



Highways Maintenance Efficiency Programme

# The Form of Contract for Highway Maintenance Services

## HMEP Agreement & Contract Data

October 2016 – Version 3



Although this report was commissioned by the Department for Transport, the findings and recommendations are those of the authors and do not necessarily represent the views of the Department for Transport. The information or guidance in this document (including third-party information, products and services), is provided by Department for Transport on an 'as is' basis, without any representation or endorsement made and without warranty of any kind whether express or implied.<sup>1</sup>

Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
Telephone 0300 330 3000

Email: [highwayefficiency@dft.gsi.gov.uk](mailto:highwayefficiency@dft.gsi.gov.uk)

Website: [www.dft.gov.uk/hmep/index.php](http://www.dft.gov.uk/hmep/index.php)

© Crown copyright 2016

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team at: The National Archives, Kew, London, TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

---

<sup>1</sup> When creating a contract document, the pages before the form of agreement should be removed.

# REVISION SCHEDULE

## THE FORM OF CONTRACT FOR HIGHWAY MAINTENANCE SERVICES

### HMEP AGREEMENT & CONTRACT DATA

Rev	Date	Details	Prepared by	Reviewed by	Approved by
2	June 2015	Review and update following release of NEC3 TSC 2013 and Sector Feedback.	Peter Higgins for Thomas Telford Ltd	ADEPT/HTMA Reference Group	Matthew Lugg OBE HMEP
3	October 2016	Foreword updated; Affected Property Definition revised; Service Period amended ZM1.4 and ZM5 amended	J Cuthbert AECOM	K Notman AECOM	Matthew Lugg OBE HMEP

This Programme is supported by the following organisations:



# CONTENTS

REVISION SCHEDULE	ii
FOREWORD	1
AGREEMENT	7
CONTRACT DATA	10
PART ONE – DATA PROVIDED BY THE <i>EMPLOYER</i>	10
SCHEDULE 1 – PART 1 TUPE AND PENSIONS PROVISIONS	40
SCHEDULE 1 – PART 2 BULK TRANSFER TERMS	61
SCHEDULE 1 – ANNEX 1 – DRAFT ADMISSION AGREEMENT	66
SCHEDULE 1 – ANNEX 2 – DRAFT GUARANTEE BOND	67
SCHEDULE 1 – ANNEX 3 – TUPE INFORMATION	68
SCHEDULE 2 – ANNEX 1 – PRICE ADJUSTMENT FOR INFLATION	69
SCHEDULE 2 – ANNEX 2 – PRICE ADJUSTMENT FOR INFLATION	70
SCHEDULE 3 – PARTNERING INFORMATION	72
CONTRACT DATA	73
PART TWO – DATA PROVIDED BY THE <i>CONTRACTOR</i>	73
SCHEDULE OF COST COMPONENTS	80
SHORTER SCHEDULE OF COST COMPONENTS	84
ACKNOWLEDGEMENTS	87

# FOREWORD

## ABOUT THE HIGHWAYS MAINTENANCE EFFICIENCY PROGRAMME

The Highways Maintenance Efficiency Programme (HMEP) is a sector-led transformation initiative that will maximise returns from investment and deliver efficiencies in highway maintenance services. The Programme started in April 2011 with sponsorship from the Department for Transport and is intended to run until 2020.

The Programme is offering local highway practitioners benefits from different ways of working. The vision is that those involved in highways maintenance delivery (the local authorities as clients and their service providers, be they from the private or public sector) will over time adopt an ambitious and longer-term approach to enable them to:

- continuously find new and improved ways of delivering services to highway users and managing highways assets
- make use of collaborative partnerships to improve processes and outcomes
- deliver a sustainable balance between meeting the needs of highways users, improving quality and minimising costs.

The guidance and efficiency toolkits developed by the Programme have been overseen by the HMEP Programme Board comprising key personnel who support the Programme's aims and ambitions. This ensures that:

- the Programme is truly being driven by what the whole sector needs and wants ('by the sector for the sector')
- the solutions identified by the sector are relevant, realistic, repeatable, scalable and sustainable
- HMEP is benefits-led, driving true transformation of the sector with tangible efficiency gains and a lasting legacy.

As a transformation initiative, HMEP is targeting the ways that Local Highway Authorities conduct their business. It invites the sector to adopt new ways of working to deliver efficiency savings through:

- **Collaboration & Change** – looking at how alliances between authority clients and their providers can be formed to deliver efficiencies in the delivery of highway maintenance services. Other projects are looking at changing business processes and culture, for instance by applying LEAN thinking to the processes behind service delivery and how services can be streamlined to realise efficiencies
- **Procurement, Contracting and Standardisation** – advising on the routes to procurement enabling authorities to determine how their current service is aligned to current thinking and which is the best procurement option to realise their future service ambitions. It also provides the tools so that efficiencies can arise through the use of, for instance, a standardised form of contract, the most commonly used Schedule of Prices, a Method of Measurement targeted at highway term maintenance activities and a highway maintenance specification which is better aligned to the activities that Local Highway Authorities undertake

- **Asset Management** – to advocate moving away from a reactive to a longer-term approach for maintaining highways assets by providing advice to the sector in the form of updated asset management guidance supported by a life-cycle planning tool for both a simplistic and, where appropriate, more complex determination of whole-life asset costs. HMEP is also providing training specifically targeted at asset management practitioners to help them move towards an asset management approach and to adopt the new HMEP guidance and tools
- **Benchmarking & Performance** – collecting, sharing and comparing performance data on customer service/quality/cost to show how effective Local Highway Authorities are both in delivering value-for-money services and in driving targeted efficiencies.

Products and tools have been developed for each of these themes and are being designed to be interdependent, but complementary, so that authorities can maximise their returns on their investments.

## ABOUT THIS SUITE OF CONTRACT DOCUMENTS

The following suite of documents has been prepared to assist local highway authorities in preparing contract documents for a highway maintenance term service contract,

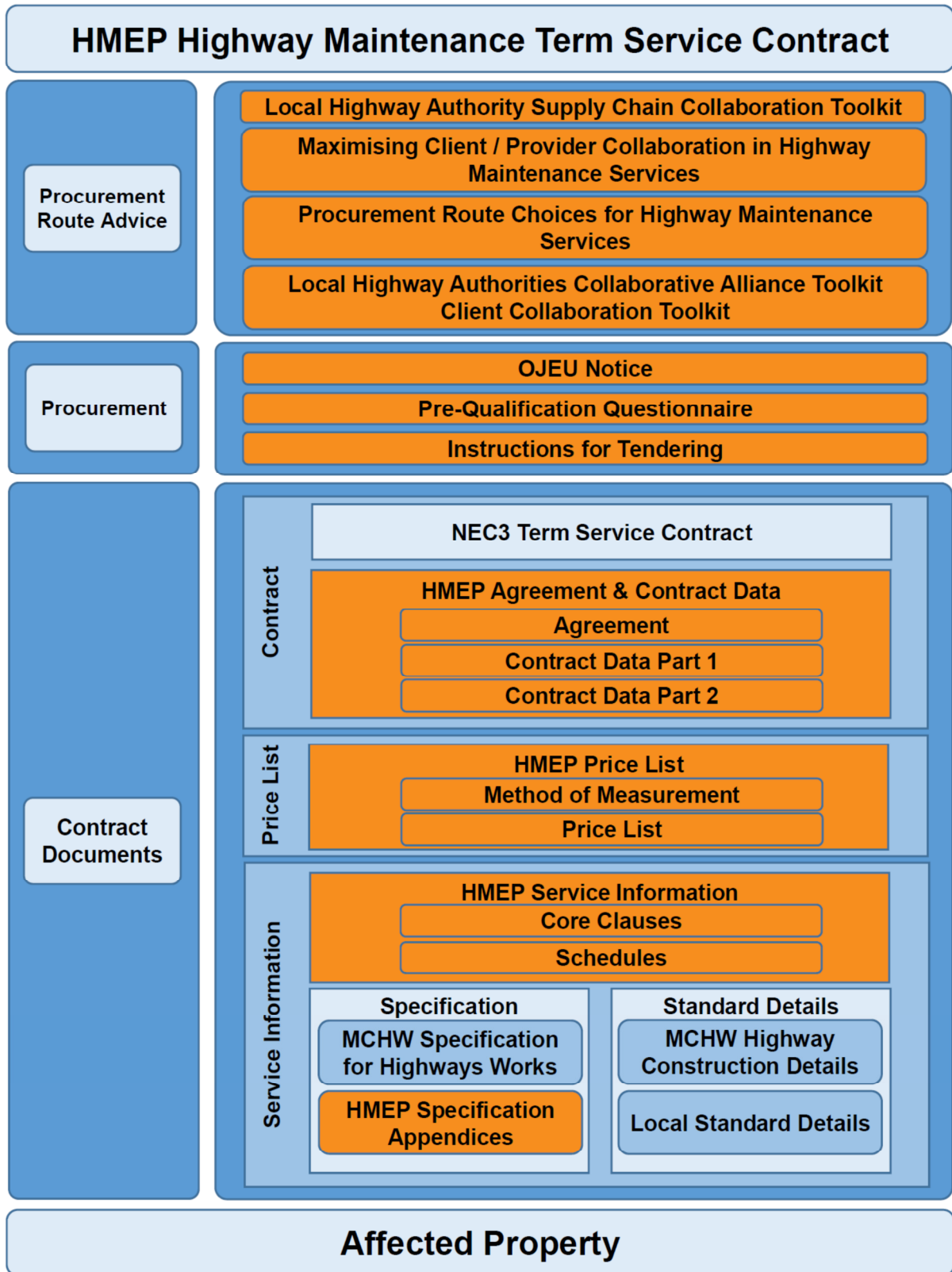


Figure 1 – Diagram of HMEP Highway Maintenance Term Service Contract



The orange boxes in Figure 1 above indicates a HMEP produced guidance documents or model contract document. These HMEP documents are located at <http://www.highwaysefficiency.org.uk/>

