Year. A proposal includes the *Provider's* proposed adjustments to the Prices. The *Service Manager* decides whether the proposal is accepted and, if so, the resulting changes to the Prices.

34 Notification of Completion

34.1 The *Provider* notifies the *Service Manager* when a Scheme constructed by the *Provider* is completed in accordance with the Service Information.

35 Expiry of Contract Period

35.1 During the last 6 months of the Contract Period, the *Service Manager* may instruct the *Provider* not to Provide any part of the Services which

- the *Service Manager* considers will not be completed prior to the expiry of the Contract Period or
- relate to Schemes which the *Service Manager* considers will not be completed prior to the expiry of the Contract Period.

35.2 The *Provider* co-operates with the *Employer* and the Incoming Provider so as to ensure a smooth transfer of functions on the expiry of the Contract Period and in particular to ensure the smooth and effective transfer of the Transferring Employees whether on, before or after the *access date*.

36 TUPE

36.1 The Parties acknowledge that TUPE is likely to apply to this contract so that the Transferring Employees become the employees of the *Provider* (or, where the *Provider* is an unincorporated joint venture, a Consortium Member) or a Subcontractor on the *access date*. Where the *Provider* is an unincorporated joint venture, references in clauses 36 and 37 to the *Provider* (as the employer of the Transferring Employees) are to the relevant Consortium Member, but the *Provider* remains liable for compliance with its obligations and for the warranties and indemnities given by it under those clauses.

36.2 The *Provider* complies with and ensures that any Subcontractor complies with its obligations under TUPE, including compliance with any request by the Outgoing Provider under regulation 13(4) of TUPE before the *access date*.

36.3 The *Provider* provides and ensures that any Subcontractor provides the TUPE Information to the Employer or to any Prospective Tenderer or Incoming Provider within the *period for reply* after the *Employer's* request to do so and in any event at least twelve months before the end of the Contract Period. The *Provider* warrants that the TUPE Information is complete and accurate as at the date it is disclosed.

- 36.4 The *Employer* may disclose any of the TUPE Information to any Prospective Tenderer and Incoming Provider and ensures that prior to such disclosure the Prospective Tenderer or the Incoming Provider undertakes not to disclose (unless required by law to do so) the TUPE Information to any other person other than a person
- who is a servant, agent or legal adviser of the Prospective Tenderer or Incoming Provider and
 - who has undertaken not to disclose that information unless required by law to do so.
- 36.5 After the TUPE Information has been provided, the *Provider*
- informs the *Employer* of any change to any part of the TUPE Information and
 - co-operates with any reasonable request made by the *Employer* or any Prospective Tenderer or Incoming Provider concerning the TUPE Information
- within 7 days of a change or receipt of a request.
- 36.6 So far as reasonably practicable, the *Provider* does not and ensures that any Subcontractor does not make or promise to make any changes affecting the TUPE Information which would increase the Employment Costs of the Staff in the six months before or at any time after the end of the Contract Period without the prior consent of the *Employer* (such consent not to be unreasonably withheld) unless such change is required by law. The *Provider* supplies to the *Employer* full particulars of any proposed changes and the *Employer* responds within a reasonable time.
- 36.7 The *Provider* does not and ensures that any Subcontractor does not increase the number of Staff nor dismiss or transfer to duties unconnected with the Services more than five per cent of the Staff in the twelve months before the end of the Contract Period without the prior consent of the *Employer* (such consent not to be unreasonably withheld).
- 36.8 Before the end of the Contract Period, the *Provider* informs and consults with the appropriate representatives as required under regulation 13 of TUPE. The

Employer requests the Incoming Provider to provide to the *Provider* the information required under regulation 13 of TUPE.

36.9 The *Provider* indemnifies and keeps indemnified the *Employer* and any Incoming Provider in respect of any claims, costs (including Employment Costs), expenses, payments and liabilities arising from

- any claim by any of the Staff or by a third party or trade union or body representing any of the Staff in relation to any act or omission which allegedly occurred before the end of the Contract Period,
- any failure by the *Provider* or any Subcontractor to comply with its obligations under regulations 11 and 13 of TUPE and
- any claim by any employee or former employee of the *Provider* or any Subcontractor who is not identified in the TUPE Information that his employment or any liability in respect of his employment or its termination has or should have transferred to the Incoming Provider or the *Employer* pursuant to TUPE.

37 Pensions

37.1 The *Provider* ensures that any Transferring Employees

- who were originally employed by a public sector employer in providing services similar to the Services and were members of the Original Scheme,
- whose employment transferred to a private sector employer pursuant to the Transfer of Undertakings (Protection of Employment Regulations 1981 or TUPE and who have been continuously employed in providing services similar to the Services up to the *access date* and
- who immediately before the *access date* are members of the Outgoing Provider's Pension Scheme

automatically become members of the Provider's Pension Plan on and from the *access date* and (except in the case of any such Transferring Employee who opts out of membership of the Provider's Pension Plan in writing in a form approved

by the Employer) remain members of the Provider's Pension Plan throughout the period of their employment in connection with Providing the Services.

37.2 The *Provider* ensures that the Provider's Pension Plan

- is a registered pension scheme for the purposes of the Finance Act 2004,
- is a scheme which (in the opinion of the Government Actuary's Department acting in accordance with its Statement of Practice) is a broadly comparable scheme to the Original Scheme assessed at the point the Transferring Employees left the Original Scheme, or with the Employer's agreement assessed at the *access date* on the basis that the Transferring Employees had remained active members of the Original Scheme, and
- is a scheme which satisfies all of the *Provider's* benefit obligations under TUPE and the Pensions Act 2004.

37.3 The *Provider* submits such documents and information as the *Employer* may reasonably require to enable the *Employer* to satisfy itself that the Provider's Pension Plan complies with the requirements of clause 37.2 and the *Provider* delivers a GAD Certificate to the *Employer* at least three months before the *access date*.

37.4 Unless the prior written consent of the *Employer* is given, the *Provider*

- complies with the requirements of the Pensions Act 2004, the Occupational Pension Schemes (Member-Nominated Trustee and Directors) Regulations 2006, the Pension Regulator's Code of Practice no 8 (member-nominated trustee and directors - putting in place and implementing arrangements) and all other applicable legislative or regulatory requirements insofar as they relate to the appointment of member nominated trustees or directors,
- ensures that the Provider's Pension Plan contains a provision requiring that no amendment to the Provider's Pension Plan can be made in respect of the Transferring Employees referred to in clause 37.1 which could reduce the value of the accrued benefits of any such Transferring Employee (or any beneficiary claiming by or through them), such value to be calculated on a basis which allows for service (including, but not restricted to, service credited following transfers of assets to the Outgoing Provider's Pension Scheme from other

pension schemes) to the date upon which the power to amend is exercised and the expected future growth in earnings of the Transferring Employee in question as determined by the trustees of the Provider's Pension Plan from time to time having consulted the Appointed Actuary and

- ensures that the Provider's Pension Plan contains a provision requiring that the transfer value payable in respect of any Transferring Employee referred to in clause 37.1 or any group of such Transferring Employees who leaves the employment of the *Provider* as a result of the transfer of any undertaking which is part or the whole of an undertaking transferred to the *Provider* under this contract will be a value reflecting expected future increases in salary of such Transferring Employee or Transferring Employees concerned and will, as a minimum, be no less (in the opinion of the Government Actuary's Department) than the transfer value calculated on the same, or a more generous basis as that used to calculate the transfer value to the Provider's Pension Plan as provided for in clause 37.5.

If the transfer payment paid by the trustees or administrators of the Provider's Pension Plan is less (in the opinion of the Government Actuary's Department) than the transfer payment which would have been paid had this clause 37.4 been complied with, the *Provider* shall pay to the receiving scheme the amount of the difference.

- 37.5 The *Provider* procures that the Provider's Pension Plan will accept a bulk transfer from the trustees or administrators of the Outgoing Provider's Pension Scheme or the Original Scheme (as appropriate) on terms agreed between the actuary to the Outgoing Provider's Pension Scheme or the actuary to the Original Scheme (as appropriate) and the Appointed Actuary in respect of all of the Transferring Employees referred to in clause 37.1 who become members of the Provider's Pension Plan and requests the trustees or administrators of the Outgoing Provider's Pension Scheme or the Original Scheme to make such a transfer in respect of them. The *Provider* further procures that, in the cases of Transferring Employees in respect of whom a bulk transfer is made pursuant to this clause 37.5, the benefits granted under the Provider's Pension Plan in respect of pensionable service before the *access date* are granted on the equivalent of a day for day service credit basis or the actuarial equivalent thereof as agreed between the appropriate actuary and the Appointed Actuary.

37.6 If any of the Transferring Employees referred to in clause 37.1 has his employment terminated by the *Provider* for reasons of redundancy or operational efficiency during the Contract Period, the *Provider* (to the extent that the relevant benefit has not been provided under any other provision of this contract)

- uses his best endeavours to procure that an amount, equivalent to any additional pension benefits which would have been paid to the Transferring Employee from the Original Scheme had he remained in service with his previous public sector employer and been made redundant by that employer on the date on which his employment is actually terminated by the *Provider*, is paid from the Provider's Pension Plan,
- in the event that the *Provider* is unable to procure the additional benefits from the Provider's Pension Plan, pays compensation to the Transferring Employee which is equivalent in terms of value and manner of payment to that which would have been paid from the Provider's Pension Plan and
- procures the payment of any benefit other than on redundancy or for reasons of operational efficiency which is not an old age invalidity or survivors' benefit either through the relevant *Provider's* pension scheme or, if that is not possible, by paying compensation, where the obligation to do so has transferred to the *Provider* under TUPE, on the same basis as that which applies on redundancy.

37.7 The *Provider* ensures that any Transferring Employees who immediately before the *access date* are members of the Outgoing Provider's (non-Government Actuary's Department certified) pension scheme and who were not members of the Original Scheme automatically become members of the Provider's Alternative Pension Plan on and from the *access date* and (except in the case of any such Transferring Employee who opts out of membership of the Provider's Alternative Pension Plan in writing in a form approved by the *Employer*) remain members of the Provider's Alternative Pension Plan throughout the period of their employment in connection with Providing the Services.

37.8 The Provider's Alternative Pension Plan is

- a registered pension scheme for the purposes of the Finance Act 2004 and

- a scheme which, as a minimum, fulfils the *Provider's* benefit obligations under TUPE and the Pensions Act 2004.
- 37.9 Where the employment of any Transferring Employee is transferred to a Subcontractor, the *Provider* procures that the Subcontractor
- complies with the requirements of clauses 37.2 to 37.5 in relation to any Transferring Employee to whom clause 37.1 applies and complies with the requirements of clause 37.8 in relation to any Transferring Employee to whom clause 37.7 applies (as the case may be) and
 - imposes similar requirements on any subsequent transferee of the Transferring Employees.
- 37.10 The *Provider* ensures that no announcement (whether or not in writing) will be made by the *Provider* or any Subcontractor to the Transferring Employees concerning the matters raised in this clause 37 without the consent in writing of the *Employer*.
- 37.11 The *Provider* indemnifies the *Employer* and holds it harmless at all times from any reasonable costs or losses suffered or incurred by it arising from claims by Transferring Employees or by trade unions, elected Transferring Employee representatives or staff associations in respect of all or any Transferring Employees which
- relate to pension rights in respect of periods of employment on or after the *access date* or
 - arise out of the failure of the *Provider*, any Subcontractor or any subsequent transferee of the Transferring Employees to comply with the relevant provisions of this clause 37.

4 QUALITY MANAGEMENT, AUDIT AND REPORTING

40 Quality Management

40.1 The *Provider* operates a quality management system which

- complies with the requirements of ISO 9001:2008,
- incorporates an environmental management system consistent with ISO 14001,
- includes Processes for delivering continual improvement following the guidance in ISO 9004,
- has third party certification for the Services to be provided under this contract from a UKAS approved accreditation body or is operating in preparation for accreditation within 12 months of the Contract Date and
- complies with good industry practice.

40.2 The Quality Plan incorporates the Quality Statement and is sufficiently detailed to demonstrate how the *Provider* will achieve each of the commitments in the Quality Statement and meet the requirements of this contract including, without limitation, the objectives for this contract as set out in Annex 1 of the Service Information. The *Provider* keeps a controlled copy of the Quality Plan available for inspection by the *Employer* and his representatives (including the *Service Manager*) at all times.

40.3 The *Service Manager* notifies the *Provider* if he considers that the Quality Plan does not comply with the requirements of this contract. Following such notification the *Provider* reviews the Quality Plan and reports to the *Service Manager* setting out his proposed changes. If the *Service Manager* accepts the proposals, the Quality Plan is changed.

40.4 The *Provider* may submit to the *Service Manager* proposed revisions to the Quality Statement for acceptance within the *period for reply*. A reason for not accepting the proposed revision is that

- it will not enable the *Provider* to meet a Performance Requirement,

- it will unacceptably increase the risk of failure to meet a Performance Requirement,
- it will not enable the *Provider* to achieve the level of performance specified in the Quality Statement or
- it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement.

The Quality Plan is not changed without acceptance by the *Service Manager*.

40.5 An agreed revision to the Quality Statement is not a compensation event.

41 Audit and Quality Management Points

41.1 The *Provider* carries out a programme of internal audits in accordance with the requirements of ISO 9001. The *Provider* notifies the *Service Manager* of the internal audit dates and makes provision for the *Service Manager* to attend. The *Provider* supplies the *Service Manager* with copies of all internal audit documentation including reports and action plans.

41.2 The *Service Manager* arranges or carries out routine and additional audits of the *Provider's* quality management system. Routine audits are carried out at intervals of six months at the relevant locations including but not limited to site, operational depots, offices (including head offices). Additional audits are carried out when the number of Quality Management Points in effect exceeds 25. The location, frequency and extent of additional audits will be determined by the *Service Manager* in his absolute discretion having regard to the root causes for the accrual of the Quality Management Points in effect. The *Provider* pays the *Employer* the cost of the additional audits.

41.3 In addition to the audits referred to in clause 41.2, the *Service Manager* may carry out or arrange supplementary audits at any time, to inspect work and materials and generally to investigate whether the *Provider* is performing his obligations under this contract. The *Service Manager* notifies the *Provider* before carrying out a supplementary audit.

41.4 The *Provider* allows access to the Area Network and any other premises used by the *Provider* to Provide the Services at all reasonable times for the *Service*

Manager and other persons authorised by the *Employer* or the *Service Manager* to carry out audits. The *Provider* provides all facilities and assistance necessary to enable such audits to be carried out.

- 41.5 The occurrence of a Failure can be identified from an audit carried out by the *Provider*, the *Service Manager* or the relevant accreditation body or otherwise.
- 41.6 In the event of a Failure occurring the *Provider* accrues Quality Management Points in accordance with the *quality table*. Quality Management Points are in effect for the periods set out in the *quality table*. If in the opinion of the *Service Manager* the *Provider* has failed to properly accrue Quality Management Points, the *Service Manager* instructs the *Provider* to accrue the applicable number of Quality Management Points calculated in accordance with the *quality table* and they are deemed to have accrued from the date of the *Service Manager's* instruction.
- 41.7 The *Provider* maintains a register of the number of Quality Management Points in effect, showing when Quality Management Points accrue and are removed.
- 41.8 If the number of Quality Management Points in effect at any time is more than 25 points, the *Provider* and the *Service Manager* meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid the accrual of further Quality Management Points. The *Provider* submits a report to the *Service Manager* within one week of the meeting setting out
- the actions agreed at the meeting and
 - any other actions which the *Provider* proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.
- 41.9 If the *Service Manager* does not accept the *Provider's* proposals or the *Provider* does not take the agreed actions, the *Service Manager* serves a quality warning notice on the *Provider* notifying the *Provider* that he has substantially failed to comply with his obligations. Within one week of receipt of the quality warning notice, the *Provider* submits a report to the *Service Manager* setting out the actions which the *Provider* has taken and what further or alternative actions he

proposes to take to reduce the number of Quality Management Points in effect to 25 or less.

41.10 Following the issue of a quality warning notice and until the number of Quality Management Points in effect is reduced to 25 or less

- the *Provider* does not commence work in relation to any new Scheme (including the Services in Annex 9 of the Service Information but excluding works to repair assets damaged by an Incident and works required to make good damage by third parties) and
- the *Employer* may appoint Others to construct or provide services in relation to any new Scheme.

41.11 Until the number of Quality Management Points in effect is reduced to 25 or less, the *Provider* takes the actions detailed in his reports and submits weekly up date reports to the *Service Manager* setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.

41.12 Following the issue of a quality warning notice, the *Employer* may terminate if the *Provider*

- fails to submit a report to the *Service Manager* under clause 41.8 or clause 41.9 or clause 41.11 when required to do so,
- fails to demonstrate in his reports how his proposed actions will immediately reduce the number of Quality Management Points or avoid accruing further Quality Management Points or
- fails to take the actions detailed in his reports to reduce the number of Quality Management Points in effect to 25 or less.

42 Correcting Nonconformities

42.1 The *Provider* identifies and corrects Nonconformities including those resulting from audit and takes action to eliminate the causes of actual or potential Nonconformities within a time which minimises the adverse effect on the *Employer* or Others and in any event before carrying out any operation the same as or similar to that in respect of which the Nonconformity occurred. The corrective and eliminative actions and the planned time periods for them are set

out in a corrective action report in accordance with Annex 19 of the Service Information which is submitted to the *Service Manager*.

- 42.2 The *Service Manager* may identify and instruct the *Provider* to correct Nonconformities. In the event that the *Service Manager* considers that a Nonconformity may create an immediate or serious threat to safety or in the event of an emergency the *Service Manager* may instruct the correction to be carried out forthwith or within a specified time. An instruction given pursuant to this clause is not a compensation event.
- 42.3 The *Service Manager* may instruct the *Provider* to reduce the planned period for correction in a corrective action report. A reason for reduction is that the *Service Manager* decides that the planned period for correction set out in the corrective action report is unreasonable. An instruction given pursuant to this clause is not a compensation event.
- 42.4 The *Service Manager* may instruct the *Provider* to change the risk categorisation for a corrective action. A reason for change is that the *Service Manager* decides that the *Provider's* risk categorisation for the corrective action is inappropriate. An instruction given pursuant to this clause is not a compensation event.
- 42.5 If the *Provider* fails to take corrective action within the time set out in the *Provider's* corrective action reports or the reduced period instructed in accordance with clause 42.3, the *Provider* within a period specified by the *Service Manager* (and in any case not later than two weeks after the failure is identified)
- establishes the reason for the failure,
 - raises a new corrective action report and
 - reports to the *Service Manager* the changes he has made to the Quality Plan to prevent further failures.
- 42.6 The *Provider* remains liable (subject to any applicable legislation relating to limitation of actions) for claims, proceedings, compensation and costs due to breaches of this contract which become apparent before or after the end of the Contract Period.

43 Records

- 43.1 The *Provider* keeps detailed records relating to the Area Network, the Traffic Technology Systems (Midlands) and the Services (including performance levels in the Area Network and the Traffic Technology Systems (Midlands), the Defined Cost of Providing the Services and records relating to Subcontractors) in the format and containing the details and for the period specified in the Service Information. The *Provider* makes the records available to the *Employer* and his representatives (including the *Service Manager*) on request.
- 43.2 The *Provider* provides information to the *Service Manager* in the form, at the times and containing the details specified in the Service Information relating to
- the Defined Cost of Providing the Services
 - the actual cost of Providing the Services where the Defined Cost is deemed to be zero and
 - performance levels in the Area Network and the Traffic Technology Systems (Midlands) by reference to the Performance Requirements and the performance measures referred to in the Service Information.
- 43.3 The *Provider* acknowledges that, for the purpose of examining and certifying the *Provider's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the *Employer* may examine documents held or controlled by the *Provider* or any Subcontractor and may require the *Provider* to provide such oral or written explanations as he considers necessary. The *Provider* promptly complies with any such requirements at his own cost. The carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Provider* is not a function exercisable under this contract.

5 PAYMENT

50 *Provider's invoices*

50.1 The *Provider* assesses the amount due and

- submits invoices to the *Employer* and
- enters and certifies the relevant details on the *Employer's* electronic invoicing system

on or before each *invoice date*. The first *invoice date* is stated in the Contract Data Part One. Later *invoice dates* occur at the end of each *assessment interval* after the last *invoice date* until all amounts due to the *Provider* under this contract have been paid.

50.2 In respect of the amount assessed as due to the *Provider*, the *Provider* submits invoices on each *invoice date*, one in respect of each of the following

- Lump Sum Duties,
- Schemes constructed by the *Provider* excluding Design Services and/or Lump Sum Duties for the Schemes,
- Design Services,
- Management Services,
- Preliminaries for the RTMC Contractor (Midlands), HADEC Suppliers and VMS Suppliers and
- the Services listed in Section D of the Pricing Schedule.

Invoices submitted by the *Provider* are in the format and contain all the details specified in the Service Information or otherwise required by the *Service Manager* from time to time. The *Provider* submits all the supporting information specified in the Service Information or otherwise required by the *Service Manager* to demonstrate how the amount stated as due in each invoice has been assessed.

50.3 The amount due is assessed as at the date one week before the *invoice date*. The amount due is the sum of:

- the Price for Services Provided to Date and
- any other amounts to be paid to the *Provider* under this contract,

less

- any amounts previously paid by the *Employer* under this contract and
- any amounts to be paid to or retained by the *Employer*.

Save where the Price for Services Provided to Date is Defined Cost plus the resulting Fee the amount due is assessed in accordance with the Pricing Schedule.

50.4 Any value added tax which the law requires the *Employer* to pay to the *Provider* is included in the amount due, but such value added tax is not payable unless and until the *Provider* submits an appropriate value added tax invoice to the *Employer*. Any value added tax which the law requires the *Provider* to pay to the *Employer* is included in the amount due to the *Employer*, but such value added tax is not payable unless and until the *Employer* submits an appropriate value added tax invoice to the *Provider*.

50.5 The *Provider* corrects any wrongly assessed amount due in a later invoice.

50.6 The *Provider* discloses to the *Service Manager*

- the Fee element of the Prices for each Scheme constructed by the *Provider* and
- the revised Fee element if the Prices for a Scheme are changed.

If the *Provider* does not disclose the Fee element of the Prices for a Scheme, the *Service Manager* assesses the Fee element as the average of the *direct fee percentage* and the *subcontracted fee percentage* applied to the Prices.

50.7 If at any time

- the Defined Cost of a Scheme constructed by the *Provider* (excluding the Defined Cost of the Design Services) exceeds
- the total of the Prices less the Fee element disclosed by the *Provider* or assessed by the *Service Manager*

the Fee payable by the *Employer* for the Scheme does not exceed the Fee element so disclosed or assessed, and the Price for Work Done to Date and the Price for Services Provided to Date are reduced accordingly.

51 Payment

51.1 Subject to clauses 51.6 and 51.7, the *Employer* makes payment of the *Provider's* invoice on or before the final date for payment in accordance with clause 59.7 unless and until the *Employer* notifies the *Provider* otherwise. Any payments to be made to the *Provider* following the receipt of such notices are made directly to the *Provider* and upon receipt of such notice the *Provider* closes the Project Bank Account and gives notice to Named Suppliers that the Project Bank Account is no longer established for the provision of payment to the *Provider* and Named Suppliers. Payments are made in the *currency of this contract*.

51.2 If a certified payment is late, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

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

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

the *Employer* or the *Provider* (as the case may be) pays interest on the correcting amount. Interest is assessed from the date when the incorrect amount was included in an invoice until the date when the correcting amount is included in the assessment which includes the correcting amount.

51.4 Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

51.5 For the purposes of sections 109 to 110A of the Housing Grants, Construction and Regeneration Act 1996 (as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009)

- the *Provider's* invoice is the payment notice in accordance with section 110A specifying the sum whether or not that sum is zero considered to be due at the

payment due date in respect of the payment and the basis on which that sum is calculated,

- the *Provider* issues an invoice where the amount stated is zero,
- the date on which a payment becomes due is the next *invoice date* after the date when the *Provider* submits his invoice and certifies the relevant details in accordance with the *Employer's* electronic invoicing system (or the *invoice date*, if the *Provider* submits his invoice and certifies the details on that date) and
- the final date for payment is 21 days after the date on which the payment becomes due unless notice has been given pursuant to clause 51.1 that payment will be made other than in accordance with clause 59.7 in which case the final date for payment is 14 days after the date on which the payment becomes due.

51.6 If the *Employer* intends to pay less than the notified sum or, in the absence of an invoice from the *Provider*, the *Employer* intends to pay less than the sum stated in any application or notice from the *Provider*, the *Service Manager* gives notice to the *Provider* not later than one week before the final date for payment. The notice specifies the sum the *Employer* considers to be due on the date the notice is served and the basis on which that sum is calculated whether or not that sum is zero.

A Party does not pay less than the amount due under this contract unless he has given notice of his intention to pay less in accordance with this clause 51.6.

51.7 Where under this contract any sum of money is recoverable from or payable by the *Provider*, such sum:

- shall be deducted by the *Provider* when assessing the amount due to the *Provider* in accordance with clause 50.3;
- may be deducted from or reduced by the amount of any sum then due or which may at any time become due to the *Provider* under this contract (subject to compliance by the *Service Manager* with clause 51.6) or any other contract with any Department or Office of Her Majesty's Government; or
- may be required, by notice by the *Service Manager* in writing, to be paid by the *Provider* to the *Employer*, in which case the sum becomes due to the *Employer*

on the date of the *Service Manager's* notice and the final date for payment of such sum is 14 days after the date on which the payment becomes due.

51.8 The *Provider* keeps these records

- audited accounts for the *Provider* relating to the Area Network and the Traffic Technology Systems (Midlands),
- accounts of payments of Defined Cost,
- accounts of payments in respect of which the Defined Cost is deemed to be zero,
- proof that the payments have been made,
- communications about and assessments of compensation events for Subcontractors and
- other records as stated in the Service Information.

51.9 The *Provider* allows the *Service Manager* or the *Employer* and their authorised representatives to inspect at any time within working hours the accounts and records which the *Provider* is required to keep.

51.10 In this clause 51

- **Act** means the Finance Act 2004 and
- **Regulations** means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

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

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

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or

- is neither registered nor exempt from registration.

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

- the *Provider* submits an application for payment which separately identifies the cost of labour and
- the *Employer* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

52 Prices for Schemes constructed by the *Provider*

52.1 The *Provider* prepares his assessment of the total of the Prices for Schemes in accordance with Annex 20 of the Service Information.

52.2 The *Provider* carries out market comparisons in accordance with the Quality Plan to demonstrate that the Prices for Schemes constructed by him are no higher than necessary to meet the requirements of the Service Information. The *Service Manager* may instruct the *Provider* to carry out additional market comparisons in accordance with the Quality Plan.

52.3 If

- the *Provider's* market comparisons or
- any tender exercise carried out by the *Service Manager* under clause 20.3

demonstrate that the Prices for any Scheme constructed by the *Provider* are higher than necessary to meet the requirements of the Service Information, the *Provider* reports to the *Service Manager* within two weeks, stating the changes he proposes to the Quality Plan to reduce the Prices for future Schemes constructed by him. The *Provider* implements the changes immediately when accepted by the *Service Manager*.

52.4 Subject to clauses 52.6 and 52.8 the *Provider* assesses the *Provider's* share of the difference between the total of the Prices and the Price for Work Done to Date for a Scheme constructed by the *Provider*. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Work Done to Date for the Scheme divided by the total of the

Prices for that Scheme expressed as a percentage. The *Provider's* share equals the sum of the products of the increment within each *share range* and the corresponding *Provider's share percentage*.

- 52.5 If the Price for Work Done to Date is less than the total of the Prices for a Scheme constructed by the *Provider*, the *Provider* is paid his share of the saving. If the Price for Work Done to Date is greater than the total of the Prices for a Scheme constructed by the *Provider*, the *Provider* pays his share of the excess.
- 52.6 Within 13 weeks of Completion of a Scheme the *Provider* states the final Price for Work Done to Date for the Scheme to the *Service Manager*. If the *Service Manager* agrees the amount stated the *Provider* assesses the *Provider's* share in accordance with clause 52.4 and the *Service Manager* certifies the amount due to the *Provider* after addition or deduction of the *Provider's* share from the amount stated using the form of certificate in Appendix B to Annex 20.
- 52.7 If the *Provider* is unable to state the final Price for Work Done to Date for the Scheme within the time stated in clause 52.6 it:
- states the Price for Work Done to Date to the extent it can
 - identifies the elements of the Scheme for which it is unable to state the final Price for Work Done to Date, gives reasons for its inability and sets out its timetable for providing the final Price for Work Done to Date using the form of certificate in Appendix C to Annex 20.
- 52.8 If the *Provider* has not stated the final Price for Work Done to Date for the Scheme by the time when he is required to carry out the post completion review referred to in Annex 20 of the Service Information then the *Service Manager* may at his option and in his sole discretion either:
- carry out his own assessment of the final Price for Work Done to Date for the Scheme and the *Provider's* share and certify the amount due to the *Provider* using the form of certificate in Appendix B to Annex 20 or
 - extend the time by which the *Provider* must carry out the post completion review referred to in Annex 20 of the Service Information. If time is so extended then the provisions of this clause apply to the extended time.

- 52.9 The *Provider's* share is included in the amount due for the month which follows the *Service Manager's* certificate issued pursuant to clause 52.6 or 52.8.
- 52.10 A failure by the *Provider* to prepare a post completion review in compliance with Annex 20 of the Service Information within the time required by this contract or as extended by the *Service Manager* is a Nonconformity.
- 52.11 The amount certified by the *Service Manager* as due to the *Provider* for a Scheme pursuant to clause 52.6 or 52.8 is binding on the Parties until otherwise agreed by them or determined in accordance with clauses 90 – 92 of this contract.

53 Continual improvement

- 53.1 The *Provider* continually reviews its and its Subcontractors Processes, Procedures and Materials selected by the *Provider* and Subcontractors for incorporation into the Services in order to identify Efficiency Improvements.
- 53.2 In reviewing the Processes, Procedures and Materials selected by the *Provider* and Subcontractors for incorporation into the Services the *Provider* as a minimum implements the requirements of Annex 14 of the Service Information.
- 53.3 The *Provider* submits details of any Efficiency Improvement to the *Service Manager* for acceptance. The details must include an explanation of the change to existing Processes, Procedures and/or Materials selected by the *Provider* and Subcontractors for incorporation into the Services together with calculations showing the forecast reduction in the lump sum prices and/or rates accruing from the Efficiency Improvement including the timeline over which the reduction will be realised.
- 53.4 If the *Service Manager* accepts an Efficiency Improvement which relates to Lump Sum Duties then the lump sum Prices are reduced, the reduction being assessed as 50% of the forecast reduction in the lump sum prices identified in the *Provider's* submission. The reduction endures for the remainder of the term of this contract or until there is a further reduction on acceptance of a further Efficiency Improvement and the *lump sum annual discounts* are applied to the reduced Prices.

- 53.5 If the *Service Manager* accepts an Efficiency Improvement which relates to Services for which there is a rate in Section B of the Pricing Schedule the rate is reduced, the reduction being assessed as 50% of the reduction in the rates identified in the *Provider's* submission. The reduced rates endure for the remainder of the term of this contract or until there is a further reduction on acceptance of a further Efficiency Improvement and the *schedule of rates annual discounts* are applied to the reduced rates.
- 53.6 If the *Service Manager* accepts an Efficiency Improvement and it relates to Services which are listed in Section D of the Pricing Schedule then the changes to the Processes, Procedures and/or Materials selected by the *Provider* and Subcontractors for incorporation into the Services identified in the Efficiency Improvement is taken into account in the forecasting and execution of the relevant Services so that any saving in the Defined Cost is for the entire benefit of the *Employer*.
- 53.7 If the *Service Manager* accepts an Efficiency Improvement the *Provider's* Quality Plan is amended to reflect the change in Processes, Procedures and/or Materials selected by the *Provider* and Subcontractors for incorporation into the Services. Where the change in Processes, Procedures and/or Materials selected for incorporation into the Services relates to subcontracted work, the *Provider* ensures that its subcontract arrangements are appropriately adjusted to enable the improvement to be realised.
- 53.8 In this contract,
- the acceptance of an Efficiency Improvement by the *Service Manager* does not relieve the *Provider* of any of its obligations under this contract,
 - a change to a Process and/or Materials selected by the *Provider* and Subcontractors for incorporation into the Services in order to correct a Nonconformity is not an Efficiency Improvement, and
 - the *Provider* is not entitled to payment for the design or development of an Efficiency Improvement.