This suite of documents has been prepared as part of the HMEP Procurement, Contracting and Standardisation theme. Entering into a contract is a time consuming process to both parties and there have been many developments in how this should be undertaken in recent years. This HMEP suite of documents compiles the current thinking around procurement and offers tools which will help with procurement of a highway maintenance term service contract.

It aims to remove the burden of preparing a bespoke contract and provides model documents based on current good practice within the sector. The documents have been prepared with the benefit of input from a number of Local Highway Authorities, ADEPT, HTMA and Term Maintenance Contractors and well as legal and contract experts.

The suite of contract documents takes practitioners through the procurement stages from advertising the intention to procure to the contract documentation needed to formalise the contractual relationships.

These documents give local highway authority officers the guidance they need to make the right choices while maintaining flexibility to ensure the resulting contract can meet their varying needs.

Standardisation is one of the key facets of the Programme that contributes to delivering efficiencies. Local highway authorities need to be aware that any variation to these standard forms, particularly the form of contract, has to be considered carefully and may introduce the need to consult, check and seek appropriate contract and or legal advice.

The benefit to an authority of not making changes is that there is greater understanding through the use of these common forms so that contractors will become more familiar and confident in using them. In time more competitive prices may result from reduced tendering costs, reduced mobilisation costs, reduced contractual risk and commonality of service provision requirements.

Any change detracts from the benefit of using the common forms and needs to be measured against any benefit of using a bespoke form. Every change introduced increases uncertainty which the contractor has to consider on an individual basis. This leads to an increase in tendering costs and increases the likelihood of contractors deciding not to submit a tender. Anything that generates inefficiencies and higher costs for activities would be considered contrary to the HMEP guiding principles.

## HOW TO USE THE HMEP AGREEMENT AND CONTRACT DATA

The HMEP Agreement and Contract Data offer amendments and additions to the NEC 3 Term Service Contract (TSC) (dated April 2013) and comprise the Agreement and Contract Data Parts 1 and 2.

It is recommended that the compiler makes full use of the following NEC3 documents, which provide further advice and guidance in preparing an NEC3 Term Service Contract:

- NEC3 term service contract – Guidance notes
- NEC3 term service contract – Flow charts
- NEC3 – how to use the TSC communication forms
- NEC3 – how to write the TSC Service Information

The HMEP Agreement and Contract Data have been drafted on the basis of a single *Employer*, *Contractor* and *Service Manager*. In situations where there are multiple authorities, consideration will need to be given as to whether one authority acts as the lead Employer for the contract or there are multiple contracts. The definition of the Affected Property will also need to be amended.

The Form of Agreement and Contract Data may be used with all three of the Main Option Clauses available with the NEC 3 Term Service Contract:

- Option A – Priced contract with price list
- Option C – Target contract with price list
- Option E – Cost reimbursable contract

The Contract Data has been written to permit different main options for different components of the *service* provided under the contract. It is though envisaged that for a Highway Maintenance Term Service Contracts either Option A or C will be used in the majority of situations.

A range of Secondary Options have been recommended for use in the contract. The HMEP Service Information and HMEP Specification Appendices have been written on the assumption that Secondary Option X19 Task Order is used and all works are to be instructed as a Task Order; therefore, if X19 is not used then these documents will need to be redrafted accordingly.

A number of Z Clauses have been developed to suit a Highway Maintenance Term Service Contract. The recommended Z clauses are dependent on the Main Option used; therefore the Z clauses will be prefixed by and have been named as follows:

- “ZM” are Z Clauses suitable for use with all Main Options
- “ZAC” are Z Clauses that only applied to service components provided under Main Option A & C
- “ZA” are Z Clauses that only applied to service components provided under Main Option A
- “ZC” are Z Clauses that only applied to service components provided under Main Option C
- “ZE” are Z Clauses that only applied to service components provided under Main Option E

The HMEP Agreement and Contract Data is available for use in the HMEP Compiler<sup>2</sup>. This software package guides the compiler through the preparation of the HMEP Agreement and Contract Data and then prepares a fully formatted and referenced document. The use of this software ensures the resultant HMEP Agreement and Contract Data complies with the guidance notes and is free from formatting and referencing errors. The automated formatting and referencing provides significant time savings over manual editing using traditional word processing software. The HMEP Compiler can be accessed via;

<http://www.highwaysefficiency.org.uk/>

## COMMENTS AND FEEDBACK

The document is provided in the hope that users contribute to its future development. The HMEP Programme Board welcomes any comments and feedback on this suite of documents so that it may be reviewed, improved and refined to give the sector the best advice possible. In particular, it will be highly beneficial if users can provide examples of documents developed from the HMEP models, which could be made available to other users for reference.

If you wish to make a comment, please send an email to [highwayefficiency@dft.gsi.gov.uk](mailto:highwayefficiency@dft.gsi.gov.uk) with the header 'Feedback on the HMEP Suite of Contract Documents'.<sup>2</sup>

---

<sup>2</sup> To be released late 2016.

# AGREEMENT

Dated [.....] [20...]

(1) [EMPLOYER]

AND

(2) [CONTRACTOR]

## AGREEMENT

Relating to

[Highways Improvement and Maintenance Term Service Contract]

for

[.....]

**THIS AGREEMENT** is made on the ..... day of ..... [20...]

**BETWEEN:**

- (1) [EMPLOYER] of [.....] (the **Employer**) and  
 (2) [CONTRACTOR] (Company Number:.....) whose registered office is at [.....] (the **Contractor**)

The *Employer* has agreed to enter into this contract for the provision of: [Highways improvement and maintenance services]<sup>3</sup> to the Affected Property as more particularly set out in the *conditions of contract*.

1. The *Contractor* Provides the Service in accordance with the *conditions of contract*.
2. The *Employer* will pay the *Contractor* the amount due and carry out his duties in accordance with the *conditions of contract*.
3. The documents forming part of this contract are:
  - the *conditions of contract*
  - the Service Information
  - the Price List
  - the Contract Data part one
  - the Contract Data part two
  - the documents identified in the Contract Data
4. The *conditions of contract* and other documents which are incorporated into and form part of this contract contain all the terms which the *Employer* and the *Contractor* have agreed in relation to the subject matter of this contract, and supersede any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

<sup>3</sup> *Employer* amends description of *service* as required.

**IN WITNESS** whereof this Agreement has been duly executed and delivered as a deed on the date and year stated above.

**THE COMMON SEAL of THE *EMPLOYER***

hereunto affixed is authenticated by:

Authorised signatory:

Print name:

**EXECUTED AS A DEED** by **THE *CONTRACTOR***  
by the signatures of:

Director:

Director/Company Secretary:

# CONTRACT DATA

## PART ONE – DATA PROVIDED BY THE EMPLOYER

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

### Statements given in all contracts

- 1 General**
- The *conditions of contract* are the core clauses and the clauses for main Options **A/C/E**<sup>4</sup> set out in the following table<sup>5</sup> dispute resolution Option **W2** and secondary Options<sup>6</sup> **X2, [X4 or X13], X12, X17, X18, X19, Y(UK)2, Y(UK)3** and **Z** of the NEC3 Term Service Contract April 2013.

#### Include this table if more than one main Option is used

- The main Options<sup>7</sup> to be applied to the different parts of the *service* are as follows:

<i>service</i> component	main Option
[1]	[.....]
[2]	[.....]
[3]	[.....]
[4]	[.....]
[5]	[.....]

- The *service*<sup>8</sup> is [.....]

<sup>4</sup> A/C/E are deleted from statement where not used.

<sup>5</sup> If more than one main Option applies to the provision of the *service* then the Options applying to each part of the *service* are set out in the table.

<sup>6</sup> The compiler should amend this list if any of the recommended secondary options are not used.

<sup>7</sup> *Employer* sets out his requirements if different main Options apply to different parts of the *service* for example: *Service* component [1] mobilisation / de-mobilisation and main Option [C]. The *Employer* deletes the table if only one main Option applies.

<sup>8</sup> *Employer* inserts a brief description of the *service* to be provided

- The *Employer* is:

Name: .....

Address: .....

Email: .....

- The *Service Manager* is:

Name: .....

Address: .....

Email: .....

- The *Adjudicator* is chosen jointly by the Parties when a dispute arises.
- The Affected Property is the Area Network and any Adjoining or Related Property as defined in the Service Information.
- The Service Information is in<sup>9</sup>:

.....  
.....  
.....

- The *language of this contract* is English.
- The *law of this contract* is the law of England subject to the jurisdiction of the Courts of England.

<sup>9</sup> \_\_\_\_\_  
*Employer* inserts a reference to the document.



- The *period for reply*<sup>10</sup> is:

The priority code described in the Service Information

*period for reply*

.....	.....
.....	.....
.....	.....
.....	.....

- The *Adjudicator nominating body* is the Institution of Civil Engineers.
- The *Adjudicator nominating body* chooses an adjudicator if the Parties cannot agree on a choice.
- The *tribunal* is litigation.
- The following matters<sup>11</sup> will be included in the Risk Register:

.....

.....

.....

**3 Time**

- The *starting date*<sup>12</sup> is [.....]
- The Initial Service Period is [.....] years.

**5 Payment**

- The *assessment interval* is one month.
- The *currency of this contract* is pound sterling (£).
- The *interest rate* is [.....] % per annum (not less than 4) above the official bank base rate of the Bank of England.

<sup>10</sup> The priority code and *period for reply* is completed by the *Employer* for example, priority code “0” may require a reply from the *Service Manager* “within 2 hours (out of hours)” and priority code “3” may require a reply “within 5 Working Days”.

<sup>11</sup> *Employer* lists matters to be included on the Risk Register—the *Contractor* lists other risks to be added to the Risk Register in Contract Data part two.

<sup>12</sup> *Employer* inserts the date from which the *service* will be provided.

**8 Insurance**

- The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer's* property is [£.....]<sup>13</sup>.
- The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer's* property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor's* Providing the Service for any one event is [£.....]<sup>14</sup>.
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is [£.....]<sup>15</sup>.

**Optional statements**

**If<sup>16</sup> no plan is identified in part two of the Contract Data**

- The *Contractor* submits a first plan for acceptance within [2] weeks of the Contract Date.

**Y(UK)2 If the final date for payment is not 14 days after the date when payment is due**

- The period for payment is [10]<sup>17</sup> days after the date on which payment becomes due.

**If there are additional *Employer's* risks**

These are the additional *Employer's* risks:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

<sup>13</sup> *Employer* inserts minimum level of cover.

<sup>14</sup> *Employer* inserts minimum level of cover.

<sup>15</sup> *Employer* inserts minimum level of cover.

<sup>16</sup> *Employer* deletes this statement if the *Contractor* is required to identify his plan in Contract Data Part two.

<sup>17</sup> *Employer* amends as required.

**If the *Employer* is to provide Plant and Materials**

- The insurance against loss of or damage to Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of [£.....]<sup>18</sup>.

**If additional insurances are to be provided**

- The *Employer* provides these additional insurances<sup>19</sup>:

1. Insurance against [.....]

Cover / indemnity is [.....]

The deductibles are [.....]

2. Insurance against [.....]

Cover / indemnity is [.....]

The deductibles are [.....]

- The *Contractor* provides these additional insurances<sup>20</sup>:

1. Insurance against loss of or damage to equipment provided by the *Employer* for use by the *Contractor* to Provide the Service

Cover / indemnity is [£.....] for any one event

The deductibles are [£.....]

2. Professional indemnity insurance in respect of the liability of the *Contractor* for negligence in Providing the Service

Cover / indemnity is [£.....] for any one claim or series of claims arising out of the same cause, provided that such insurance continues to be available at commercially reasonable rates

The deductibles are [£.....]

<sup>18</sup> *Employer* adds details of other additional insurance including cover for Plant and Materials provided by the *Employer* and the amount of minimum cover required.

<sup>19</sup> *Employer* adds details of other additional insurance to be provided and the minimum cover required.

<sup>20</sup> *Employer* adds details of other additional insurance to be provided and the minimum cover required.

**If Option A is used**

- The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than [one month].

**If Option C is used**

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

<i>Share range</i>	<i>Contractor's share percentage</i>
Less than [.....] %	[.....]%
From [.....] % to [.....] %	[.....]%
From [.....] % to [.....] %	[.....]%
Greater than [.....] %	[.....]%

**If Option C or E is used or if multiple options are used**

- The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than [one month].

**Option X12**

- The *Client* is

Name .....

Address.....

- The *Client's* objective is

.....  
 .....

- The Partnering Information is in Schedule 3

**Option X13 (not used with Option X4)**

- The amount of the performance bond is [£.....]

**Option X17**

- The *service level table* is...

- Option X18**
- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to [£.....].
  - For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to [£.....].
  - The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to [£.....].
  - The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters is limited to [£.....].
  - The *end of liability date*<sup>21</sup> is [...] years after the end of the Service Period.

- Option X19**
- The *Contractor* submits a Task Order Programme to the *Service Manager* within [.....] days of receiving the Task Order.

<b>Option Y(UK)3</b>	term	person or organisation
	.....	.....
	.....	.....
	.....	.....
	.....	.....

- Option ZM21**
- Option [1] / [2]<sup>22</sup> is used to calculate the Price Adjustment Factor for each Work Category.
  - The Price Adjustment Factors, the Price Adjustment Amounts and (where Option 2 applies) the Latest Work Category Index for each Work Category are calculated on a monthly basis at, or immediately before, the assessment date.

The *additional conditions of contract* are set out in Annex Z.

<sup>21</sup> *Employer* inserts the term of years.

<sup>22</sup> *Employer* deletes as appropriate.

ANNEX Z<sup>23</sup>

**Clauses that apply to all main Options.**

**Option ZM1: Identified and defined terms**

ZM1.1 Delete clause 11.2 (4) and add the following:

11.2 (4) A Defect is

- a part of the *service* which is not provided in accordance with the Service Information,
- a part of the *service* which is not in accordance with the applicable law or the Accepted Plan or
- a part of the *service* designed by the *Contractor* which is not in accordance with the *Contractor's* design which the *Service Manager* has accepted.

ZM1.2 Delete clause 11.2 (5).

ZM1.3 Delete clause 11.2 (6).

ZM1.4 Add the following new defined terms

- (1) Documents are information of any nature produced or provided in the course of Providing the Service.
- (2) EIR is the Environmental Information Regulations 2004.
- (3) Financial Year is the period commencing on 1 April in each calendar year and ending on 31 March in the following calendar year.
- (4) FOI is the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or the Lord Chancellor's Department or other relevant Government department in relation to this act.
- (5) Service Improvement Plan is as set out in the Partnering Information.
- (7) Service Period is the *service period* unless later changed in accordance with this contract.

---

<sup>23</sup> Any options not required should be removed and replaced by the words "not used". Any further Z clauses to be numbered "ZZ1, ZZ2 etc."

**ZM2: Fair payment**

- ZM2.1 “Fair Payment Charter” is the model form of fair payment charter originally published by the Office of Government Commerce (now adopted by the Cabinet Office) and based upon the “Guide to Best Fair Payment Practices.”
- ZM2.2 The *Contractor* applies the Fair Payment Charter to his Subcontractors and suppliers, specialists and other professional advisers (of all tiers) involved in Providing the Service.

**ZM3: Conflict of interest**

- ZM3.1 The Contractor notifies the Service Manager as soon as he becomes aware of any circumstances giving rise to, or potentially giving rise to, conflicts of interest relating to the Contractor or the Employer (including, without limitation, conflicts affecting the Employer’s reputation and standing) which the Contractor anticipates may justify the Employer taking action to protect his interests.

**ZM4: The *Contractor’s* design**

- ZM4.1 The Contractor designs the parts of the service which the Service Information states he is to design.
- ZM4.2 The Contractor submits the particulars of his design as the Service Information requires to the Service Manager for acceptance. A reason for not accepting the Contractor’s design is that it does not comply with the Service Information or the applicable law.
- ZM4.3 The Contractor does not proceed with the relevant work until the Service Manager has accepted his design.
- ZM4.4 The Contractor may submit his design for acceptance in parts if the design of each part can be assessed fully.

**ZM5: Starting and the Service Period**

- ZM5.1 In this contract, replace *service period* with Service Period.
- ZM5.2 (1) Extended Service Period is an extension to the Initial Service Period agreed by the Parties subject to any reduction in accordance with ZM5.4 notified by the *Service Manager*.