54 Innovations

- 54.1 The *Provider* may at any time after the *starting date* submit to the *Service Manager* a proposal for an Innovation.

54.2 The *Provider* continually monitors the development of a proposed Innovation and assesses the likelihood of its successful development and ensures that any abortive cost to both itself and the *Employer* are mitigated.

54.3 A proposed Innovation must identify a resultant defined and calculated saving in cost to the *Employer* which will arise from either or both of:

- A reduction in the Prices or
- A reduction in other costs to the *Employer*.

54.4 Prior to preparing a detailed business case for an Innovation the *Provider* submits to the *Service Manager* an outline business case setting out brief details of:

- The proposed change to the Performance Requirements
- Any significant risks that would impact on the successful development and implementation of the proposed Innovation
- The approximate cost saving to the *Employer*
- The envisaged mechanisms to generate the proposed financial benefits for the *Employer* i.e. the extent to which the benefits will be realised by a reduction in the Prices and/or by a reduction in other costs to the *Employer*.

The primary purpose of the outline business case is to provide an opportunity for the *Provider* to assess the likelihood of the proposed Innovation being accepted and for the *Service Manager* to assess the complexity of the envisaged mechanisms to generate the proposed financial benefits.

54.5 Following a joint review of the outline business case between the *Provider* and the *Service Manager* the *Provider* may continue to develop the proposal by preparing a detailed business case at his discretion and at his own risk. The *Provider* is not entitled to payment for the design or development of an Innovation (including the development of business cases).

54.6 If the *Provider* prepares a detailed business case for a proposed Innovation he submits it to the *Service Manager*. A detailed business case includes full details of:

- Full details of the revised Performance Requirements,

- how any risks associated with the implementation of the Innovation are to be allocated,
 - a cost benefit analysis,
 - the financial benefit and the timeline over which the benefit will be realised including details of how the benefit will be realised by way of a reduction in the Prices and/or a reduction in other costs to the *Employer*, and
 - A proposal as to how the *Provider's* share of saving is to be paid which takes account of the conditions in clause 54.11.
- 54.7 The Network Board discusses the *Provider's* proposal and recommends whether (and if so on what terms) the Innovation is implemented.
- 54.8 The *Employer* may at any time reject a proposed Innovation in his absolute discretion. The *Provider* will not be reimbursed for developing the business case(s) whether or not it is rejected.
- 54.9 If the *Employer* agrees to implement an Innovation the *Service Manager* instructs the implementation of the Innovation as a change to the Service Information.
- 54.10 A change to the Service Information instructed by the *Service Manager* under this clause 54 is not a compensation event.
- 54.11 The saving in cost to the *Employer* is shared on an equal 50% split between the *Provider* and the *Employer* subject to the following:
- The savings only relate to the Area Network,
 - The cash benefit of the savings to the *Employer* must be capable of being realised within the contract period,
 - The *Provider's* share of the saving from any one Innovation shall not exceed one million pounds (£1,000,000),
 - No payment is made to the *Provider* in respect of savings in the *Employer's* costs outside the Services until such time as the savings are realised, and
 - Payment is made in accordance with the proposal in the detailed business case or as the same is amended by agreement.
- 54.12 The *Providers* share of the saving is deemed to include payment for release of the Intellectual Property Rights in the Innovation.

55 Price Adjustment for Inflation

55.1 For the purposes of this clause

- the base date index (B) is the value of the latest available *index* before the *base date*,
- the Services index (L) is the value of the latest available *index* before the last anniversary of the Contract Date before the *invoice date*,
- the *Provider's* Scheme index (T) is the value of the latest available *index* one month before the date of commencement of the relevant Scheme to be constructed by the *Provider*,
- the *Provider's* Scheme period (P) is the period of time in weeks from the date of commencement of the relevant Scheme to be constructed by the *Provider* to its completion, assessed at the date the Scheme to be constructed by the *Provider* is approved or instructed by the *Service Manager*,
- the starting period (S) is the period of time in weeks from the *base date* to the date of commencement of work on the relevant Scheme to be constructed by the *Provider*, assessed at the date the Scheme is approved or instructed by the *Service Manager*,
- the Price Adjustment Factor for the Services is $((L - B)/B)$ and
- the Price Adjustment Factor for a Scheme constructed by the *Provider* is $((T - B)/B) \times (S + P/2)/S$.

55.2 An amount for price adjustment is added to the Target Sum for each Scheme constructed by the *Provider*, which is the final Target Sum for the Scheme multiplied by the Price Adjustment Factor for that work. If a forecast of the final Target Sum is used in an assessment, the assessment includes a forecast of the amount of the price adjustment.

55.3 Each amount due after the first anniversary of the Contract Date includes an amount for price adjustment which is the sum of:

- the amount by which the Price for Services Provided to Date for Lump Sum Duties and Preliminaries for the RTMC Contractor (Midlands), HADECS Suppliers and VMS Suppliers have changed since the previous assessment of the amount due multiplied by the Price Adjustment Factor for the Services and
- the amount for price adjustment included in the previous amount due.

55.4 The Defined Cost for compensation events is assessed using the

- Defined Cost current at the time of assessing the compensation event adjusted to the *base date* by dividing by $(1+PAF)$, where PAF is the Price Adjustment Factor for the Scheme constructed by the *Provider* or the Services as applicable, and
- Defined Cost at *base date* levels for amounts calculated from rates stated in the Pricing Schedule for employees and Equipment.

56 Price for Services Provided to Date

56.1 The Price for Services Provided to Date is the total of

for Lump Sum Duties

- the total of the monthly lump sum prices set out in the schedule to section A of the Pricing Schedule and adjusted in accordance with Section A of the Pricing Schedule for the period since the *access date*, which lump sum prices include for the cost of everything necessary to meet the Performance Requirements and service levels set out in the Service Information and all other obligations under the contract for the Lump Sum Duties, save where otherwise expressly provided in the Pricing Schedule,
- a proportion of the lump sum price for mobilisation stated in the schedule to Section A of the Pricing Schedule which is the proportion of the Mobilisation Period which has elapsed and
- the lump sum price for demobilisation stated in the schedule to Section A of the Pricing Schedule on completion of the demobilisation duties stated in the Service Information,

for Schemes constructed by the *Provider*

- the lump sum price for third party claims duties after the expiry of the Contract Period stated in the schedule to Section A of the Pricing Schedule one week before the last *invoice date* before the end of the Contract Period.
- subject to clause 50.7, the total Defined Cost of the Schemes excluding the Defined Cost of the Services in Stages 1 and 2 of Annex 20 of the Service Information plus the resulting Fee,

for Design Services where a Scheme has been partly designed by the Outgoing Provider

- the Defined Cost plus the resulting Fee of the Services required to satisfy the requirements of Phase 2A of Stage 2 of Annex 20 of the Service Information instructed by the *Service Manager* and carried out by the *Provider*,
- for the Services in Phase 2B of Stage 2 of Annex 20, when both the final Price for Work Done to Date for the Scheme has been determined and all the Services in respect of the Scheme have been carried out, the relevant Design Factor applied to the final Price for Work Done to Date for the Scheme excluding the amount for Preliminaries. The relevant Design Factor is the Design Factor which is set out in Part B of Appendix C of the Pricing Schedule for
 - Schemes being constructed by the *Provider* or
 - Schemes being constructed by a Contractor and
 - the type of Scheme which has been designed and
 - the value band within which the final Price for Work Done to Date for the Scheme excluding the amount for Preliminaries falls or
- if at any time after the commencement of the Design Services the *Service Manager* instructs the *Provider* to cease such Design Services, the Defined Cost of the Design Services which the *Provider* has carried out plus the resulting Fee,

for Design Services where a Scheme has not been partly designed by the Outgoing Provider

- prior to determination of the Target Sum or Accepted Price as the case may be for the Scheme, a proportion of the amount calculated by applying the relevant Design Factor to seventy per cent (70%) of the Scheme Budget Cost excluding the cost of Preliminaries which is the proportion of the Design Period which has elapsed. The relevant Design Factor is the Design Factor which is set out in Part A of Appendix C of the Pricing Schedule for
 - Schemes being constructed by the *Provider* or
 - Schemes being constructed by a Contractor and
 - the type of Scheme which is being designed and
 - the value band within which the Scheme Budget Cost excluding the cost of Preliminaries falls,

- at the end of the Design Period the difference between the amount calculated by applying the relevant Design factor to seventy per cent (70%) of the Target Sum or Accepted Price as the case may be excluding the costs of Preliminaries and the amount calculated by applying the relevant Design Factor to seventy per cent (70%) of the Scheme Budget Cost for the Scheme excluding the cost of Preliminaries. If the difference is a negative amount the amount is deducted from any payment due to the *Provider*. The relevant Design Factor is the Design Factor which is set out in Part A of Appendix C of the Pricing Schedule for
 - Schemes being constructed by the *Provider* or
 - Schemes being constructed by a Contractor and
 - the type of Scheme which has been designed and
 - the value band within which the Target Sum or Accepted Price as the case may be excluding the cost of Preliminaries falls,

- when both the final Price for Work Done to Date for the Scheme has been determined and all the Services in respect of the Scheme have been carried out, the relevant Design Factor applied to the final Price for Work Done to Date for the Scheme excluding the amount for Preliminaries less any payments previously made for Design Services for the Scheme. The relevant Design Factor is the Design Factor which is set out in Part A of Appendix C of the Pricing Schedule for
 - Schemes being constructed by the *Provider* or
 - Schemes being constructed by a Contractor and
 - the type of Scheme which has been designed and
 - the value band within which the final Price for Work Done to Date for the Scheme excluding the amount for Preliminaries falls or
- if at any time after the commencement of such Design Services the *Service Manager* instructs the *Provider* to cease the Design Services, the Defined Cost of the Design Services which the *Provider* has carried out plus the resulting Fee,

for Management Services
- from commencement of the Management Services until commencement of the Construction Period for the Scheme, a proportion of the Management Factor applied to 40 per cent (40%) of the Scheme Budget Cost for the Scheme which is the proportion of the Procurement Period which has elapsed,
- from commencement of the Construction Period for the Scheme until determination of the final Price for Work Done to Date for the Scheme, a proportion of the Management Factor applied to 30 per cent (30%) of the Accepted Price for the Scheme which is the proportion of the Construction Period which has elapsed,
- when both the final Price for Work Done to Date for the Scheme has been determined and all the Management Services in respect of the Scheme have been carried out, the Management Factor applied to the final Price

for Work Done to Date for the Scheme less any payments previously paid for Management Services for the Scheme or

- if at any time after the commencement of the Management Services the *Service Manager* instructs the *Provider* to cease the Management Services, the Defined Cost of the Management Services which the *Provider* has carried out plus the resulting Fee,

for the Services listed in Section D of the Pricing Schedule

- the Defined Cost of the Services which have been carried out by the *Provider* plus the resulting Fee and

for Traffic Management Services for the RTMC Contractor (Midlands), HADECS Suppliers and VMS Suppliers

- the quantity of the work which the *Provider* has completed for the RTMC Contractor (Midlands), HADECS Suppliers and VMS Suppliers for each item in the Preliminaries section of Section B of the Pricing Schedule multiplied by the rate as adjusted in accordance with Section B of the Pricing Schedule.

57 Defined Cost

- 57.1 All the *Provider's* costs which are not included in the Defined Cost are treated as included in the Fee.

58 Adjustment of fee percentages

- 58.1 The *Provider* notifies the *Service Manager* in advance of any proposal to change its methods of Providing the Services from those identifiable from the Fee Schedule or the data supporting it.

- 58.2 If any proposed change in the *Provider's* methods of Providing the Services alters the basis on which the *subcontracted fee percentage* or the *direct fee percentage* is calculated, the *Provider* assesses and submits to the *Service Manager* for approval by the *Employer* its proposed adjustments to the Fee Schedule and to the *subcontracted fee percentage* or the *direct fee percentage*. The adjustments to the *subcontracted fee percentage* or the *direct fee percentage* are assessed using the data contained in the Fee Schedule and the data supporting it. The

Provider does not implement a change in its methods of Providing the Services until the proposed adjustments are approved by the *Employer*.

- 58.3 The adjustment to the *subcontracted fee percentage* or the *direct fee percentage* applies from the date when the *Provider* changes its methods of Providing the Services.

59 Project Bank Account

- 59.1 The *Provider* establishes the Project Bank Account with the *project bank* within three weeks of the Contract Date.

- 59.2 Unless stated otherwise in the Contract Data, the *Provider* pays any charges and is paid any interest made by the *project bank*.

- 59.3 The *Provider* submits to the *Service Manager* for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The *Provider* provides to the *Service Manager* copies of communications with the *project bank* in connection with the Project Bank Account.

- 59.4 The *Provider* includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The *Provider* notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payments of amounts due under their contracts.

- 59.5 The *Provider* submits proposals for adding a Supplier or a Subcontractor to the Named Suppliers to the *Service Manager* for acceptance and/or the *Employer* notifies that a Supplier or a Subcontractor is to be a Named Supplier. The *Employer* does not have to accept any proposals by the *Provider* for adding a Supplier or a Subcontractor to the Named Suppliers. If a Supplier or a Subcontractor becomes a Named Supplier the *Employer*, the *Provider* and Supplier or a Subcontractor execute a joining deed substantially in the form in Schedule 5.

- 59.6 On or before each assessment date, the *Provider* submits to the *Service Manager* an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.

- 59.7 No later than one week before the final date for payment, the *Employer* makes payment to the Project Bank Account of the sum which is due to be paid to the *Provider* under clause 51.1 or clause 51.6 as appropriate.
- 59.8 The *Provider* makes payment to the Project Bank Account of any amount required to make payment in full to Named Suppliers.
- 59.9 The *Provider* prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the *Provider* and to the *Provider* for the balance of the certified payment. After signing the Authorisation, the *Provider* submits it to the *Service Manager* for signature by the *Employer* and submission to the *project bank*.
- 59.10 The *Provider* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.
- 59.11 A payment which is due from the *Provider* to the *Employer* is not made through the Project Bank Account.
- 59.12 The *Provider* acknowledges that payment into the Project Bank Account discharges the *Employer's* obligation to make payment in accordance with this contract to the extent of that payment.
- 59.13 The *Employer*, the *Provider* and *named suppliers* sign the Trust Deed before the first assessment date.
- 59.14 If the *Service Manager* issues a termination notice, no further payments are made into the Project Bank Account.

6 COMPENSATION EVENTS

60 Compensation events

60.1 The following are compensation events.

- (1) The *Service Manager* gives an instruction changing the extent of the Area Network or the Regional Technology Network (Midlands) or the Traffic Technology Systems (Midlands) which is not stated elsewhere in these Conditions of Contract not to be a compensation event.
- (2) The *Service Manager* instructs or agrees a change to the Service Information which
 - is not a change to the Information Systems,
 - is not stated elsewhere in these Conditions of Contract not to be a compensation event,
 - is not a change to the method of or requirements for performance measurement and
 - is not a change to the scoring and/or weighting in the *Employer's* Value Management Requirements referred to in Annex 20 of the Service Information.
- (3) The *Provider* is required to modify his systems or methods of Providing the Services as a result of a change in the *Employer's* reference documents in Annex 18 of the Service Information (not resulting from an Innovation or a change in law occurring after the Contract Date) and the Defined Cost of carrying out the relevant operation (taking into account all associated costs incurred or savings made by the *Provider* as a result of the change) is increased or decreased by more than 5% as a result. In determining whether a compensation event has occurred, the effect of each change in the *Employer's* reference documents is considered separately and is not aggregated with the effect of any

other change. The first 5% of the increase or decrease in the Defined Cost of carrying out an operation as a result of change in the *Employer's* reference documents is ignored when assessing a compensation event (but not when determining whether a compensation event has occurred).