The Service Period is the Initial Service Period together with any Extended Service Period.

ZM 5.3 The *Contractor* and the *Service Manager* may each propose to the other that the Service Period is extended at any time before the end of the Service Period. A proposal includes

- analysis of the *Contractor's* performance against the contract performance measurements stated in the Service Information,
- the *Employer's* future requirements in relation to the *service* and
- any proposed changes to this contract.

If an extension to the Service Period is agreed, the change to this contract is confirmed in writing and signed by the Parties.

ZM 5.4 If the performance of the *Contractor* falls below the performance levels stated in the Service Information<sup>24</sup>, the *Service Manager* may notify the *Contractor* that an Extended Service Period is reduced. A reduction may not be made if it would reduce the remainder of the Service Period to less than 12 months<sup>25</sup>.

## ZM6: Accepting Defects

ZM6.1 Delete clause 43.1 and add the following.

43.1 The *Contractor* and the *Service Manager* may each propose to the other that the Service Information is changed so that a Defect does not have to be corrected.

43.2 If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices and or an earlier Task Completion Date to the *Service Manager* for acceptance. If the *Service Manager* accepts the quotation, he gives an instruction to change the Service Information, the Prices and the Task Completion Date accordingly.

---

<sup>24</sup> Need to refer here to the specific measurement table used for this purpose.

<sup>25</sup> Decide appropriate period



**ZM7: Assessing the amount due**

ZM7.1 Delete clause 50.4 and replace with the following.

50.4 The *Contractor* submits an application for payment to the *Service Manager* on or before each assessment date providing details of how he assesses the amount due.

In assessing the amount due, the *Service Manager* considers the *Contractor's* application for payment. The *Service Manager* gives the *Contractor* details of how the amount due has been assessed.

If the *Contractor* submits his application for payment later than the assessment date, the date of submission is treated as the assessment date in determining the date of the *Service Manager's* certification and the date of payment, but the assessment date is not otherwise changed.

**ZM8: Reasons for termination**

ZM8.1 Delete clause 91.5 and add the following.

91.5 Either Party may terminate if the Parties (R17)

- have been released under the law from further performance of the whole of this contract or
- are unable either to remove a conflict of interest or to reduce its damaging effect to a mutually acceptable level.

**ZM9: Intellectual Property Rights**

ZM9.1 Intellectual Property Rights are all patents, trademarks, service marks, copyright, moral rights, rights in design, rights in databases, know-how and all or any other intellectual or industrial property rights whether or not registered or capable of registration in the United Kingdom or any other part of the world, together with all or any related good will.

ZM9.2 All Intellectual Property Rights in any existing Information and Communication Technology (ICT) or other systems operated by the *Employer* and Documents prepared by the *Employer* remain vested in the *Employer* and the *Contractor* provides all reasonable assistance to the *Employer* in the protection of the vesting of such Intellectual Property Rights in the *Employer*.

- ZM9.3 In relation to any ICT or other systems used and/or developed by the *Contractor* for the purposes of this contract, all Intellectual Property Rights in such systems that are developed during the Service Period for the benefit of the *Employer* vest in the *Employer* save to the extent referred to in clauses ZM9.5 and ZM9.6.
- ZM9.4 In relation to any Documents prepared by or on behalf of the *Contractor* for the purposes of Providing the Service or in connection with this contract, the *Contractor* grants or procures for the benefit of the *Employer* an irrevocable royalty free licence to use and reproduce the Documents for the same or similar purposes to those originally intended, whether during or after the *Service Period*. The licence includes the right, at no charge to the *Employer*, to grant sub-licences and is transferable to third parties.
- ZM9.5 To the extent that any of the Documents referred to in clause ZM9.4 is generated by, or maintained on, a computer or other equipment or otherwise in any machine readable format, the *Contractor* procures for the benefit of the *Employer*, the grant of a licence or sub-licence for, and supply of, any relevant software or database to enable the *Employer* or any person authorised by it to access and otherwise use such data for the same or similar purposes to those originally intended, whether during or after the *Service Period*.
- ZM9.6 To the extent that any ICT or other systems used by the *Contractor* for the purposes of this contract were developed by the *Contractor* before entering into this contract, the Intellectual Property Rights in such ICT or other systems remain vested in the *Contractor* provided that the *Contractor* procures for the *Employer* the grant of the rights referred to in clause ZM9.5 if and to the extent that the relevant ICT or other systems are necessary to the successful continued operation of the *service* provided, or previously provided, under this contract.

## ZM10: Confidentiality

### ZM10.1 **Keep Confidential**

Confidential Information is information, the disclosure or use of which would constitute an actionable breach of confidence, which has either been notified as confidential by either Party in writing or that ought reasonably to be considered as confidential, including *commercially sensitive information* which relates to the business affairs, trade secrets, intellectual property rights or know-how of either Party and/or personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

ZM10.2 The Parties do not disclose or use Confidential Information except;

- as required and necessary in connection with the *service*,
- where already in the public domain or in the possession of the other Party, other than as a result of a Party breaching this contract,
- for the purpose of dispute resolution in connection with this contract,
- in accordance with the *law of the contract* or
- as necessary for the *Service Manager* to validate the *Contractor's* accounts and records of Defined Cost.

ZM10.3 **Obligation preserved**

If disclosure or use of Confidential Information is permitted, the disclosing Party places the receiver under the same obligation of confidentiality required by this contract.

## ZM11: TUPE

ZM11.1 To the extent that TUPE applies to the transfer of any staff at the *starting date* or at any time during the *Service Period* from the *Employer* and/or any existing *Contractor* or their respective *Contractors* or Subcontractors to the *Contractor* and to the extent that TUPE may apply at the end of the *Service Period* the provisions set out in Schedule 1 apply.

## ZM12: Freedom of Information

ZM12.1 The Parties acknowledge that the FOI and EIR may apply to this contract. The Parties undertake to facilitate compliance with the information disclosure requirements pursuant to the FOI and EIR in the manner provided for in clauses ZM12.2 and ZM12.3 to the extent that such requirements relate to information held by a Party on behalf of the other Party in connection with this contract.

ZM12.2 Request for Information has the meaning set out in section 8 of the FOI.

ZM12.3 Before responding to a Request for Information, the *Employer* will consider in its absolute discretion

- the availability of exemptions under the FOI, the EIR or any other applicable legislation and
- where an exemption being considered requires it, whether or not the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing information relating to this contract.

ZM12.4 Before

- responding to a Request for Information (which, where the FOI or EIR provides, includes confirming or denying that the information is held by the *Employer* or on the *Employer's* behalf) or
- disclosing information about, or relating to, this contract

the *Employer* notifies the *Contractor* of the Request for Information and stipulates the time period (not exceeding one week from the date of the Request for Information) within which the *Contractor* must make representations to the *Employer* concerning whether an exemption applies (including, where necessary, why the public interest in maintaining the exemption is not outweighed by the public interest in disclosure).

ZM12.5 In determining whether an exemption applies or whether to confirm or deny or to disclose any information, the *Employer* takes into account any reasonable representations made by the *Contractor*.

ZM12.6 The *Contractor* acknowledges that, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOI, the *Employer* may be obliged, or in its discretion decide, under the FOI or EIR to disclose information concerning this contract

- without consulting with the *Contractor* or
- following consultation with the *Contractor* and having taken its views into account.

A disclosure made in accordance with the FOI or EIR is not in breach of any confidentiality agreements between the Parties.

**ZM13: Data Protection**

ZM13.1 (1) Data Protection Act means the Data Protection Act 1998 and any subordinate legislation made under this act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

(2) "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" have the meanings prescribed under the Data Protection Act.

ZM13.2 The *Contractor* complies (and ensures that all his employees comply) with any notification requirements under the Data Protection Act and both Parties observe their obligations under the Data Protection Act which arise in connection with this contract.

ZM13.3 Notwithstanding the general obligation in clause ZM13.2, where the *Contractor* is processing Personal Data as a Data Processor for the *Employer*, the *Contractor*;

- processes the Personal Data only in accordance with instructions from the *Employer* (which may be specific instructions or instructions of a general nature),
- complies with all applicable statutory provisions,
- processes the Personal Data only to the extent, and in such manner as is, necessary for the provision of the *Contractor's* obligations under this contract or as required by any statutory provision or any regulatory body,
- implements appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures must be appropriate to the harm which may result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data, having regard to the nature of the Personal Data which is to be protected,
- takes reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data,
- obtains prior written consent from a strategic director or head of service of the *Employer* in order to transfer the Personal Data to any Subcontractor in connection with Providing the Service,
- does not cause or permit the Personal Data to be transferred outside of the European Economic Area (unless transferred under a "safe harbour" scheme) without the prior consent of the *Employer*,
- ensures that all employees and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with their obligations,
- ensures that none of the employees and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the *Employer*,
- does not disclose Personal Data to Others in any circumstances other than with the written consent of the *Employer* or in compliance with a legal obligation imposed on the *Employer*,

- notifies the Employer (within one week) if it receives:
  - a request from a Data Subject to have access to that person's Personal Data or
  - a complaint or request relating to the *Employer's* obligations under the Data Protection Act and
- notifies the *Employer* of any breach or potential breach of the Data Protection Act, including the loss of personal information relating to this contract.

ZM13.4 This clause applies both during and after the *Service Period*.

#### **ZM14: Right to Provide the Service**

ZM14.1 Except as provided for in this contract, the *Employer* does not contract with Others to provide part of the *service*.

#### **ZM15: Unincorporated Joint Venture**

ZM15.1 This clause applies where the *Contractor* comprises more than one organisation operating as an unincorporated joint venture.

ZM15.2 All of the organisations comprising the *Contractor* (each a "Joint Venture Party") are jointly and severally liable to the *Employer* for the performance of the *Contractor's* obligations under this contract and for all obligations and liabilities of the *Contractor* arising under or in connection with this contract.

ZM15.3 Receipt by one Joint Venture Party of any sum due from the *Employer* to the *Contractor* under or in connection with this contract operates as a complete discharge of the *Employer's* liability to make payment to the *Contractor*.

ZM15.4 If any Joint Venture Party wishes to terminate the joint venture agreement between them relating to this contract, it immediately notifies the *Employer*. Any such termination entitles the *Employer* to terminate the *Contractor's* obligation to Provide the Service as if one of the events listed in clause 91.2 of the *conditions of contract* had occurred.

ZM15.5 For the purposes of clause 13.2 of the *conditions of contract*, all communications to be given to the *Contractor* by the *Employer* (other than a notice of termination or a notice to refer a dispute) are validly given if given to any Joint Venture Party.

ZM15.6 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* is an unincorporated joint venture and any of the events listed in clause 91.1 of the *conditions of contract* occurs in relation to any member of that unincorporated joint venture. The provisions of clause 90.2 apply to the termination as though it had been for reason R11.

#### ZM16: Human Rights Act

ZM16.1 In Providing the Service the *Contractor* acts as if it was a public authority for the purposes of the Human Rights Act 1998.

#### ZM17: Local Government Ombudsman

ZM17.1 Where any investigation by a Local Government Ombudsman or Information Commissioner takes place, the *Contractor*

- attends meetings as required by the Ombudsman or Information Commissioner and permits its people to attend if required,
- promptly allows access to and investigation of any documents deemed by the Ombudsman or Information Commissioner to be relevant,
- allows any of its people to be interviewed by the Ombudsman or Information Commissioner,
- allows any of its people to appear as a witness in any proceedings and
- co-operates as required by the Ombudsman or Information Commissioner during the course of any investigation.

#### ZM18: Assignment

ZM18.1 The *Contractor* does not assign, novate or otherwise dispose of this contract or any part thereof without the prior consent in writing of the *Employer*.

#### ZM19: Corrupt Gifts

ZM19.1 If

- the *Contractor* has offered or given, or agreed to give, to any person any gifts or consideration of any kind as an inducement or reward for doing (or forbearing to do) or having done (or forborne to do) any action in relation to the entry into this contract with the *Employer* or for showing or forbearing to show favour or disfavour to any other person in relation to this contract or

- similar acts have been done by any person in relation to this contract or by any person employed by the *Contractor* or acting on behalf of the *Contractor* (whether with, or without, the knowledge of the *Contractor*) or
- the *Contractor* or any person employed by the *Contractor* has committed any offence under the Bribery Act 2010 or has given any fee or reward, the receipt of which is an offence under subsection 2 of section 117 of the Local Government Act 1972,

the *Employer* may terminate the *Contractor's* obligation to Provide the Service. The provisions of clause 90.2 apply to the termination as though it had been for reason R11.

## **ZM20: Limitation of the *Contractor's* liability for his design to reasonable skill and care**

### **ZM20.1 The *Contractor's* Design**

The *Contractor* is not liable for Defects in the *service* due to his design so far as he proves that he used reasonable skill and care to ensure that his design complied with the Service Information.

ZM20.2 If the *Contractor* corrects a Defect for which he is not liable under this contract it is a compensation event.

## **ZM21: Poaching of Employees**

ZM21.1 During the Service Period and for a period of 12 months thereafter neither the *Employer* nor the *Contractor* seeks to poach the other Party's staff (either directly employed or subcontracted) who are or have been associated with the procurement and/or operation of the contract provided that neither of the Parties is prevented from employing a former employee of the other who responds to a bona fide advertisement.

## **ZM22: Whistle blowing**

ZM22.1 The *Contractor* confirms that the *Employer* is authorised as a person to whom the *Contractor's* staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its staff making a protected disclosure (as defined by the said Act) is not subjected to any detriment and its staff are made aware of this provision.

ZM22.2 The *Contractor* reviews on an annual basis its whistle blowing policy and procedure in accordance with the *Employer's* whistle blowing policy and procedure.



**Clauses that apply only to those *service* components provided under main Option A and main Option C**

**ZAC1: Price adjustment for inflation**

ZAC1.1 **Defined terms**

- (a) The Base Date Index (IB) is the latest available Work Category Index before the Base Date.
- (b) The Latest Work Category Index (IA) is the latest available Work Category Index before the date of assessment of an amount due.
- (c) The Price Adjustment Factor is the factor calculated, for each Work Category, using the Option selected in the Contract Data.
- (d) The Price Adjustment Amount is calculated, for the relevant rates and prices in the Price List, using the relevant Work Category Index according to which Option is selected in the Contract Data.
- (e) The Base Date is the return date of the *Contractor's* tender.
- (f) The Work Categories are the work categories listed in the table at Schedule 2 Annex 1.
- (g) Work Category Index is the index applicable to each Work Category as determined in accordance with clause ZM21.2.
- (h) The Resource Cost Indices are the resource cost indices published by the Building Cost Information Service (BCIS) (as part of the Highways Term Maintenance Price Adjustment Formulae Indices [xxxx] Series<sup>26</sup>).

<sup>26</sup> *Employer* to amend as required. It is recommended by the Highways Maintenance Efficiency Programme (HMEP) that the Series should be the latest Series of the Highways Term Maintenance Price Adjustment Formulae Indices, published by the BCIS, at the time of tender

### ZAC1.2 **Work Category Indices**<sup>27</sup>

The indices used to calculate the Price Adjustment Factor for each Work Category are either

- Option 1 – the appropriate Work Category Indices published by the Building Cost Information Service (BCIS) (as part of the Highways Term Maintenance Price Adjustment Formulae Indices [xxxx] Series) or<sup>28</sup>
- Option 2 – bespoke Work Category Indices, compiled from the 21 Resource Cost Indices in the proportions set out in the table attached at Schedule 2 Annex 2.<sup>29</sup>

### ZAC1.3 **Price Adjustment Factor**

- (a) The Price List specifies which Work Category (and therefore which Work Category Index) is applicable to each rate and price included in the Price List.<sup>30</sup>
- (b) The Price Adjustment Factor for each Work Category and the Price Adjustment Amount for the relevant rates and prices in the Price List are calculated at the intervals stated in the Contract Data.
- (c) The rates, prices and amounts in the Price List remain the same for the term of this contract unless changed pursuant to any provision of this contract.
- (d) The Service Manager and Contractor may agree to add new items with base date prices to the Price List. In such an event, the Service Manager and Contractor also agree which Work Category Index will be applicable to the new item.

<sup>27</sup> Most price adjustments can be calculated from the Work Category Indices published by BCIS, but bespoke Work Category Indices can be compiled when required for particular circumstances using the Resource Cost Indices. Highways term maintenance contracts should be structured so that items in the schedule of rates, activities or lump sums are aligned to the relevant Work Categories so that they can be separately and easily price adjusted. Work Category Indices should not be weighted together to form one index and applied to all work as the proportions of the types of work ordered may vary significantly during the term of the contract.

<sup>28</sup> Note this is the recommended option

<sup>29</sup> If this Option is selected the table at Schedule 2 Annex 2 needs to be carefully considered and completed.

<sup>30</sup> The Price List may include an additional column specifying which Work Category each priced item falls into.

ZAC1.4 **Calculation of Price Adjustment Factor and Price Adjustment Amount - Option 1**<sup>31</sup>

The formula for calculating the Price Adjustment Factor (**PAF**) for each Work Category is: **PAF = (IA-IB) / IB**

where:

**IA** = the Latest Work Category Index (for the relevant Work Category)

**IB** = the Base Date Index (for the relevant Work Category)

The formula for calculating the Price Adjustment Amount is: **(VB x PAF)**

where:

**VB** = the value of the work carried out at the *base date* rates and prices

**PAF** = the Price Adjustment Factor calculated as set out above.

ZAC1.4 **Calculation of Price Adjustment Factor and Price Adjustment Amount – Option 2**<sup>32</sup>

(a) Each Work Category is comprised of a number of Resource Cost Indices in the proportions set out in the table attached at Schedule 2 Annex 2.