- (4) The *Employer* does not allow access to and use of a part of the Area Network, the Regional Technology Network (Midlands) or the Traffic Technology Systems (Midlands) as the *Provider* reasonably requires to Provide the Services.
- (5) The *Employer* does not provide something which the Service Information states that he is to provide within 8 weeks of a request from the *Provider* to do so.
- (6) The *Service Manager* gives an instruction to stop or not to start any element of the Services.
- (7) Others
 - do not work within the times notified by the *Service Manager*,
 - do not work within the conditions stated in the Service Information or
 - do work on the Area Network that is not stated in the Service Information or notified by the *Service Manager*.
- (8) The *Service Manager* gives an instruction for dealing with an object of value or of historical or other interest found on, under or adjoining the Area Network.
- (9) The *Service Manager* changes a decision (other than a decision referred to in Clause 60.1(2)) which he has previously communicated to the *Provider*.
- (10) The *Provider* encounters a defect in the physical condition of the Area Network (other than a defect the repair or rectification of which forms part of the Lump Sum Duties) which

- is not revealed by the Network Information or by any other publicly available information referred to in the Network Information,
- is not of a general type or category revealed by the Network Information or by any other publicly available information referred to in the Network Information,
- was not evident from a visual inspection or routine survey of the Area Network at the Contract Date,
- an experienced contractor or consultant acting with reasonable diligence could not reasonably have discovered prior to the Contract Date and
- an experienced contractor or consultant would have judged at the Contract Date to have such a small chance of being or becoming present that it would have been unreasonable for him to have allowed for it.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

- (11) An event which is an *Employer's* risk stated in this contract.
- (12) The value of renewal of roads and renewal of structures Schemes undertaken in any Financial Year is greater or less by a factor of more than 20% than the forecast Scheme Budget for such Schemes specified in the Network Information in respect of the relevant Financial Year. Only the effect on the Defined Cost of the Lump Sum Duties due to the value of the Schemes undertaken in any Financial Year being greater or less than that specified in the Network Information by a factor of more than 20% is taken into account in assessing a compensation event. The first 20% of the deviation is ignored when making the assessment of the effect on the Defined Cost (but not when determining whether a compensation event has occurred).

- (13) A change in law occurring after the Contract Date, unless the change and its effects could reasonably have been anticipated by the *Provider* prior to the Contract Date.
- (14) The *Provider* exercises his right to suspend performance of the Services under Section 112 of the Housing Grants, Construction and Regeneration Act 1996 (as amended by Part 8 of the Local Democracy, Economic and Construction Act 2009).
- (15) The *Employer* resolves an ambiguity or inconsistency in or between the documents which are part of this contract.
- (16) The *Employer* decides on a matter on which the Network Board is unable to reach unanimous agreement save for any decision which the *Employer* is expressly or impliedly empowered to make under this contract or any decision pursuant to which the *Service Manager* issues an instruction to the *Provider* which he is empowered to issue under this contract..
- (17) The *Employer* notifies the *Provider* of an extension or further extension to the *contract period* for all or part of the Services. In respect of Lump Sum Duties, only the difference between the forecast Defined Cost of the Lump Sum Duties in the extended period and the average Defined Cost of the Lump Sum Duties over the most recent same time period in the *contract period* or Contract Period as the case may be, after allowing for indexation, is taken into account in assessing the compensation event. In respect of Services to which the rates in the Pricing Schedule apply, the rates for the most recent same time period in the *contract period* or Contract Period as the case may be, after allowing for indexation as stated in Contract Data Part 1 paragraph 5.6, are used as the basis for assessment instead of Defined Cost and the resulting Fee.
- (18) The *Service Manager* does not reply to a communication where required by this contract within the *period for reply*.

- (19) The *Service Manager* unreasonably refuses to authorise the replacement of an item of Employer's Stocks when requested to do so by the *Provider*.
- (20) The *Service Manager* instructs the *Provider* to take action (other than any action required as part of the Services) to enable the Area Network or the Traffic Technology Systems (Midlands) (or part of them) to be brought back into use by traffic or to minimise disruption to the free flow of traffic on the Area Network or the Regional Technology Network (Midlands) following an Incident.
- (21) A breach of contract or act of prevention by the *Employer* which is not one of the other compensation events in this contract.
- (22) The *Employer* or the *Service Manager* do not carry out the actions allocated to them in the Risk Register.
- (23) A change in the use of the Employer's Premises from that stated in the Premises Document.
- (24) The *Service Manager* notifies a correction to an assumption which he had stated about a compensation event.
- (25) Any other event which the Risk Register states is a compensation event.
- (26) The *Service Manager* issues an instruction pursuant to clause 26.8.
- (27) The *Service Manager* instructs the *Provider* to deliver to the Strategic Salt Stockpile a quantity of salt which meets the specification set out in this contract and to remove from the Strategic Salt Stockpile the same quantity and quality of salt or such other quantity or quality as the *Service Manager* specifies.

60.2 The *Provider* is deemed to have satisfied himself before entering into this contract:

- as to the extent of the Area Network and the Traffic Technology Systems (Midlands),

- as to the accuracy and completeness of the Network Information in respect of the Area Network including, but not limited to, the description of the Area Network,
- as to the scope and nature of the Services and his obligations under this contract,
- as to the basis of payment for the Services and
- that he has all the information necessary to enable him to Provide the Services in accordance with this contract.

60.3 If there is an ambiguity or inconsistency within the Network Information (including the information referred to in it), other than the Network Information in respect of the Area Network, the *Provider* is assumed to have taken into account the conditions more favourable to Providing the Services.

60.4 A change to the Area Network resulting from a Scheme constructed by the *Provider* is not a compensation event.

60.5 A correction of any inaccuracies, errors or omissions in the Network Information in respect of the Area Network including, but not limited to, the description of the Area Network is not a compensation event.

60.6 A change in the use of the Provider's Premises from that stated in the Premises Document is not a compensation event.

61 Notifying compensation events

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

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

a proposed instruction or a proposed changed decision into effect, unless and until the *Service Manager* instructs him to do so.

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

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

If the *Provider* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices unless the *Service Manager* should have notified the event to the *Provider* but did not.

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

- arises from a fault of the *Provider*,
- has not happened and is not expected to happen,
- was something of which the *Provider* was or ought to have been aware at the time when the original Prices for the work affected by the compensation event were assessed,
- has no effect upon Defined Cost or
- is not one of the compensation events stated in this contract

he notifies the *Provider* of his decision that the Prices are not to be changed.

If the *Service Manager* does not notify the *Provider* of his decision within two weeks of the *Provider's* notification, the *Provider* may notify the *Service Manager* to this effect. A failure by the *Service Manager* to reply within two weeks of this notification is treated as acceptance by the *Service Manager* is a compensation event and an instruction to submit.

61.5 If the *Service Manager* decides that the *Provider* did not give an early warning of the event which an experienced *Provider* of services similar to the Services could have given, he notifies this decision to the *Provider* within two weeks of the *Provider's* notification of the event.

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

62 Quotations for compensation events

62.1 After discussing with the *Provider* different ways of dealing with the compensation event which are practicable, the *Service Manager* may instruct the *Provider* to submit alternative quotations.

62.2 Quotations for compensation events comprise proposed changes to the Prices and any consequential changes to the Service Information assessed by the *Provider*. The *Provider* submits details of his assessment with each quotation. If the Programme or the Schemes Budget for the current year or any future Financial Year is altered by the compensation event, the *Provider* includes the alterations to the Programme or the proposed alterations to the Forward Programme in his quotation.

62.3 The *Provider* submits quotations within three weeks of the event being notified as a compensation event or within such other period as the *Service Manager* may agree.

62.4 The *Service Manager* may reply to a quotation. If he replies, he does so within two weeks of a submission. His reply is

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

62.5 If the *Service Manager* does not reply to a quotation within two weeks the *Provider* may notify the *Service Manager* to this effect. If the *Provider* submitted more than one quotation for the compensation event he states in his notification

which quotation he proposes is to be accepted. If the *Service Manager* does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or proposed changed decision, the *Provider's* notification is treated as acceptance of the quotation by the *Service Manager*.

63 Assessing compensation events

63.1 Subject to clauses 60.1(12) and 60.1(17), the changes to the Prices are assessed as the effect of the compensation event upon

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

The date when the *Service Manager* instructed or should have instructed the *Provider* to submit quotations divides the work already done from the work not yet done. If the effect of a compensation event is to reduce the total Defined Cost, the Prices are reduced. Where a compensation event affects the Defined Cost of the Lump Sum Duties, the assessment is made on the basis that the words "Equipment which is used for Lump Sum Duties and" are treated as having been omitted from paragraph 2 of the Schedule of Cost Components.

63.2 The rights of the *Employer* and the *Provider* to changes to the Prices are their only rights in respect of a compensation event.

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

63.4 Assessment of the effect of a compensation event includes risk allowances for cost for matters which have a significant chance of occurring and are at the *Provider's* risk under this contract.

63.5 Assessments are based upon the assumptions that

- the *Provider* reacts competently and promptly to the compensation event,

- any Defined Cost due to the event is reasonably incurred and
- the *Provider* takes all reasonably practicable steps to minimise the increase or maximise the reduction (as the case may be) in Defined Cost.

63.6 A compensation event which is an instruction to change the Service Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices were for the interpretation most favourable to the Party which did not provide the Service Information.

63.7 Assessments for changed Prices for compensation events are in the form of changes or additions to lump sums or rates in the Pricing Schedule and/or additions or changes to the activities and rates in Activity Schedule for a Scheme. If the *Service Manager* and the *Provider* agree, rates and lump sums in the Pricing Schedule may be used as a basis for assessment instead of Defined Cost and the resulting Fee.

63.8 If the *Service Manager* gives an instruction changing the extent of the Area Network and/or the Regional Technology Network, any changes to the Prices are assessed by reference to the Area Network and/or the Regional Technology Network Alteration Schedules.

63.9 If the *Service Manager* gives an instruction changing any element of the Service Information listed in the Area Service Alteration Schedule, any changes to the Prices are assessed by reference to that Schedule.

64 The *Service Manager's* assessment

64.1 The *Service Manager* assesses a compensation event

- if the *Provider* has not submitted a quotation and details of his assessment within the time allowed or
- if the *Service Manager* decides that the *Provider* has not assessed the compensation event correctly in a quotation and he does not instruct the *Provider* to submit a revised quotation.

64.2 The *Service Manager* notifies the *Provider* of his assessment of a compensation event and gives the *Provider* details of it within the period allowed for the *Provider's* submission of his quotation for the same event. This period starts when the need for the *Service Manager's* assessment becomes apparent.

64.3 If the *Service Manager* does not assess a compensation event within the time allowed, the *Provider* may notify the *Service Manager* to this effect. If the *Provider* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Service Manager* does not reply within two weeks of this notification, the notification is treated as acceptance of the *Provider's* quotation by the *Service Manager*.

65 Implementing compensation events

65.1 A compensation event is implemented when

- the *Service Manager* notifies his acceptance of the *Provider's* quotation,
- the *Service Manager* notifies the *Provider* of his own assessment or
- a *Provider's* quotation is treated as having been accepted by the *Service Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

7 TITLE**70 Employer's title to Materials**

70.1 Whatever title the *Provider* has to Materials which are outside the Area Network passes to the *Employer* if the *Provider* has marked them as for this contract.

70.2 Whatever title the *Provider* has to Materials passes to the *Employer* if they have been brought within the Area Network.

70.3 At the end of the Contract Period, the *Service Manager* may

- instruct or allow the *Provider* to remove from the Area Network any Materials supplied in connection with Schemes but not used, in which event the title to those Materials passes back to the *Provider* when they are removed or
- instruct the *Provider* to sell or re-use any other Materials which are within the Area Network, in which event clause 74.3 applies so far as relevant.

If the *Service Manager* does not instruct or allow the *Provider* to remove, sell or re-use Materials, the *Provider* leaves the Materials within the Area Network for the use of the *Employer*.

70.4 If the Network Information states that, at the *access date*, the *Employer* makes available materials (excluding Employer's Stocks) for the *Provider* to Provide the Services, the *Provider* supplies the same quantity and quality of materials to the *Employer* at the end of the Contract Period.

71 Use of Premises

71.1 The *Provider* occupies and maintains the Employer's Premises on the terms set out in Schedule 2.

71.2 The *Provider* submits to the *Service Manager* for acceptance details of any proposals to change the use of the Employer's Premises from that stated in the Premises Document. A change accepted by the Services Manager changes the Premises Document. A reason for not accepting a proposed change is that

- it will change the terms on which the *Provider* occupies and maintains the Employer's Premises or
- it will not allow the *Provider* to Provide the Services.

71.3 The *Service Manager*, after notifying the *Provider*, may change the *Provider's* permitted use of the Employer's Premises from that stated in the Premises Document. The *Provider* notifies the *Service Manager* if he proposes to change the use of the Employer's Premises or the provision or use of the *Provider's* Premises from that stated in the Premises Document.

71.4 The *Provider* makes office space and facilities (as specified in the Service Information) available in the Employer's Premises or the *Provider's* Premises for the number of *Employer's* representatives stated in the Service Information.

72 Removing Equipment and Materials

72.1 The *Provider* removes Equipment and Materials from the Area Network and/or the Regional Technology Network (Midlands) when it is no longer needed to Provide the Services unless the *Service Manager* allows it to be left in or on the Area Network and/or the Regional Technology Network (Midlands).

72.2 Where clause 70.3 does not apply the *Provider* removes Materials from the Area Network and/or the Regional Technology Network (Midlands) with the *Service Manager's* permission when they are no longer needed to Provide the Services.

73 Employer's Vehicles

73.1 The *Provider* utilises the Employer's Vehicles, carries out maintenance work and performs other functions in relation to the Employer's Vehicles as specified in and in accordance with the Service Information.

73.2 The *Service Manager* may instruct the *Provider* to

- deliver the National Reserve Fleet to a location outside the Area Network for use by Others and
- collect the National Reserve Fleet from a location outside the Area Network.

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

73.4 If the Network Information or the Service Information states that any of the Employer's Vehicles are returned to the *Employer* before the end of the Contract Period, the *Provider* returns those vehicles to the *Employer* on the dates stated. All other Employer's Vehicles are returned to the *Employer* at the end of the Contract Period.

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

74 Objects and materials within the Area Network and the Regional Technology Network (Midlands)

74.1 The *Provider* has no title to an object of value or of historical or other interest found on, in or under the Area Network and/or the Regional Technology Network (Midlands). The *Provider* notifies the *Service Manager* when such an object is found and, in respect of any such object found within the Area Network or the Regional Technology Network (Midlands), the *Service Manager* instructs the *Provider* how to deal with it. The *Provider* does not move the object without instructions.

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

74.3 The *Provider* takes all reasonable steps (by way of sale, re-use or otherwise) to maximise the value to the *Employer* of:

- Any Materials which the *Service Manager* instructs the *Provider* to sell or re-use under clause 70.3 and
- Any materials referred to in clause 74.2 to which the *Employer* has title. Any amount received by the *Provider* from the sale of such Materials and materials is held on trust for the *Employer* and is paid by the *Provider* to the *Employer* in accordance with this contract.