(b) At the Base Date:

- The Base Date Index for each Work Category Index is 100.
- For each Resource Cost Index within a Work Category, the weighting for that Resource Cost Index (specified in the table at Schedule 2 Annex 2) is divided by the Resource Cost Index figure as at the Base Date then multiplied by 100 to ascertain the “factor” for that Resource Cost Index.

<sup>31</sup> Employer deletes this clause if Option 2 is selected in the Contract Data.

<sup>32</sup> Delete this clause if Option 1 is selected in the Contract Data.

- (c) At the intervals set out in the Contract Data, the Latest Work Category Index for each Work Category is calculated as follows:
- The latest available index figure before the date of assessment of an amount due for each Resource Cost Index is multiplied by the factor for that Resource Cost Index to ascertain the “product” for that Resource Cost Index.
  - The products of each Resource Cost Index within a Work Category Index are added together to ascertain the Latest Index for that Work Category.
- (d) The formula for calculating the Price Adjustment Factor (**PAF**) for each Work Category is: **PAF = (IA-IB) / IB**

where:

**IA** = the Latest Work Category Index (for the relevant Work Category) calculated in accordance with clause ZM21.4(c))

**IB** = the Base Date Index (for the relevant Work Category)

The formula for calculating the Price Adjustment Amount is:

**(VB x PAF)**

where:

**VB** = the value of the work carried out at the Base Date rates and prices

**PAF** = the Price Adjustment Factor calculated as set out above.

**Price adjustment to amount due**

ZAC1.5 Each amount due includes an amount for price adjustment which is the sum of the Price Adjustment Amounts for each of the relevant priced items in the Price List.

**Adjustment to rates prices and amounts - Option C only <sup>33</sup>**

ZAC1.6 Where the Prices have been calculated by reference to rates and prices in the Price List, each time the amount due is assessed; the total of the Prices is adjusted to reflect the Price Adjustment Amounts for the rates and prices used to calculate those Prices.

<sup>33</sup> Employer deletes this clause if main Option C has not been selected.

**ZAC2: Efficiency Savings<sup>34</sup>**

ZAC2.1 At each anniversary of the Contract Date, the Prices, for the part(s) of the *service* stated in the *efficiency saving table*, are reduced by the relevant percentage stated in the *efficiency saving table*.

---

<sup>34</sup> This clause is optional and provided for authorities who wish to use this approach. *Employer* deletes if not used.

## Clauses that apply only to those *service* components provided under main Option A: priced contract with Price List

### ZA1: Identified and defined terms

ZA1.1 Add new defined terms:

(1) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
  - retention,
  - payments to Others,
  - the supply of equipment, materials and services included in the charge for overhead cost within the Affected Property in this contract and
  - other amounts due to the *Employer*

and

- the cost of components in the Shorter Schedule of Cost Components for other work excluding the cost of preparing quotations for compensation events,

less Disallowed Cost.

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

- is not justified by the Contractor's accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred because the Contractor did not:
  - follow an acceptance or procurement procedure stated in the Service Information or
  - give an early warning which the contract required him to give,

and the cost of:

- correcting Defects after Task Completion,
- correcting Defects caused by the Contractor not complying with a constraint on how they are to Provide the Service stated in the Service Information,
- Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Service Information,

- resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away when the Service Manager requested,
  - events for which this contract requires the Contractor to insure and
  - preparation for and conduct of adjudication or proceedings of the tribunal.
- (3) The Price for Services Provided In Year is the total of the Prices for the *service* provided in the relevant Financial Year.

## **ZA2: The Contractor's discount**

ZA2.1 Add new clause 55.1 to 55.2.

55.1 The Price for Services Provided In Year for the part of the *service* stated in the *discount table* is divided into increments falling within each of the cumulative Price for Services Provided In Year ranges stated in the *discount table*. The *Contractor's* discount equals the sum of the products of the increment within each cumulative Price for Services Provided In Year range multiplied by the *discount percentage*.

55.2 At each assessment date the *Service Manager* calculates the *Contractor's* discount. The *Contractor's* discount is deducted from the amount due.

**Clauses that apply only to those *service* components provided under main Option C: target contract with Price List**

**ZC1: Identified and defined terms**

ZC1.1 Delete clause 11.2(18) and replace with the following new defined term:

11.2(18) The Price for Services Provided to Date is the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.

ZC1.2 Add the following new defined terms.

(1) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
  - retention,
  - payments to Others,
  - the supply of equipment, materials and services included in the charge for overhead cost within the Affected Property in this contract and
  - other amounts due to the *Employer*,

and

- the cost of components in the Schedule of Cost Components for other work,

less Disallowed Cost.

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

- is not justified by the Contractor's accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not:
  - follow an acceptance or procurement procedure stated in the Service Information,
  - or give an early warning which the contract required him to give,

and the cost of

- correcting Defects after Task Completion,



- correcting Defects caused by the Contractor not complying with a constraint on how he is to Provide the Service stated in the Service Information,
  - Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Service Information,
  - resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away when the Service Manager requested,
  - events for which the contract requires the Contractor to insure and
  - preparation for and conduct of an adjudication or proceedings of the tribunal.
- (3) The Price for Services Provided in Year is the total Defined Cost of the *service* provided in the relevant Financial Year plus the Fee.
- (4) Total of the Prices In Year is the total of the Prices for the *service* provided in the relevant Financial Year.

**ZC2: The Contractor's share**

ZC2.1 Delete clause 53.1 to 53.3 and replace with the following.

- 53.1 The *Service Manager* assesses the *Contractor's* share of the difference between the Total of the Prices In Year and the Price for Services Provided In Year. The difference is divided into increments falling within each of the *share ranges*. The limits of a *share range* are the Price for Services Provided In Year divided by the Total of the Prices In Year, expressed as a percentage. The *Contractor's* share equals the sum of the products of the increment within each *share range* and the corresponding *Contractor's share percentage*.
- 53.2 Where an item in the Price List is carried out over more than one Financial Year, the Total of the Prices In Year for each Financial Year include a proportion of the amount stated in the Price column for the item which is the proportion of the work in the item which has been completed in that Financial Year.
- 53.3 If the Price for Services Provided In Year is less than the Total of the Prices In Year, the *Contractor* is paid his share of the saving. If the Price for Services Provided In Year is greater than the Total of the Prices In Year, the *Contractor* pays his share of the excess.

53.4 At the end of each Financial Year, the *Service Manager* assesses the *Contractor's* share. This share is included in the next amount due following the assessment.

**ZC3: Assessing compensation events**

ZC3.1 Add new clause 63.15.

63.15 If the *Service Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Service Manager* may make his own assessments using the Shorter Schedule of Cost Components.

**Clauses that apply only to those parts of the *service* provided under main Option E: cost reimbursable contract**

**ZE1: Identified and defined terms**

ZE1.1 Delete clause 11.2(18) and replace with the following new defined term.

11.2(18) The Price for Services Provided to Date is the total Defined Cost which the *Service Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.

ZE1.2 Add the following new defined terms.

(1) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
  - retention,
  - payments to Others,
  - the supply of equipment, materials and services included in the charge for overhead cost within the Affected Property in this contract and
  - other amounts due to the *Employer*,

and

- the cost of components in the Schedule of Cost Components for other work,

less Disallowed Cost.

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

- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not:
  - follow an acceptance or procurement procedure stated in the Service Information or
  - give an early warning which this contract required him to give,

and the cost of

- correcting Defects after Task Completion,
- correcting Defects caused by the Contractor not complying with a constraint on how he is to Provide the Service stated in the Service Information,

- Plant and Materials not used to Provide the Service (after allowing for reasonable wastage) unless resulting from a change to the Service Information,
- resources not used to Provide the Service (after allowing for reasonable availability and utilisation) or not taken away when the Service Manager requested,
- events for which the contract requires the Contractor to insure and
- preparation for and conduct of an adjudication or proceedings of the tribunal.

## **ZE2: Assessing compensation events**

ZE2.1 Add new clause 63.15.

63.15 If the *Service Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Service Manger* may make his own assessments using the Shorter Schedule of Cost Components.