75 Intellectual Property Rights

- 75.1 All Intellectual Property Rights in Documents existing at the Contract Date remain the property of the *Provider* or the *Employer* as the case may be.
- 75.2 All Intellectual Property Rights in Documents created by or on behalf of the *Employer* or the *Provider* in connection with the Services, the Area Network and the Traffic Technology Systems (Midlands) or an Innovation are the property of the *Employer*.
- 75.3 The *Provider* assigns to the *Employer* all present and future Intellectual Property Rights in all Documents created by the *Provider* or any Subcontractor in Providing the Services. The *Provider* obtains all documents from third parties necessary to ensure that the *Employer* is the owner of the Intellectual Property Rights in the Documents.
- 75.4 The *Provider* makes available to the *Employer* all Documents created by the *Provider* or any Subcontractor in Providing the Services for use by the *Employer* to carry out any statutory duty or perform any function in relation to the Area Network and/or the Traffic Technology Systems (Midlands) during or after the expiry of the Contract Period. The *Provider* makes available the Documents in the format specified in the Service Information.
- 75.5 The *Provider* has the right to use Documents provided by the *Employer* only to Provide the Services. The *Provider* may make this right available to Subcontractors. On completion of the Services the *Provider* returns all the Documents to the *Employer*.
- 75.6 Where any Documents created by the *Provider* or any Subcontractor are held on computer or in other machine readable format, the *Provider* provides a licence for and supplies any software necessary to enable the *Employer* and his representatives to access and use the Documents for the purpose of performing any statutory duty or carrying out any function in relation to the Area Network and/or the Traffic Technology Systems (Midlands) during or after the expiry of the Contract Period.
- 75.7 The *Employer* and the *Provider* do anything necessary to confirm the terms of any assignment of Intellectual Property Rights or licence to use the Documents.

76 Employer's Stocks

- 76.1 The *Provider* deals with the Employer's Stocks as specified in and in accordance with the Service Information.
- 76.2 The *Provider* takes all reasonably practical steps to protect the Employer's Stocks against the risk of loss or damage from any cause. The *Provider* stores the Employer's Stocks in a secure place when not in use.
- 76.3 The *Provider* may at any time request the *Service Manager* to authorise the replacement of an item of Employer's Stocks.
- 76.4 The title to all Employer's Stocks remains with the *Employer* at all times. The *Provider* returns all unused Employer's Stocks to the *Employer* at the end of the Contract Period.

8 RISKS AND INSURANCE

80 *Employer's risks*

80.1 The following are *Employer's* risks.

- (1) Claims, proceedings, compensation and costs payable to Others which are
- an unavoidable result of Providing the Services,
 - due to defects in the design or work of persons employed by or contracted to the *Employer* (except where the claims, proceedings, compensation and costs arise due to defects in the design or work of persons employed by the *Provider* which is a *Provider's* risk),
 - due to negligence, default, breach of statutory duty or interference with any legal right by the *Employer* or by any person employed by or contracted to him (except where the claims, proceedings, compensation and costs arise due to negligence, default, breach of statutory duty or interference with any legal right by the *Provider* which is a *Provider's* risk),
 - due to a defect in the physical condition of the Area Network (other than a defect the repair or rectification of which forms part of the Lump Sum Duties) which
 - is not revealed by the Network Information or by any other publicly available information referred to in the Network Information,
 - is not of a general type or category revealed by the Network Information or by any other publicly available information referred to in the Network Information,
 - was not evident from a visual inspection or routine survey of the Area Network at the Contract Date,

- an experienced contractor or consultant acting with reasonable diligence could not reasonably have discovered prior to the Contract Date and
 - an experienced contractor or consultant would have judged at the Contract Date to have such a small chance of being or becoming present that it would have been unreasonable for him to have allowed for it,
 - due to the presence of the Employer's Vehicles in the Area Network, unless due to any breach of this contract, negligence or default on the part of the *Provider* or
 - due to an Incident occurring within the Area Network during the Contract Period, unless the Incident (or any claims, proceedings, compensation or costs incurred by the *Employer* as a result of the Incident) is due to any act or default of the *Provider* or would not have occurred if the *Provider* had Provided the Services in accordance with this contract.
- (2) Loss of or damage to any part of the Area Network or any Materials due to
- war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the *Provider's* employees or
 - radioactive contamination.
- (3) Loss of or damage to any part of the Area Network (excluding the Employer's Premises) due to theft.
- (4) Loss of or wear or damage to any part of the Area Network by any other cause, except loss, wear or damage
- the repair or reinstatement of which forms part of the Lump Sum Duties,

- which is due to any act, omission, default or breach of this contract on the part of the *Provider*, or
- to any Scheme constructed by the *Provider* in the course of construction.

(4) Additional *Employer's* risks agreed by the Network Board.

81 The *Provider's* risks

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

82 Indemnity

82.1 Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk save that where the event is a compensation event pursuant to clause 60.1(11) the provisions in section 6 apply in respect of the effect of the compensation event.

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

83 Indemnified Claims

83.1 The *Employer* notifies the *Provider* as soon as practicable of any notice or demand which it receives in respect of an Indemnified Claim.

83.2 The *Provider* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Employer*. The *Employer* co-operates with and gives reasonable assistance to the *Provider* in defending the Indemnified Claim.

83.3 The *Provider* keeps the *Employer* fully informed and consults with the *Employer* as appropriate in relation to the conduct of any Indemnified Claim.

- 83.4 Where the *Provider* is diligently conducting the defence of an Indemnified Claim, the *Employer* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Provider*.
- 83.5 The *Provider* bears the costs which he incurs in defending an Indemnified Claim. The *Provider* indemnifies the *Employer* against any costs incurred by the *Employer* arising out of the *Provider's* defence of the Indemnified Claim.
- 83.6 The *Employer* may give the *Provider* notice that he is taking over the conduct of an Indemnified Claim.
- 83.7 On receipt of the *Employer's* notice the *Provider*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Employer* and
 - co-operates with and gives reasonable assistance to the *Employer* in defending the Indemnified Claim.
- 83.8 Where the reason for the *Employer's* notice is not due to the fault of the *Provider* in conducting the Indemnified Claim, the *Provider* is released from the indemnity to the *Employer* given in clause 83.5 in respect of the costs incurred by the *Employer* following the date of the notice but is not otherwise released from any its indemnities.

84 Insurance cover

- 84.1 The *Provider* provides the insurances stated in the Insurance Table. The *Provider* provides additional insurances as stated in the Contract Data.
- 84.2 The insurances (other than employer's liability and professional indemnity insurance) are in the joint names of the Parties and provide cover for events which are at the *Provider's* risk from the *access date* until the end of the Contract Period or all the Services have been completed (whichever is the later) or a termination notice has been issued.

INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to any Scheme constructed by the <i>Provider</i> in the course of construction.	The full reinstatement cost (including demolition, debris removal and inflation).
Loss of or damage to Materials.	The replacement cost (as new).
Loss of or damage to Equipment or Employer's Stocks.	The market value at the time when the loss or damage occurred.
Liability for loss of or damage to property (except any Scheme constructed by the <i>Provider</i> in the course of construction, Materials, Equipment and Employer's Stocks) and liability for bodily injury to or death of a person (not an employee of the <i>Provider</i>) caused by any activity in connection with this contract (including liability arising out of intrusive asbestos surveys).	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately.
Loss of or damage to Employer's Vehicles.	The market value at the time when the loss or damage occurred.
Liability for death of or bodily injury to employees of the <i>Provider</i> arising out of and in the course of their employment in connection with this contract (including liability arising out of intrusive asbestos surveys).	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event.
Liability of the <i>Provider</i> for claims made against him arising out of his failure to use the skill and care	The amount stated in the Contract Data for any one event.

normally used by professionals providing services similar to the Services (including liability arising out of intrusive asbestos surveys).	
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85 Insurance policies

85.1 The *Provider* submits to the *Service Manager* for acceptance certificates which state that the insurances required by this contract are or will be in force

- before the *starting date*,
- at least two months before each renewal date and
- when instructed by the *Service Manager* to do so.

The certificates are signed by the *Provider's* insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with this contract.

85.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.

85.3 The Parties comply with the terms and conditions of the insurance policies.

85.4 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Provider* for events which are at his risk.

86 If the *Provider* does not insure

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

86.2 If, at any time during the Contract Period, the *Provider* is unable to obtain any of the insurances required by this contract on reasonable commercial terms or at commercially reasonable premium rates, the *Provider* immediately notifies the *Service Manager*. The Network Board decides what measures should be taken to protect the interests of the Parties in the absence of such insurance.

87 Claims against third parties

87.1 The *Provider* in accordance with this contract

- repairs defects in the Area Network caused by a fault in the work of Others (including an Outgoing Provider) and
- repairs and replaces loss or damage to the Area Network and any Materials and Equipment caused by the act or default of Others.

87.2 Where the repair or replacement falls within the Lump Sum Duties, the *Provider* may pursue a claim against any third party to recover the costs involved in the name of the *Employer*. The amount the *Provider* claims is no more than

- the actual Third Party Claims Defined Cost for repair or replacement work already done,
- the forecast Third Party Claims Defined Cost for repair or replacement work not yet done and
- the resulting Third Party Claims Overhead

87.3 The *Provider* bears and indemnifies the *Employer* against any costs and liabilities incurred in pursuing a claim under clause 87.2. Any sums recovered by the *Provider* as a result of the claim and received by the *Employer* (other than sums recovered in respect of the repair or replacement of Employer's Stocks, which belong to the *Employer*) are held on trust for the *Provider* and are paid by the *Employer* to the *Provider* in accordance with this contract. Any sums received by the *Provider* in respect of the repair or replacement of Employer's Stocks are held on trust for the *Employer* and are paid by the *Provider* to the *Employer* in accordance with this contract. Alternatively the *Provider* may agree with the third party that the third party will carry out the necessary works at no cost to the *Employer*.

87.4 The *Provider* keeps detailed records relating to the Third Party Claims Defined Cost in accordance with clause 43. No later than 4 weeks after the end of each Contract Year and each successive period of 12 months following the final Contract Year, but finally after the earlier of

- the third successive period of 12 months following the final Contract Year and
- the successive period of 12 months in which all claims made under clause 87.2 have been resolved and all recoveries paid in respect of those claims,

the *Provider* submits a statement to the *Service Manager* showing

- the total amount recovered in that year from third parties in respect of claims made against them under clause 87.2 and
- the amount, if any, by which that amount exceeds the total of
- the final Third Party Claims Defined Cost for the repair or replacement work relating to those claims and
- the resulting Third Party Claims Overhead

87.5 The statement the *Provider* submits under clause 87.4 in respect of the final Contract Year and any successive period of 12 months following the final Contract Year also specifies

- third party claims that have not been resolved and
- the amounts of agreed recoveries third parties have yet to pay in respect of resolved claims.

87.6 Where the repair or replacement does not fall within the Lump Sum Duties, the *Employer* may request the *Provider* to pursue a claim against any third party to recover the costs involved on behalf of the *Employer*. The *Provider* conducts the claim in accordance with the Service Information. The *Employer* reimburses the *Provider* in accordance with this contract for any costs incurred by him in pursuing the claim. Any sums recovered by the *Provider* as a result of the claim belong solely to the *Employer*.

9 DISPUTES AND TERMINATION

90 Dispute resolution

90.1 A dispute arising under or in connection with this contract is referred to and decided by the Adjudicator. A Party may refer a dispute to the Adjudicator at any time.

90.2 In clauses 91 to 93, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

91 The Adjudicator

91.1 Subject to clause 91.2, the referring Party requests the *adjudicator nominating body* to nominate an adjudicator. The *adjudicator nominating body* chooses an adjudicator within four days of the request. The nominated adjudicator becomes the Adjudicator. The Parties agree the Adjudicator's fee rate within 2 days of his nomination. The Parties appoint the Adjudicator within 3 days of his nomination using the terms of appointment set out in Schedule 3.

91.2 If a Contract Dispute raises issues which are substantially the same as or are connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication the Contract Dispute is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the Adjudicator.

91.3 If a Related Dispute raises issues which are substantially the same as or are connected with issues in a Contract Dispute and the Contract Dispute has been referred to adjudication the Related Dispute is referred to the Adjudicator.

91.4 The *Employer* ensures that contracts with Contractors contain provisions which enable clauses 91.2 and 91.3 to be effective and the *Provider* ensures that contracts with Subcontractors contain provisions which enable clauses 91.2 and 91.3 to be effective.

91.5 If the Adjudicator resigns or becomes unable to act

- the Parties may choose an Adjudicator jointly or
- a Party may ask the *adjudicator nominating body* to choose an adjudicator.

The *adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the Adjudicator.

- 91.6 A replacement Adjudicator has the power to decide a dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided dispute as if it had been referred to him on the date he was appointed.
- 91.7 The Adjudicator acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.
- 91.8 The Adjudicator, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

92 The adjudication

- 92.1 A Party intending to refer a dispute to adjudication, gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which he wishes the Adjudicator to make.
- 92.2 Within seven days of a Party giving a notice of adjudication he
- refers the dispute to the Adjudicator,
 - provides the Adjudicator with the information on which he relies, including any supporting documents and
 - provides a copy of the information and supporting documents he has provided to the Adjudicator to the other Party.

Any further information from a Party to be considered by the Adjudicator is provided within fourteen days of the referral. This period may be extended if the Adjudicator and the Parties agree.

- 92.3 Where a Contract Dispute and Related Dispute are referred to adjudication the Adjudicator decides the disputes together so far as practicable.
- 92.4 The Adjudicator may

- review and revise any action or inaction of the *Service Manager* related to the dispute and alter a quotation which has been treated as having been accepted,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

- 92.5 If a Party does not comply with any instruction within the time stated by the Adjudicator, the Adjudicator may continue the adjudication and make his decision based upon the information and evidence he has received.
- 92.6 A communication between a Party and the Adjudicator is communicated at the same time to the other Party and to any Contractor or Subcontractor with whom a related dispute exists.
- 92.7 If the Adjudicator's decision includes assessment of additional cost or delay caused to the *Provider*, he makes his assessment in the same way as a compensation event is assessed.
- 92.8 The Adjudicator decides the dispute and notifies the Parties and the *Service Manager* of his decision and his reasons within twenty-eight days of the dispute being referred to him. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties.
- 92.9 Unless and until the Adjudicator has notified the Parties of his decision, the Parties and the *Service Manager* proceed as if the matter disputed was not disputed.
- 92.10 If the Adjudicator does not make his decision and notify it to the Parties within the time provided by this contract, the Parties and the Adjudicator may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the Adjudicator has resigned.

- 92.11 The fees and disbursements of the Adjudicator arising in relation to a Contract Dispute which is referred for determination to the Adjudicator shall be borne as between the *Employer* and the *Provider* as the Adjudicator shall in his absolute discretion direct.
- 92.12 The Adjudicator's decision is binding on the Parties unless and until revised by the tribunal and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. If the Adjudicator's decision changes an amount notified as due, payment of the sum decided by the Adjudicator is due not later than seven days from the decision or the final date for payment of the notified amount, whichever is the later. The Adjudicator's decision is final and binding if neither Party has notified the other within the times required by this contract that he is dissatisfied with a matter decided by the Adjudicator and intends to refer the matter to the tribunal.
- 92.13 The Adjudicator may, within five days of giving his decision to the Parties, correct a clerical mistake or ambiguity.

93 Review by the *tribunal*

- 93.1 A Party does not refer any dispute under or in connection with this contract to the tribunal unless it has first been decided by the Adjudicator in accordance with this contract.
- 93.2 If, after the Adjudicator notifies his decision, a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the tribunal. The dispute may not be referred to the tribunal unless this notification is given within four weeks of the notification of the Adjudicator's decision.
- 93.3 The tribunal settles the dispute referred to it. The tribunal has the powers to reconsider any decision of the Adjudicator and to review and revise any action or inaction of the *Service Manager* related to the dispute. A Party is not limited in tribunal proceedings to the information or evidence put to the Adjudicator.
- 93.4 If the tribunal is arbitration, the arbitration procedure, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

93.5 A Party does not call the Adjudicator as a witness in tribunal proceedings.

94 Termination

94.1 If either Party wishes to terminate the *Provider's* obligation to Provide the Services, he notifies the *Service Manager* and the other Party giving details of his reason for terminating. The *Service Manager* issues a termination notice to both Parties promptly if the reason complies with this contract.

94.2 The procedures for termination are implemented immediately after receipt of a termination notice.

94.3 Within thirteen weeks of receipt of the termination notice, the *Provider* submits his final invoice which is the *Provider's* assessment of the amount due on termination. Payment is made within 30 days of the *Provider's* invoice.