# SCHEDULE 1 – PART 1 TUPE AND PENSIONS PROVISIONS

## 1 Defined terms

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

**“Administering Authority”**

[name of administering authority] Council of [address] acting in its capacity as the administering authority of the [name of relevant Local Government Pension Scheme (LGPS) fund] for the purposes of the LGPS Regulations,

**“Admission Body”**

is a transferee admission body for the purposes of regulation 3 of the LGPS Regulations,

**“Assigned Employees”**

has the meaning set out in paragraph 2.8.1.1 of Part 1 of this schedule,

**“Cessation Date”**

any date on which the *Contractor* or any Subcontractor ceases to be an Admission Body other than as a result of the termination of the contract or because it ceases to employ any Eligible Employees,

**“Compensation Regulations”**

the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006,

**“Contractor Admission Agreement”**

has the meaning as referred to in paragraph 3.1 of Part 1 of this schedule,

**“Contractor Scheme”**

the retirement benefits scheme or schemes established or to be established under paragraph 3.7 of Part 1 of this schedule,

**“Direct Losses”**

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

**“Directive”**

the EC Acquired Rights Directive 77/187 as amended,

**“Eligible Employees”**

- (a) the Transferring Employees who are active members of or eligible to join the LGPS on a Relevant Transfer Date.

- (b) [the Transferring Original Employees who are active members of or have the right to acquire benefits under either the LGPS under Regulation 3 of the LGPS Regulations or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date<sup>35</sup>] and
- (c) [any other individuals nominated by the *Contractor* or relevant Subcontractor (as appropriate)<sup>36</sup>],

for so long as they are employed in connection with Providing the Service or part of the *service*,

**“Employee Liability Information”**

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

**“Exit Contribution”**

has the meaning set out in paragraph 3.14.2 of Part 1 of this schedule,

**“First Contractor”**

means the organisation with whom the *Employer* initially contracted for the provision of services which are fundamentally the same type of services as the *service*,

**“Fund”**

means the [ .....] Local Government Pension Fund within the LGPS,

**“Government Actuary’s Department”**

means the Government Actuary’s Department of Finlaison House, 15–17 Furnival Street, London, EC4A 1AB,

**“Incoming Contractor”**

the organisation appointed by the *Employer* to Provide the Service after the expiry or earlier termination of the contract,

**“Indirect Losses”**

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

**“Initial Employer Contribution Rate”**

shall mean [.....]% of Pensionable Pay,

**“Intervening Contract”**

a contract with the *Employer* for the provision of services which are fundamentally the same type of services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the *Contractor*,

<sup>35</sup> The protection of the pension rights of Transferring Original Employees (and Transferring Employees) is covered by The Best Value Authorities Staff Transfers (Pensions) Direction 2007 irrespective of whether the original transfer from the Authority was protected under the Direction or under the Fair Deal Guidance. However, neither the Direction nor the Fair Deal Guidance protects the pension rights of staff recruited by an existing *Contractor* after the transfer of the Transferring Original Employees. However, the Authority would not be prohibited by the Fair Deal Guidance from providing some pension protection for such staff where appropriate on value for money grounds. The Authority should also consider the protection which will apply under TUPE and/or Sections 257–258 of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005 as appropriate.

<sup>36</sup> This sub-paragraph will need to be inserted, for example, where the Contractor Admission Agreement is to be an open Admission Agreement which will allow the *Contractor* or relevant Subcontractor to nominate additional employees.

**“LGPS Regulations”**

means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356),

**“Local Government Pension Scheme” and “LGPS”**

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

**“New Employees”**

those new employees employed by the *Contractor* to Provide the Service who will be working alongside the Transferring Employees,

**“New Employer”**

has the meaning set out in paragraph 3.11.1.2 of Part 1 of this schedule,

**“Original Employee”**

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

**“Outgoing Contractor”**

any agent or *Contractor* or Subcontractor appointed by the *Employer* to carry out works and services fundamentally the same as the *service* in relation to the Affected Property immediately prior to the Relevant Transfer Date,

**“Past Service Reserve”**

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

**“Pensionable Pay”**

has the meaning set out in the LGPS Regulations.

**“Relevant Employees”**

the employees who are the subject of a Relevant Transfer,

**“Relevant Transfer”**

a relevant transfer for the purposes of TUPE,

**“Relevant Transfer Date”**

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

**“Retendering Information”**

has the meaning set out in paragraph 2.8.1.1 of Part 1 of this schedule,

**“Return Date”**

has the meaning set out in paragraph 2.9.2 of Part 1 of this schedule,

**“Returning Employees”**

has the meaning set out in paragraph 2.9.2 of Part 1 of this schedule,

**“Transfer Amount”**

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

**“Transfer Date”**

the date the Transferring Employees are transferred to the employment of the *Contractor* and the date that the Transferring Original Employees are transferred to the employment of a subsequent *Contractor*,

**“Transfer Value”**

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

**“Transferring Employee”**

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

**“Transferring Original Employee”**

means an Original Employee:

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

**“TUPE”**

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

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.



## 2 TUPE

### 2.1 Relevant Transfers

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

2.1.1.1 the Relevant Transfer Date and

2.1.1.2 where the identity of a provider (including the *Employer*) of any works or services which constitutes or which will constitute part of the service is changed, whether in anticipation of changes pursuant to the contract or not, constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the *Contractor* and/or its Subcontractor except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of the contract) the *Contractor* will procure that the former and the new Subcontractor will both comply with their obligations under TUPE.

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

### 2.2 Emoluments and outgoings

2.2.1 The *Employer* will be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Transfer Date.

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

## 2.3 Employment costs

- 2.3.1 The *Employer* has supplied to the *Contractor* information, prior to the time for return of tenders, which is contained in Annex 3 to this schedule (the First Employee List) in relation to each of those employees of the *Employer* and, to the extent that the *Employer* is in possession of such information, of the Outgoing Contractor who it is expected, if they remain in the employment of the *Employer* or of the Outgoing Contractor (as the case may be) until immediately before the Relevant Transfer Date, would be Relevant Employees. The *Employer* warrants that the information in respect of the employees of the *Employer* contained in the First Employee List will be true and accurate in all material respects but gives no warranty as to the accuracy or completeness of the information in respect of those employees of any Outgoing Contractor. Where the Outgoing Contractor contract requires the Outgoing Contractor to indemnify and keep indemnified in full the *Employer* and at the *Employer's* request any future *Contractor* against all losses arising from any claim by any party as a result of the Outgoing Contractor (or Subcontractor) failing to provide or providing inaccurate Employee Liability Information to the *Employer* or *Contractor*, the benefit of that indemnity shall be secured by the *Employer* for the *Contractor* in the event of any material inaccuracy in or omission from the Employee Liability Information provided by the Outgoing Contractor.
- 2.3.2 The *Employer* shall supply to the *Contractor* an update of the First Employee List at [three monthly] intervals from the date of this contract. The *Employer* shall also provide an updated list to include all Employee Liability Information (20) Business Days before the Transfer Date. This list is known as the ELI data. The *Employer* shall also supply to the *Contractor* within (5) Business Days after the Transfer Date information, which was correct as at the Transfer Date, in respect of the Transferring Employees (and to the extent that the *Employer* is in possession of such information, in relation to Relevant Employees of the Outgoing Contractor) on all the same matters as should be provided in the First Employee List. This list is the “Final Employee List” [and where there is more than one Transfer Date the “Final Employee List” means each list so prepared in respect of each part of the *service* and at each Transfer Date]. The *Employer* warrants that the information in respect of the employees of the *Employer* contained in any update of the First Employee List or in the Final Employee List will be true and accurate in all material respects but gives and shall give no warranty as to the accuracy or completeness of any information in respect of those employees of any Outgoing Contractor contained in any update of the First Employee List or in the Final Employee List. Where the Outgoing Contractor contract requires the Outgoing Contractor to indemnify and keep indemnified in full the *Employer* and at the *Employer's* request any future *Contractor* against all losses arising from any claim by any party as a result of the Outgoing Contractor (or Subcontractor) failing to provide or providing inaccurate Employee Liability Information to the *Employer* or *Contractor* within the First Employee List or in the Final Employee List, the benefit of that indemnity shall be secured by the *Employer* for the *Contractor* in the event of any material inaccuracy in or omission from the Employee Liability Information provided by the Outgoing Contractor.
- 2.3.3 Without prejudice to paragraph 2.3.1 above, the *Employer* will, and will procure if it has the contractual or legal powers to do so, and will otherwise use all reasonable endeavours to procure that the Outgoing Contractor will:
- 2.3.3.1 provide the Employee Liability Information to the *Contractor* at such time or times as are required by TUPE and