94.4 After a termination notice has been received, subject to clause 96.4, the *Provider* stops Providing the Services.

94.5 Where an entitlement to terminate arises due to default by the *Provider*, the *Employer* is entitled to commence the procurement of the Services from an alternative provider prior to the issue of a termination notice.

95 Reasons for termination

95.1 Either Party may terminate if the other Party or, in the case of the *Provider* where the *Provider* is or is owned by a Consortium, if a Consortium Member has done one of the following or its equivalent:

- had a winding-up order made against it,
- had a provisional liquidator appointed to it,
- passed a resolution for winding-up (other than in order to amalgamate or reconstruct),
- had an administration order made against it,
- had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets or

- made an arrangement with its creditors.

95.2 The *Employer* may terminate if the *Service Manager* has notified him that the *Provider* has defaulted in one of the following ways and not put the default right within four weeks of the notification:

- substantially failed to comply with his obligations,
- wholly or substantially abandoned the Area Network or stopped Providing the Services without reasonable cause,
- persistently or materially failed to comply with the Quality Statement or
- persistently or materially failed to meet any of the Performance Requirements.

95.3 The *Employer* may terminate if the *Service Manager* has notified him that the *Provider* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification:

- substantially hindered the *Employer* or Others or
- substantially broken a health and safety regulation.

95.4 The *Employer* may terminate if the *Provider* or a Consortium Member fails to comply with clause 10.4, clause 10.5, clause 13.16 or clause 29.1.

95.5 The Employer may in its sole discretion at any time terminate at any time without cause. Such termination is not a breach of contract and does not entitle the Provider to any damages or claims except as expressly provided in this clause 95.

95.6 The *Provider* may terminate by notifying the *Service Manager* if the *Employer* has not paid an amount due to the *Provider* within eleven weeks of the issue of a notice by the *Provider* to the *Service Manager* that payment is overdue.

95.7 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract.

95.8 If the *Service Manager* has instructed the *Provider* to suspend the whole or substantially the whole of the Services and an instruction to restart the Services has not been given within 26 weeks

- the *Employer* may terminate if the instruction was due to a default by the *Provider*,
- the *Provider* may terminate if the instruction was due to a default by the *Employer* and
- either Party may terminate if the instruction was due to any other reason.

96 Procedures on termination

96.1 On termination

- the *Employer* may Provide the Services and may use any Materials to which he has title and
- the *Provider* gives to the *Employer* copies of all Documents in his possession which relate to the Services or the Area Network and/or the Traffic Technology Systems (Midlands).

96.2 The *Service Manager* may instruct the *Provider* to leave the Area Network and/or the Regional Technology Network (Midlands), remove any Equipment and Materials from the Area Network and/or the Regional Technology Network (Midlands) and assign or novate the benefit of any subcontract or other contract related to performance of this contract to the *Employer* or another person specified by the *Employer*. The *Provider* complies with any such instruction.

96.3 The *Employer* may use any Equipment to which the *Provider* has title to Provide the Services. The *Provider* promptly removes the Equipment from the Area Network and/or the Regional Technology Network (Midlands) when the *Service Manager* notifies him that the *Employer* no longer requires it to Provide the Services.

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

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

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

97 Payment on termination

97.1 The amount due on termination includes

- an amount due assessed as for normal payments (subject to Clause 97.2),
- the Defined Cost for Materials
 - within the Area Network or
 - to which the *Employer* has title and of which the *Provider* has to accept delivery,
- the Defined Cost of removing Equipment from the Area Network and/or the Regional Technology Network (Midlands) if applicable and
- save where the reason for termination is a failure by the *Provider* to comply with clause 10.4 other Defined Cost reasonably incurred in expectation of completing the Services.

97.2 In the case of termination due to default by the *Provider*,

- the amount due on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the Services including, without limitation, any additional administration and/or financing costs and/or the costs of procuring the Services or any of them from an alternative provider, and
- the *Provider* is not entitled to payment of any *Provider's* share.

97.3 In the case of termination due to default by the *Employer* or pursuant to clause 95.5, the amount due on termination also includes the Fee applied to the *Service Manager's* assessment of the total amount which would have been payable to the *Provider* under this contract in respect of the period of three months immediately following termination.

- 97.4 If there is a termination not due to default by the *Provider*, the *Service Manager* assesses the *Provider's* share in respect of any Scheme constructed by the *Provider* after he has issued a termination notice or on completion of the Scheme if the *Service Manager* has instructed the *Provider* to complete it. If the *Provider* is not instructed to complete a Scheme, the assessment uses, as the Price for Work Done to Date for the Scheme, the total of the Defined Cost which the *Provider* has paid and which he is committed to pay for the Scheme for work done before termination. The assessment uses, as the total of the Prices for the Scheme, a proportion of the target sum for the Scheme which is the proportion of the work in the Scheme which has been completed.
- 97.5 The *Service Manager's* assessment of the *Provider's* share in respect of any Scheme constructed by the *Provider* is added to the amount due to the *Provider* on termination if there has been a saving or deducted if there has been an excess.

SCHEDULE 1 - SCHEDULE OF COST COMPONENTS

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

1 People

The following components of the cost of people who are engaged in Providing the Services and are directly employed by the *Provider* (excluding people engaged only in providing the supporting functions identified in the Fee Schedule).

11 Wages, salaries and amounts paid by the *Provider* for people.

12 Payments to people for

(a) bonuses and incentives

(b) overtime

(c) working in special circumstances

(d) special allowances

(e) absence due to sickness and holidays

(f) statutory redundancy and notice severance on a pro rata basis for the period engaged in Providing the Services where redundancy arises because the person is no longer required to be employed to Provide the Services and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in Providing the Services.

13 Payments made in relation to people for

(a) travel

(b) subsistence and lodging

- (c) relocation
- (d) medical examinations
- (e) passports and visas
- (f) travel insurance
- (g) items (a) to (f) for dependants
- (h) protective clothing
- (i) National Insurance contributions
- (j) meeting the requirements of the law
- (k) life assurance
- (l) death benefit
- (m) occupational accident benefits
- (n) medical aid
- (o) a vehicle
- (p) safety training specific to Providing the Services in the Area Network and/or the Regional Technology Network (Midlands)
- (q) vetting in accordance with the Service Information.

- 14 The following components of the cost of people who are engaged in Providing the Services and are not directly employed by the *Provider* but are paid for by him according to the time worked (excluding people providing services for or in connection with the management, administration and/or operation of the contract and/or providing head office functions supporting the provision of the Services).

Amounts paid by the *Provider*.

2 Equipment and Temporary Accommodation

The following components of the cost of Equipment and Temporary Accommodation which is used within the Working Areas (excluding Equipment which is used for Lump Sum Duties and Equipment cost covered by charges item 44).

- 21 Amounts for Equipment and Temporary Accommodation assessed at open market rates multiplied by the time for which the Equipment or Temporary Accommodation is required.
- 22 Payments for the purchase price of Equipment which is consumed.
- 23 Unless included in the open market rates, payments for
- (a) transporting Equipment and Temporary Accommodation to and from the Working Areas other than for repair and maintenance,
 - (b) erecting and dismantling Equipment and Temporary Accommodation and
 - (c) constructing, fabricating or modifying Equipment and Temporary Accommodation as a result of a compensation event.
- 24 Payments for purchase of materials used to construct or fabricate Equipment and Temporary Accommodation.
- 25 Unless included in the open market rates, the cost of operatives is included in the cost of people.

3 Materials

The following components of the cost of Materials.

- 31 Payments for
- (a) purchasing Materials,
 - (b) delivery to and removal from the Working Areas,
 - (c) providing and removing packaging and

(d) samples and tests.

32 Cost is credited with payments received for disposal of Materials unless the cost is disallowed.

4 Charges

The following components of the cost of charges paid by the *Provider*.

41 Payments for provision and use in the Working Areas of

(a) water,

(b) gas and

(c) electricity.

42 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the Services.

43 Payments for

(a) cancellation charges arising from a compensation event

(b) leasing of land

(c) compensation for loss of crops or buildings

(d) royalties

(e) inspection certificates

(f) charges for access to the Working Areas

(g) facilities for visits to the Working Areas by Others

(h) advertising, leaflet drops and the like in connection with the Services

(i) specialist services excluding payments for people providing services for or in connection with the management, administration and/or operation of the contract and/or providing head office functions supporting the provision of the Services

(j) consumables and equipment provided by the *Provider* for the *Service Manager's* offices.

44 Costs incurred within the Working Areas for provision and use of equipment, supplies and services, but excluding accommodation, for

- (a) telephone, telex, fax, postal and electronic mail, radio and CCTV
- (b) computing
- (c) copying
- (d) cleaning
- (e) catering
- (f) medical facilities and first aid
- (g) recreation
- (h) sanitation
- (i) security
- (j) surveying and setting out
- (k) hand tools not powered by compressed air.

5 Insurance

The following are deducted from cost:

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

SCHEDULE 2 - EMPLOYER'S PREMISES

- 1 Subject to the *Employer* obtaining any consents necessary for the grant of each lease, the *Employer* agrees to let the Employer's Premises to the *Provider* and the *Provider* agrees to accept a lease of [each of] the Employer's Premises from the *Employer* in accordance with this Schedule.
- 2 The lease is substantially in the form of the draft lease annexed to this Schedule with such variations as the *Employer* may require.
- 3 The *Employer* decides the dates of commencement and expiry of the term granted by each lease.
- 4 The *Employer* and the *Provider* have agreed to exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 from the tenancy to be created by the Lease and have, before the date of this contract, duly carried out the requirements of Schedules 1 and 2 of The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 so as to render valid that agreement.
- 5 The *Provider* assumes that the *Employer* has the right to grant each lease and may not require any evidence of the *Employer's* title or raise any objection, requisition or enquiry in respect of it.
- 6 Until the grant of each lease, the *Provider* has no interest in the Employer's Premises and this Schedule does not operate as a demise. If the *Provider* takes up occupation of the Employer's Premises before the grant of the lease, the *Provider's* occupation is as licensee only but is otherwise on the terms of the draft lease annexed to this Schedule and the Parties perform and are bound by the covenants and provisions contained in the draft lease as if it had been granted.
- 7 Prior to giving the *Provider* occupation, the *Employer* may carry out a general condition survey of the Employer's Premises. The *Employer* gives the *Provider* reasonable prior notice of his intention to carry out such survey and the *Provider* may attend if he so wishes.

- 8 If the *Provider* for any reason does not complete the lease of any Employer's Premises within two weeks of receipt of an engrossment from the *Employer's* solicitors, the *Provider* immediately vacates the relevant Employer's Premises and is not entitled to any additional payment or compensation from the *Employer* under this contract.
- 9 The *Provider* indemnifies the *Employer* against all claims, proceedings, compensation and costs however arising in respect of the *Provider's* occupation and use of any or all of the Employer's Premises.
- 10 The *Employer* may deduct from any payment due to the *Provider* under this contract any sums due from the *Provider* under the lease which are not paid in accordance with the terms of the lease.
- 11 The *Provider*, its servants and agents do not create any lien or encumbrance on or over any of the Employer's Premises.
- 12 The *Provider* does not use the Employer's Premises other than for Providing the Services and as permitted by the relevant lease.
- 13 On the expiry or termination of this contract or the determination of any lease of the Employer's Premises, the *Provider* leaves the relevant Employer's Premises in good repair, having regard to the usage and condition at the commencement date of the relevant lease. If in the opinion of the *Employer* the Employer's Premises are not left in the required condition, the *Employer* may arrange for any necessary maintenance and repairs to be carried out by Others at the cost of the *Provider*.

ANNEX - FORM OF LEASE

DATED

THE SECRETARY OF STATE FOR TRANSPORT

[]

Draft
LEASE
of

[]

DATED**PARTIES**

- 1 Landlord **THE SECRETARY OF STATE FOR TRANSPORT** of Great Minster House, 33 Horseferry Road, London SW1P 4DR
- 2 Tenant [] [of] [(company no)] whose registered office is at [] and [] [of] [(company no)] whose registered office is at []

OPERATIVE PROVISIONS:**1 Definitions and interpretation**

- 1.1 Unless the contrary intention appears, the following definitions apply:

<i>Area Network</i>	has the meaning given to it in the Contract;
<i>Contract</i>	the asset support contract for inter alia the operation and maintenance of the Area Network dated [] between the Landlord (1) and the Tenant (2);
<i>Depot Space</i>	such part of the depots within the Premises to be occupied by the RTMC Contractor (Midlands);
<i>Encumbrances</i>	the restrictions, stipulations, covenants, rights, reservations, provisions and other matters contained, imposed by or referred to in the documents, brief particulars of which are set out in schedule 1 part 4;
<i>Floor Space</i>	such part of the office space within the Premises to be occupied by the RTMC Contractor (Midlands);

<i>Improvements</i>	the alterations listed in Schedule 2 to be carried out by the Tenant in accordance with clause 3.8;
<i>Interest</i>	interest at the <i>interest rate</i> set out in the Contract compounded at quarterly rests on 31 March, 30 June, 30 September, and 31 December in each year;
<i>Insured Risks</i>	include (without limitation) fire, lightning, explosion, storm, tempest, flood, bursting and overflowing of water tanks, apparatus or pipes, earthquake, aircraft (but not hostile aircraft) and devices dropped from aircraft, riot and civil commotion, malicious damage, subsidence, heave, landslip and such other risks as the Landlord may consider it prudent to insure;
<i>Network Management Manual</i>	the publication entitled Network Management Manual Issue 1 Amend 8 dated July 2009 published by the Highways Agency or any other version as may be notified to the Tenant from time to time;
<i>Permitted Use</i>	[offices and/or] a maintenance depot for the provision of services pursuant to the Contract and for all purposes ancillary to that use;
<i>Premises</i>	[all and each of] the premises described in, schedule 1 part 1 and each part of the Premises, including landlord's fixtures and fittings in or on them and the conducting media and machinery and plant within the Premises;
<i>Property</i>	the whole of any one of the properties listed in schedule 1 and <i>Properties</i> shall be interpreted accordingly;

RTMC Contractor as defined in the Contract; and
(Midlands)

Term the term of years granted by this lease.

- 1.2 The expressions *Landlord* and *Tenant* refer to the person in whom the immediate reversion to this lease, and the Term, respectively are for the time being vested.
- 1.3 Where the Tenant is placed under a restriction in this lease, the restriction includes the obligation on the Tenant not to permit or allow the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 The clause and paragraph headings in this lease are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.6 Unless the contrary intention appears, references:
- 1.6.1 to numbered clauses and schedules are references to the relevant clause in, or schedule to, this lease; and
- 1.6.2 to a numbered paragraph in any schedule are references to the relevant paragraph in that schedule.
- 1.7 References in this lease to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.8 Words in this lease importing one gender include both other genders and may be used interchangeably, and words denoting natural persons (where the context so allows) include corporations and vice versa.
- 1.9 When at any time the party of the second part to this lease is two or more persons, the expressions "the Tenant" include the plural number and obligations in this lease expressed or implied to be made with or by the

Tenant are to be treated as made with or by such individuals jointly and severally.

- 1.10 Any consent or approval required under this lease shall be obtained before the act or event to which it applies is carried out or done and shall be effective only if it is in such form and upon such terms as the party giving it properly requires and contains the statement "this is the form of consent or approval required by the lease pursuant to which it is granted".
- 1.11 Unless the contrary intention appears words and phrases defined in the Contract (either by use of Capital letters or italics) shall have the same meaning in this lease.
- 1.12 This lease has been entered into by the parties solely for the purpose of enabling the Tenant to carry out its obligations pursuant to the Contract.
- 1.13 Notwithstanding the termination of the Contract this lease shall be interpreted, where the context so admits, in accordance with the terms of the Contract.

2 Letting terms

The Landlord grants a lease to the Tenant:

- 2.1 of all the Premises;
- 2.2 [together with the rights in schedule 1 part 2;]
- 2.3 reserving to the Landlord and all others so entitled the rights in schedule 1 part [3];
- 2.4 for a term of beginning on [] and ending on [] (subject to earlier determination in accordance with clause 8);
- 2.5 at the yearly rent of a peppercorn payable in advance on the anniversary of the date of this lease in each year of the Term; and
- 2.6 reserving as rent all other payments to be made by the Tenant to the Landlord under this lease.

3 Tenant's covenants

The Tenant covenants with the Landlord as follows.

3.1 Rent

To pay the yearly rent reserved by this lease punctually on the due dates for payment free of deduction and rights of set-off.

3.2 Payment of Interest

To pay to the Landlord Interest on so much rent and other monies remaining due to the Landlord under this lease which have not been paid for seven days since they became due, or if the Landlord refuses to accept payment because of a breach of covenant by the Tenant, for the period from the due date for payment until payment is actually made.

3.3 Outgoings

To pay and keep the Landlord indemnified against all outgoings in respect of the Premises, that is non-domestic rates, water rates and charges, all existing and future rates, taxes (except in this context value added tax), charges, and assessments by whatever name called which are imposed on or payable by the owner or occupier of property.

3.4 Insurance

3.4.1 To keep the Premises insured for a sum equal to their full reinstatement cost in the joint names of the Tenant and the Landlord against the Insured Risks and to provide to the Landlord on demand a copy of the insurance certificate (such copy to be demanded not more than once in any period of insurance cover).

3.4.2 In the case of damage or destruction of the Premises to reinstate the Premises as soon as reasonably possible subject to the obtaining of all necessary consents.

3.4.3 Not to do anything which would render void or voidable any insurance policy effected by the Landlord or the Tenant.

3.4.4 Where the Tenant fails to insure the Premises in accordance with clause 3.4.1 the Landlord may insure the Premises for a sum equal to their full reinstatement cost and the Tenant shall pay on demand the cost of such insurance payable as additional rent.

3.5 **Services**

To pay to the Landlord a fair proportion as determined by the Landlord of the expense of maintaining and repairing any party structures, roads or services capable of being used by the occupier of the Premises in common with others along with the costs of any other services provided by the Landlord to the Premises.

3.6 **Repair and decoration**

To repair and keep the Premises in good and substantial repair and maintained and clean and in good decorative condition (in colours approved by the Landlord), and at the expiry or earlier termination of the Term to yield up the Premises in that condition.

3.7 **Indemnity to new contractor**

To pay to any new contractor appointed by The Secretary of State to operate and maintain the Area Network all losses, costs and liability incurred by such new contractor as a result of the failure by the Tenant to comply with its obligations contained in clauses 3.3, 3.6, [3.8], 3.12, 3.13 and 3.14.

3.8 **[To carry out Improvements**

3.8.1 To carry out the Improvements as soon as possible in a good and workmanlike manner using suitable materials having regard to the nature and the location of the Improvements.]

3.8.2 To identify and advise the Landlord of the need for other improvements or alterations to the Premises which will enhance the functionality and/or maximise the life of the Premises and represent good value for money to the Landlord.

3.9 Right of inspection

To permit the Landlord or its agents (with third parties) at reasonable times to enter and examine the condition of the Premises or for any other lawful purpose.

3.10 Repairs on Tenant's default

On notice from the Landlord of any defects, disrepair or unauthorised alterations or additions of or to the Premises for which the Tenant is liable, to execute all repairs, replacements, removals or other works required within a reasonable period to the reasonable satisfaction of the Landlord, failing which clause 3.11 is to apply.

3.11 Landlord's power to repair

The Landlord may through its workmen and agents enter the Premises and execute all necessary works, and all expenses so incurred are to be paid by the Tenant to the Landlord on demand and to be recoverable as rent in arrear.

3.12 Structural alterations

[Save in respect of the Improvements] Not to make structural alterations or additions to the Premises [without the Landlord's consent not to be unreasonably withheld].

3.13 Other alterations

3.13.1 Save as permitted in clause 3.13.2 not to make other alterations or additions except with the written consent of the Landlord (such consent not to be unreasonably withheld).

3.13.2 The Tenant may make internal non-structural alterations without the Landlord's consent provided that at the end or sooner determination of the Term the Tenant, if required by the Landlord, reinstates the Premises.

3.14 Yielding up

3.14.1 Immediately prior to the expiration or sooner determination of the Term at the Tenant's cost:

- 3.14.1.1 to remove every indication of the Tenant's or other occupier's name or business and to remove all tenant's fixtures and fittings furniture plant machinery and effects from the Premises making good all damage caused to the Premises to the reasonable satisfaction of the Landlord;
- 3.14.1.2 if requested by the Landlord to remove and make good all alterations or additions made to the Premises at any time during the Term and to reinstate the Premises to the Landlord's reasonable satisfaction and as the Landlord shall reasonably direct.
- 3.14.1.3 At the expiration or sooner determination of the Term to deliver all keys of the Premises to the Landlord and give back the Premises to the Landlord with vacant possession together with the Improvements and all fixtures fittings improvements and additions (subject to clauses 3.14.1.2 above) which now are or may in the future be in or about the Premises (but excepting tenant's fixtures and fittings) in a condition complying with the tenant's covenants in this lease.

3.15 **User**

Not to use or permit the whole or any part of the Premises to be used otherwise than for the Permitted Use.

3.16 **Regulations as to use**

- 3.16.1 Not to do anything which may be or cause a nuisance or disturbance to or damage the Landlord or to the owners, tenants or occupiers of adjoining and neighbouring properties.
- 3.16.2 Not to load or unload vehicles except in the servicing areas or loading bays provided for that purpose.
- 3.16.3 Not to place or leave any articles, merchandise, goods or other things in front of or elsewhere outside the Premises.

3.16.4 Not to leave any Property continuously unoccupied for more than seven days without notifying the Landlord and not to leave any Property continuously unoccupied for more than 30 days without notifying the Landlord and providing or paying for such caretaking or security arrangements during such period that any Property is unoccupied as the Landlord shall reasonably require in order to protect the Premises from vandalism, theft or unlawful occupation.

3.17 **Prohibited forms of alienation**

Not to charge, assign, underlet, part with or share possession of the whole or any part of the Premises except to the extent that clauses 3.18, 3.19, 9 and/or 10 apply.

3.18 **Obligation to assign**

On an assignment of the Contract in accordance with its terms the Tenant shall assign the lease to the assignee of the Contract.

3.19 **Consent to occupy**

The Tenant may grant a licence to the RTMC Contractor (Midlands) to occupy the Floor Space and/or the Depot Space in accordance with the Contract.

3.20 **Use by the Landlord**

To permit the Landlord to use part of the Premises for the purposes of keeping goods and vehicles belonging to the Landlord the exact location of such storage to be agreed between the Landlord and the Tenant on a case by case basis and provided always that such storage shall not prevent the use by the Tenant of the Premises for the Permitted Use.]

3.21 **Compliance with statutes**

3.21.1 To comply with the requirements of all statutes for the time being in force and of any competent authority as they apply or are applied to the Premises and their use.

3.21.2 To prepare and maintain a health and safety file in accordance with the requirements of the Construction Design and Management (CDM) Regulations 2007 or as subsequently amended or replaced.

3.22 **Expenses incurred on default**

To pay as additional rent all expenses and fees (including bailiffs' fees) incurred by the Landlord relating to the collection from the Tenant of rent and other arrears, the preparation and service of a schedule of dilapidations, and/or a notice under section 146 of the Law of Property Act 1925 (even if forfeiture is avoided otherwise than by relief granted by the court).

3.23 **Expenses of the grant of consents**

To pay the costs and disbursements of the Landlord incurred with respect to an application for consent made under this lease, whether or not consent is granted.

3.24 **Indemnity**

To keep the Landlord indemnified against liability in respect of any accident, loss or damage to person or property occurring on the Premises, and against liability to third parties for breach by the Tenant of its obligations in this lease.

3.25 **Value added tax**

To pay to the Landlord value added tax:

3.25.1 chargeable on the consideration for taxable supplies of goods and services made by the Landlord to the Tenant under this lease, and all payments to be made to the Landlord are to be treated as exclusive of the value added tax chargeable on the payment; or

3.25.2 borne, to the extent it is not recoverable, by the Landlord on the consideration for exempt supplies of goods and services made by the Landlord to the Tenant under this lease.

3.26 Encumbrances

- 3.26.1 To observe and perform by way of indemnity only the obligations and restrictions comprising the Encumbrances so far as they relate to the Premises and are capable of being enforced, and to keep the Landlord indemnified against liability for the breach of the obligations and restrictions.

3.27 Inspections

- 3.27.1 To undertake inspections of the Premises in accordance with the Network Management Manual.

3.28 Health and Safety

- 3.28.1 To undertake the health and safety duties set out in Chapter 3.19 of the Network Management Manual.
- 3.28.2 To take the steps to manage workplace hazards set out in Chapter 3.20 of the Network Management Manual.

4 Landlord's covenants

The Landlord covenants with the Tenant that the Tenant, paying the rents and performing the Tenant's covenants, may peaceably enjoy the Premises for the Term without interference from the Landlord or anyone lawfully claiming through, under or in trust for the Landlord.

5 Lease conditions**5.1 Proviso for re-entry**

The Landlord may terminate this lease by re-entering the Premises (or a part of them) itself or by an authorised agent if:

- 5.1.1 the rents remain unpaid for seven days (whether or not formally demanded); or
- 5.1.2 the Tenant fails to perform or observe any of the tenant covenants or conditions of this lease; or

5.1.3 an event of insolvency occurs in relation to the Tenant or the Tenant allows any distress or execution to be levied on its goods; or

5.1.4 the Contract is validly terminated by either party;

but the termination of this lease does not affect the rights or remedies of the Landlord for any breach of tenant covenants or the conditions of this lease occurring beforehand.

An “*event of insolvency*” is the inability of a company or individual to pay debts or having no prospect of being able to do so, entry of a company into administration liquidation or receivership of any kind, the passing of a resolution for a creditors’ winding-up, the making of a composition with creditors or a scheme of arrangement of its affairs, and the appointment of a receiver or interim receiver of an individual, and these terms are to be interpreted in accordance with the provisions of the Insolvency Act 1986.

5.2 **Right of termination on destruction**

The Landlord may terminate this lease if the Premises are so damaged as to make use of them within 12 months of the occurrence of the damage impracticable by giving notice to that effect to the Tenant at any time and all insurance monies shall belong to the Landlord absolutely.

5.3 **Notices**

Section 196 of the Law of Property Act 1925 is to apply to notices given under the terms of this lease.

5.4 **No compensation**

5.4.1 The Tenant is not entitled to compensation for disturbance on quitting the Premises unless and to the extent that any statutory right precludes the operation of this clause.

5.4.2 The Landlord and the Tenant agree that the Tenant has received compensation for the Improvements.

5.5 Right to sue in Landlord's name

5.5.1 Where at the commencement of the term of this lease the Premises are not in the state of repair and condition required by the terms of this lease as a result of the failure of the previous tenant of the Landlord of the Premises to comply with its obligations under its lease then the Tenant may pursue a claim against the previous tenant in the name of the Landlord to recover the costs involved in putting the Premises into repair.

5.5.2 The Tenant bears and indemnifies the Landlord against any costs and liabilities incurred in pursuing a claim pursuant to clause 5.5.1.

5.5.3 Any sums recovered by the Tenant as a result of it pursuing a claim pursuant to clause 5.5.1 and received by the Landlord are to be held on trust for the Tenant and are to be paid by the Landlord to the Tenant on demand.

6 Status of tenancy

This lease is a new tenancy within the meaning of section 1 of the Landlord and Tenant (Covenants) Act 1995.

7 Exclusion of security of tenure

7.1 The Landlord and the Tenant agree to exclude the provisions of sections 24-28 of the Landlord and Tenant Act 1954 in relation to the tenancy created by this lease.

7.2 It is confirmed that before the Tenant became contractually bound to enter into the Contract:

7.2.1 the Landlord served notice ("the Landlord's notice") on the Tenant on []¹ in relation to the tenancy created by this lease in a form complying with the requirements in Schedules 1 and 2 of The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the Order"), as the Tenant acknowledges; and

¹ Insert date notice served (if served by first class post must allow 2 clear business days for delivery).

7.2.2 on []² the Tenant (or a person authorised by it) made a [declaration] [a statutory declaration] in a form complying with the requirements of Schedule 2 of the Order;

and that the parties have duly carried out the requirements of Schedule 2 of the Order to render valid the agreement in clause 7.1.

8 Options to determine

8.1 Mutual Option to Determine

In the event that the Contract is assigned and this lease is not assigned at the same time by the Tenant to the assignee of the Contract either party may terminate this lease at any time after the assignment of the Contract by giving seven days' prior written notice (such notice to specify the date of termination ("the Termination Date")) to the other party and on the Termination Date this lease shall terminate but without prejudice to any claim by either party in respect of any antecedent breach of covenant by the other party.

8.2 Landlord's Option to Determine

The Landlord may terminate this lease at anytime on or after the fifth anniversary of the commencement of the Term by giving not less than 6 months' prior written notice (such notice to specify the date of termination ("the Termination Date")) to the Tenant and on the Termination Date this lease shall terminate but without prejudice to any claim by either party in respect of any antecedent breach of covenant by the other party. The notice can be served before the fifth anniversary of this lease but the Termination Date must be on or after the fifth anniversary.

8.3 Mutual Termination on termination of the Contract

8.3.1 Either the Landlord or the Tenant may terminate this Lease at any time on or after the termination of the Contract.

8.3.2 The right of termination may be exercised by one party giving to the other notice to that effect.

² Insert date declaration is made.

8.3.3 On service of the notice, this Lease will terminate, but without affecting any liability of the Tenant arising from a breach of covenant or condition which has occurred before then.

8.4 Landlord's option to determine in respect of a single Property

8.4.1 The Landlord may terminate this lease in respect of any one or more of the Properties at any time on or after the commencement of the Term ("Break of Part") provided that following such termination the Premises are of such size and nature to continue to allow the Tenant to perform its obligations under the Contract.

8.4.2 The Break of Part may be exercised by the Landlord by giving to the Tenant not less than 6 months' written notice to that effect ("the Break Notice"), stating the Property or Properties to which it relates ("the Terminated Properties) and the date of the termination ("the Termination Date").

8.4.3 On the Termination Date, this lease will terminate in respect of the Terminated Properties, but without affecting any liability of the Tenant arising from a breach of covenant or condition which has occurred before then in respect of the Terminated Properties.

8.4.4 The covenants and obligations contained in this lease in respect of those parts of the Premises not being the Terminated Properties shall continue in full force and effect.

9 Landlord's licence to occupy

9.1 Within 5 working days of a written request by the Landlord the Tenant shall grant the Landlord (or its appointed agents or contractors) a licence to occupy such parts of the Premises as the Landlord requires for the purposes of the proper carrying out of its statutory functions (including, but not so as to exclude others, the smooth handover of the Premises to a new contractor) such licence to be on the terms set-out in clause 9.2 and otherwise on such terms as the parties shall reasonably agree:

9.2 The terms of any licence will be:

9.2.1 the licence fee is to be a peppercorn;

- 9.2.2 the licence shall not grant exclusive possession and no relationship of landlord and tenant is to be created;
- 9.2.3 the licence shall permit the Landlord or its agents to keep on the Premises computer, telephone and such other office related equipment reasonably necessary for the Landlord to carry out its intended functions;
- 9.2.4 [the Landlord shall reimburse the Tenant a fair and proper proportion of the Tenant's light, heat, electrical and telecommunication costs such proportion to be based on the area licensed, the period of use and the frequency of use;]
- 9.2.5 the Landlord shall be responsible for any damage it occasions to the Premises during its use and shall reimburse the Tenant for its reasonable costs incurred in making good any damage.
- 9.3 The Tenant shall not be obliged to grant any licence where the proposed use of part of the Premises by the Landlord would practically adversely affect the Tenant's ability to carry out its obligations under the contract.

10 Landlord requiring leaseback

- 10.1 If the Landlord requires exclusive possession of part of the Premises ("the Underlease Premises") and it serves notice of such requirement on the Tenant then the Tenant shall grant to the Landlord an underlease of such part of the Premises as the Landlord requires ("the Underlease") provided that following the grant of the Underlease the Premises are of such size and nature to continue to allow the Tenant to perform its obligations under the Contract.
- 10.2 The exact terms of the Underlease are to be agreed between the parties following service of the notice referred to but shall include the following:
- 10.2.1 (unless the Underlease premises comprises a whole building) the Underlease Premises shall be internal only save where the Tenant provides storage facilities on those external parts of the Premises in accordance with Annex 8 of the Service Information;
- 10.2.2 a peppercorn rent;

- 10.2.3 no assigning, underletting or parting with possession except to another entity carrying on the functions of the Crown or who provides operational and maintenance support on any part of the Landlord's network ("the Sub-Tenant");
- 10.2.4 the Tenant is to remain responsible for the repair of the Underlease Premises save where damage is caused by the Landlord or the Sub-Tenant;
- 10.2.5 the Landlord is to be granted such rights as are necessary to enable it access to and proper use and enjoyment of the Underlease Premises;
- 10.2.6 the Underlease is to contain an agreement to exclude the provisions of sections 24-28 of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Underlease and the Landlord is to ensure that any further underlease that may be granted pursuant to the Underlease (pursuant to clause 10.2.3 above) also contains an agreement to exclude the provisions of sections 24-28 of the Landlord and Tenant Act 1954 in relation to the tenancy created by the underlease and is otherwise on the same terms as the Underlease.
- 10.3 The Landlord shall not be contractually obliged to accept the grant of the Underlease until the date of its completion.

11 Implied rights of enforcement by third parties excluded

- 11.1 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this lease under the Contracts (Rights of Third Parties) Act 1999.
- 11.2 The parties may rescind or vary this lease without the consent of a third party to whom an express right to enforce any of its terms has been provided.

Delivered as a deed on the date of this document.

SCHEDULE 1 TO THE LEASE

Part 1

Description of the Premises

Property No.	Property Name	Address	Title Numbers
1	Hilton Park Depot	Shareshill Nr. Wolverhampton West Midlands WV11 2AT	
2	Perry Barr Depot	Thornbridge Avenue Perry Barr Birmingham West Midlands B42 2AG	
3	Coleshill Depot	Coleshill Heath Road Coleshill Birmingham West Midlands B46 3HL	
4	Lydiate Ash	Sandy Lane	

Property No.	Property Name	Address	Title Numbers
	Depot	Lydiate Ash Bromsgrove West Midlands B61 0QN	
5	Bescot Motorway Compound	Bescot Road Bescot Walsall West Midlands WS1 4NL	
6	Stafford Park Depot	10 Stafford Park Industrial Estate Telford, Shropshire TF3 3BU	
7	Warndon Depot	Pershore Lane Warndon Worcestershire WR4 0AA	
8	Strensham Depot	Hill View Road Upper	

Property No.	Property Name	Address	Title Numbers
		Strensham Worcestershire WR8 9LJ	
9	Bury Court	Junction 2 M50 Bury Court Nr Ledbury Gloucestershire HR8 1RY	
10	Ansty	M6 Maintenance Compound Main Road Ansty Coventry Warwickshire CV7 9JA	
11	Longbridge	M40 Maintenance Compound Barford Road Longbridge	

Property No.	Property Name	Address	Title Numbers
		Warwick Warwickshire, CV34 6RB	
12	Doxey	M6 Maintenance Compound Doxey Road Aston by Doxey Stafford Staffordshire ST18 9LG	
13	Keele	M6 Maintenance Compound Keele Park Service Area Keele Newcastle under Lyme Staffordshire	

Property No.	Property Name	Address	Title Numbers
		ST5 5HG	

Part 2

Rights granted

Assuming a lease of the whole then no rights will be granted

Part 3

Reservations

- 1 The free and uninterrupted passage of water, steam, soil, air, gas, electricity and telephone communications from and to any part of any adjoining or neighbouring property through the conducting media commonly used for those purposes which are now or may in the future but during the period of 80 years after the date of this lease be in, upon or under the Premises.
- 2 All rights of entry upon the Premises referred to in this lease.
- 3 At all times when exercising any right reserved to the Landlord (or any person authorised by the Landlord) to enter upon the Premises the Landlord will:
 - 3.1 cause (and procure that all those exercising the right cause) as little damage and interference as reasonably possible to the Premises and all fittings and equipment within the Premises, the business of the Tenant and all permitted occupiers of the Premises; and

- 3.2 [comply with (and endeavour to procure that all persons entering the Premises comply with) the reasonable security requirements of the Tenant and other permitted occupiers of the Premises.]

Part 4
Encumbrances

Property No.	Date	Document	Parties
1		Depot plans Service Level Agreement Asbestos Inspection report Drainage drawings	
2		Depot plans Asbestos Inspection report Drainage drawings	
3		Depot plans Asbestos Inspection report Drainage drawings	
4		Depot plans Asbestos Inspection report Drainage drawings	

Property No.	Date	Document	Parties
5		Depot plans Asbestos Inspection report Drainage drawings	
6		Depot plans Asbestos Inspection report Drainage drawings	
7		Depot plans Asbestos Inspection report Drainage drawings	
8		Depot plans Service Level Agreement Asbestos Inspection report Drainage drawings	
9		Depot plans Asbestos Inspection report Drainage drawings	

Property No.	Date	Document	Parties
10		Depot plans Service Level Agreement Asbestos Inspection report Drainage drawings	
11		Depot plans Service Level Agreement Asbestos Inspection report	
12		Depot plans Asbestos Inspection report Drainage drawings	
13		Depot plans Asbestos Inspection report Drainage drawings	

SCHEDULE 2
List of Improvements

The corporate seal of **THE**)
SECRETARY OF STATE FOR)
TRANSPORT hereunto affixed is)
authenticated by

Authorised by The Secretary of State

Executed as a deed by [)
])
acting by:)

Director

Secretary

Executed as a deed by [)
])
acting by:)

Director

Secretary

SCHEDULE 3 - ADJUDICATOR’S APPOINTMENT

THIS AGREEMENT is made on the day of

BETWEEN:

(1) **THE SECRETARY OF STATE FOR TRANSPORT** of Great Minster House, 33 Horseferry Road, London SW1P 4DR (“the *Employer*” which term shall include its successors and assignees);

(2)
of
 (“the *Provider*”); and

(3)
of
 (“the *Adjudicator*”).

WHEREAS:

A. The *Employer* has entered into a contract dated (“the *Contract*”) with the *Provider* for the execution of certain works and services, and a copy of the *Contract* has been supplied to the *Adjudicator*.

B. The *Adjudicator* has agreed to act as and when required in accordance with the procedure set out in clauses 90 to 93 of the *Contract* (“the *Procedure*”).

IT IS AGREED that:

1 The *Adjudicator* shall, as and when required, act as adjudicator in accordance with the *Procedure*, except when unable so to act because of facts or circumstances beyond his reasonable control.

2 The *Adjudicator* confirms that he is independent of the *Employer* and the *Provider*, and undertakes to use reasonable endeavours to remain so, and that he shall exercise his task in an impartial manner. He shall promptly inform the *Employer* and the *Provider* of any facts or circumstances which may cause him to cease to be so independent.

- 3 The Adjudicator agrees to adjudicate the dispute in accordance with the Procedure.
- 4 The Adjudicator shall comply, and shall take all reasonable steps to ensure that any persons advising or aiding him shall comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained either by the Adjudicator or any person advising or aiding him is confidential, and shall not be used or disclosed by the Adjudicator or any such person except for the purposes of this Agreement.
- 5 The Employer and the *Provider* agree jointly and severally to pay the Adjudicator's fees and expenses as set out in the attached schedule and in accordance with the Procedure.
- 6 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his function as adjudicator, unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 7 This Agreement shall be interpreted in accordance with the law of England and Wales.

Schedule

- 1 The Adjudicator shall be paid £ per hour in respect of all time spent on the adjudication.
- 2 The Adjudicator shall be reimbursed the cost of legal or technical advice obtained in accordance with the Procedure and other extraordinary expenses necessarily incurred.
- 3 The Adjudicator [is/is not] currently registered for VAT. Where the Adjudicator is registered for VAT, it shall be charged additionally in accordance with the rates current at the date of the work done.

Signed on behalf of the *Employer*

.....

Signed on behalf of the *Provider*

.....

Signed on behalf of the Adjudicator

SCHEDULE 4 - TRUST DEED

This agreement is made between the *Employer*, the *Provider* and the Named Suppliers.

Terms in this deed have the meanings given to them in the contract between the Secretary of State for Transport (the *Employer*) and(the *Provider*) for (the Services).

Background

The *Employer* and the *Provider* have entered into a contract for the Services.

The Named Suppliers have entered into contracts with the *Provider* or a Subcontractor in connection with the Services. The *Provider* has established a Project Bank Account to make provision, until further notice, for payment to the *Provider* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Provider* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account for distribution to the Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Employer* and *Provider*. The agreement of the *Employer* and *Provider* is treated as agreement by the Named Suppliers,
- this deed is subject to the law of the contract for the Services,
- the benefits under this deed may not be assigned.

Executed as a deed on by

The Corporate Seal of the **Secretary of State for Transport** is affixed and is authenticated by:

.....

Authorised by the Secretary of State for Transport

(Provider)

[print name of Director]

..... signature

[print name of Company Secretary]

..... signature

(Named Suppliers)

[print name of Director]

.....signature

[print name of Company Secretary]

.....signature

SCHEDULE 5 - JOINING DEED

This agreement is made between the *Employer*, the *Provider* and(the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between the Secretary of State for Transport (the *Employer*) and(the *Provider*) for (the Services).

Background

The *Employer* and the *Provider* have entered into a contract for the Services.

The Named Suppliers have entered into contracts with the *Provider* or a Subcontractor in connection with the Services.

The *Provider* has established a Project Bank Account to make provision, until further notice, for payment to the *Provider* and the Named Suppliers.

The *Employer*, the *Provider* and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the Services,
- the benefits under this deed may not be assigned.

Executed as a deed onby

The Corporate Seal of the **Secretary of State for Transport** is affixed and is authenticated by:

.....

Authorised by the Secretary of State for Transport

(Provider)

[print name of Director]

.....signature

[print name of Company Secretary]

.....signature

(Additional Supplier)

[print name of Director]

..... signature

[print name of Company Secretary]

..... signature

SCHEDULE 6

FORM OF PARENT COMPANY GUARANTEE

Dated 2013

- (1) [GUARANTOR]
- (2) THE SECRETARY OF STATE FOR TRANSPORT

Parent company guarantee

relating to the Asset Support Contract for Area []

THE PARTICULARS

Date of this Deed	:	
The Guarantor	:	[NAME] [(registered number [number])][whose registered office is at] [of] [Address]
The <i>Employer</i>	:	The Secretary of State for Transport of Great Minster House, 33 Horseferry Road, London SW1P 4DR
[The Subsidiary]	:	[NAME] [(registered number [number])][whose registered office is at] [of] [Address]] ¹
The Contract	:	the asset support contract dated [DATED] made between the <i>Employer</i> and the <i>Provider</i>
The <i>Provider</i>	:	[] / [The joint venture comprising the Subsidiary and [] and []]

THIS DEED is made on the date set out in the Particulars

BETWEEN

- (1) the Guarantor; and
- (2) the *Employer*.

BACKGROUND

- (A) The *Employer* has entered into the Contract with the *Provider*.

¹ Definition of the Subsidiary and alternative wording in blue font to be deleted if *Provider* is **not** an unincorporated joint venture. If *Provider* **is** an unincorporated JV, wording in blue font to be retained and alternative wording in red font to be deleted.

- (B) The *Employer* has requested and the Guarantor has agreed to provide a guarantee of the [Subsidiary's obligations (as Provider) / Provider's obligations] under the Contract.

IT IS NOW AGREED

1. DEFINITIONS

The words and expressions defined in the Particulars shall have the same meaning throughout this Deed and references to the Particulars and clauses are to the Particulars and clauses of this Deed.

2. GUARANTEE

In consideration of the *Employer* entering into the Contract, the Guarantor irrevocably and unconditionally guarantees to the *Employer* as primary obligor the full and due performance of all the obligations of the [Subsidiary / Provider] under or in connection with the Contract, provided that the Guarantor shall have no greater liability by virtue of this Deed than it would have had if the Guarantor had been a party to the Contract in place of the [Subsidiary / Provider].

3. REIMBURSEMENT

The Guarantor by this Deed indemnifies the *Employer* against all losses, damages, costs and expenses (including legal costs and expenses incurred in enforcing the provisions of the Contract or this Deed), or otherwise which may be incurred by the *Employer* by reason of any breach on the part of the [Subsidiary / Provider] (including without limitation in this Deed the occurrence of any of the events of insolvency listed in the Contract) in fully and duly performing and observing the terms and conditions on its part contained in the Contract.

4. NO DISCHARGE OF LIABILITY

- 4.1 The liability of the Guarantor shall not be discharged or affected in any way by:

4.1.1 any fact, event or rule of law which, but for this **clause 4** might operate to release in whole or in part the Guarantor from its obligations under this Deed including (without limitation) any novation, assignment, termination of the Contract (whether automatic or otherwise and whether by reason of the [Subsidiary's / Provider's] insolvency or otherwise), or any amendment or extension of time or variation of or under the Contract or any forbearance or forgiveness by the *Employer* of the *Provider*;

4.1.2 any total or partial invalidity, illegality or unenforceability of the Contract; or

4.1.3 a legal limitation, disability or incapacity of the [[Subsidiary](#) / [Provider](#)].

5. CONTINUING GUARANTEE

This Deed creates a continuing guarantee and will remain in force until all the liabilities of the *Provider* under the Contract have been fully satisfied.

6. GUARANTOR'S WAIVER

The Guarantor waives any right it may have of first requiring the *Employer* to proceed against or enforce any claims against any of the parties to the Contract or any other person.

7. GUARANTOR'S DEFENCES

7.1 The Guarantor shall be entitled in any proceedings brought by the *Employer* under this Deed to take advantage of any defences set-offs, counterclaims, estoppels and the like which would be available to the [[Subsidiary](#) / [Provider](#)] in any proceedings brought by the *Employer* under the Contract.

7.2 The *Employer* agrees that any set-off and/or counterclaim in respect of monies due or allegedly due from the *Provider* to the *Employer* under the Contract which is taken into account in determining the liability of the Guarantor under this Deed and/or the calculation of any payment made by the Guarantor to the *Employer* pursuant to this Deed is accepted by the *Employer* to be a payment made by the [[Subsidiary](#) / [Provider](#)] in full and final discharge of any liability on the part of the *Provider* under the Contract to pay such sum. The *Employer* agrees that it shall not commence any action against the [[Subsidiary](#) / [Provider](#)] under the Contract to pursue that same sum or any sum which represents the same set-off and/or counterclaim.

8. ASSIGNMENT

8.1 The *Employer* may assign the benefit of and its benefits and rights under this Deed. The *Employer* shall give the Guarantor written notice following any assignment.

8.2 The Guarantor shall not contend that any assignee (in this **clause 8.2** the "New Employer") is precluded from recovering any loss resulting from any breach of this Deed by reason:

8.2.1 of the assignment; or

8.2.2 the *Employer* (in this **clause 8.2** excluding the New Employer) suffered no loss or a different loss to the New Employer.

9. GOVERNING LAW AND JURISDICTION

9.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.

9.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Deed (including (without limitation) in relation to any non-contractual obligations). The parties irrevocably submit to the jurisdiction of those courts.

10. THIRD PARTY RIGHTS

10.1 The Parties do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

[THE COMMON SEAL OF)
[GUARANTOR])
was affixed to this deed)
in the presence of:)

Director

Director/Secretary

OR

EXECUTED as a deed by

[GUARANTOR]

acting by one director in the presence of:)

Director

Witness signature:

Name:

Address:

Occupation:

OR

Executed as a deed by the)

[GUARANTOR] in the presence of:)

Director

Director/Company Secretary]

The corporate seal of **THE SECRETARY**)

OF STATE FOR TRANSPORT is affixed)

and is authenticated by:)

Authorised by the Secretary of State