- 2.3.3.2 update the Employee Liability Information to take account of any changes as required by TUPE. The *Employer* gives no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Outgoing Contractor.
- 2.3.4 The *Contractor* has provided to the *Employer*, and the *Employer* has agreed, the details set out in Schedule [xxx] (Workforce Information) which show, in respect of each of the parts of the *service*, the following information:
- 2.3.4.1 the workforce which the *Contractor* proposes to establish to provide the service (the “Proposed Workforce”) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- 2.3.4.2 the monthly costs of employing the Relevant Employees who are expected to be engaged in the Provision of the Service. These costs (the “Remuneration Costs”) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- 2.3.4.3 the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce [(including but not limited to costs associated with dismissal by reasons of redundancy or capability and costs of recruitment)]. These costs (the “Reorganisation Costs”) have been calculated by the *Contractor* and the Subcontractors on the basis of (amongst other things) the information contained in the First Employee List.
- 2.3.5 If at any time (including, for the avoidance of doubt, after the submission of the Final Employee List) the Remuneration Costs and/or Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to clauses 2.3.6, 2.3.7 and 2.3.9) there shall be a corresponding adjustment to the Prices to compensate for any such difference.
- 2.3.6 If the circumstances described in clause 2.3.5 arise:
- (a) in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the Provision of Service; and
  - (b) the *Contractor* and the relevant Subcontractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Prices shall be calculated as if they had done so.
- 2.3.7 In calculating any adjustment to be made to the Prices pursuant to clause 2.3.5:
- (a) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;

- (b) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Prices under this contract;
- (c) to avoid doubt any changes in costs which fall to be dealt with under clause 2.3.5 and which arise from a Change in Law shall be dealt with in accordance with the provisions of clause 2.3.5 and shall not be taken into account for the purposes of clause X2 (Change in Law);
- (d) no adjustments under clause 2.3.5 shall be made in respect of overpayments made by the Contractor or a Subcontractor to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor or the Subcontractor is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
- (e) if there are underpayments by the Contractor or a Subcontractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the amount due to the Contractor in respect of all such liabilities of the Contractor or the Subcontractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Transfer Date shall be dealt with in accordance with clauses 2.2.1) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and
- (f) in order to prevent duplication, no adjustment shall be made under this clause 2.3.7 if any indemnity given by the Employer under any other provision of this contract would apply.

2.3.8 Either party may propose an adjustment to the Prices pursuant to clause 2.3.5 by giving not less than [ten (10)] Business Days' notice to the other. Each party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to clause 2.3.5.

2.3.9 In relation to all matters described in clauses 2.3.6 and 2.3.7 the *Contractor* and the *Employer* shall, and the *Contractor* shall procure that the relevant Subcontractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

2.3.10 The *Employer* and the *Contractor* will, (and the *Contractor* will procure that each and every Subcontractor will) take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to the contract takes place smoothly with the least possible disruption to the service being provided to the *Employer* under the contract and to the employees who transfer.

2.3.11 In addition to the Employee Liability Information covered under TUPE Regulation 11(2), training records are provided to the *Contractor* showing what training and qualifications are held by each Transferring Employee and the expiry dates of that training and qualification. This information is provided at least 45 days prior to the Transfer Date. Also, copies of full employee files for all Transferring Employees are provided to the *Contractor* within two weeks of the Transfer Date.

## 2.4 Union recognition

- 2.4.1 The *Employer* will and will procure if it has the contractual or legal powers to do so and will otherwise use all reasonable endeavours to procure that the *Outgoing Contractor* will supply to the *Contractor* no later than 3 months prior to the Relevant Transfer Date true copies of its union recognition agreement(s) and the *Contractor* will and will procure that each and every Subcontractor will in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Subcontractor) after the transfer to the same extent as they were recognised by the *Employer* or the *Outgoing Contractor* before the Relevant Transfer Date.
- 2.4.2 The *Contractor* will procure that, on each occasion on which the identity of a Subcontractor changes pursuant to this contract, in the event that there is a Relevant Transfer, the new Subcontractor will in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Subcontractor to the same extent as they were recognised before the change of identity of the Subcontractor in respect of the provision of any works or services in connection with this contract.

## 2.5 Indemnities

- 2.5.1 The *Employer* will indemnify and keep indemnified in full the *Contractor* (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the *Contractor* or any relevant Subcontractor in connection with or as a result of:
- 2.5.1.1 a breach by the *Employer* of its obligations under paragraph 2.2.1 of Part 1 of this schedule,
- 2.5.1.2 subject to paragraph 2.5.4 of Part 1 of this schedule any claim or demand by or on behalf of any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the *Employer* in relation to any Transferring Employee prior to the Relevant Transfer Date (save where such act, fault or omission arises as a result of the *Contractor's* or any relevant Subcontractor's failure to comply with Regulation 13 of TUPE).
- 2.5.2 Where any liability in relation to any Transferring Employee, in respect of his or her employment by the *Employer* or its termination which transfers in whole or part in accordance with TUPE and/or the Directive, arises partly as a result of any act or omission occurring on or before the Relevant Transfer Date and partly as a result of any act or omission occurring after the Relevant Transfer Date, the *Employer* will indemnify and keep indemnified in full the *Contractor* or the relevant Subcontractor against only such part of the Direct Losses sustained by the *Contractor* or any Subcontractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Relevant Transfer Date.

- 2.5.3 The *Employer* will indemnify, and keep indemnified, in full the *Contractor* (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the *Contractor* or any relevant Subcontractor in connection with, or as a result of, any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the *Employer* prior to the Relevant Transfer Date. To the extent that the *Employer* recovers any sum in respect of the subject matter of this indemnity from such Outgoing Contractor under any indemnity or other legal entitlement it has against such Outgoing Contractor, the *Employer* will indemnify, and keep indemnified, in full the *Contractor* (for itself and for the benefit of each relevant Subcontractor) against all Direct Losses incurred by the *Contractor* or any relevant Subcontractor in connection with, or as a result of, any claim or demand by any Relevant Employee employed by the Outgoing Contractor arising out of the employment of any Relevant Employee employed by the Outgoing Contractor, provided that this arises from any act, fault or omission of the Outgoing Contractor prior to the Relevant Transfer Date. The *Employer* will use all reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this paragraph 2.5.3.
- 2.5.4 The *Contractor* will indemnify and keep indemnified in full the *Employer* and at the *Employer's* request each and every Incoming Contractor against:
- 2.5.4.1 all Direct Losses incurred by the *Employer* or any Incoming Contractor in connection with or as a result of any claim or demand against the *Employer* or any Incoming Contractor by (i) any person who is or has been employed or engaged by the *Contractor* or any Subcontractor in connection with the provision of any works or services under the contract or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the *Contractor* and/or any Subcontractor after the Relevant Transfer Date,
- 2.5.4.2 all Direct Losses incurred by the *Employer* or any Incoming Contractor in connection with or as a result of a breach by the *Contractor* of its obligations under paragraph 2.2.2 of Part 1 of this schedule and
- 2.5.4.3 all Direct Losses incurred by the *Employer* or any Incoming Contractor in connection with or as a result of any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the *Contractor* and/or the relevant Subcontractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the *Contractor* and/or any Subcontractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.
- 2.5.5 The *Contractor* will indemnify and keep indemnified in full the *Employer*, against all Direct Losses incurred by the *Employer* in connection with or as a result of:
- 2.5.5.1 the change of identity of employer occurring by virtue of TUPE to the *Contractor* or the relevant Subcontractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of the change in employer and whether such claim arises before or after the Relevant Transfer Date,

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

2.5.5.3 any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the *Contractor* or Subcontractor to the Relevant Employees or their representatives whether before on or after the Relevant Transfer Date and whether liability for any such claim arises before on or after the Relevant Transfer Date.

2.5.6 For the avoidance of doubt, the indemnities in paragraphs 2.5.4 and 2.5.5 of Part 1 of this schedule will not apply in respect of any sum for which the *Employer* is to indemnify the *Contractor* or a relevant Subcontractor pursuant to paragraph 2.5.1 of Part 1 of this schedule or to the extent that the claim arises from a wrongful act or omission of the *Employer*.

## 2.6 Provision of details and indemnity

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

## 2.7 Retendering

2.7.1 The *Contractor* will (and will procure that any Subcontractor will) within the period of 12 months immediately preceding the expiry of this contract or following the service of a notice under clause 90 (Termination) or as a consequence of the *Employer* notifying the *Contractor* of its intention to re-tender this contract:

2.7.1.1 on receiving a request from the *Employer* provide in respect of any person engaged or employed by the *Contractor* or any Subcontractor in the provision of any service which is part of the *service* (the “**Assigned Employees**”) full and accurate details regarding the number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the *Contractor* or of any Subcontractor as the case may be until immediately before the termination date, would be Returning Employees (the “**Retendering Information**”),

2.7.1.2 provide the Retendering Information promptly and at no cost to the *Employer*,

2.7.1.3 notify the *Employer* forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise,

- 2.7.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Employer’s prior written consent (not to be unreasonably withheld or delayed),
  - 2.7.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Employer’s prior written consent, which should not be unreasonably withheld and
  - 2.7.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing any part of the service to provide any such works and services save with the Employer’s prior written consent (not to be unreasonably withheld or delayed).
- 2.7.2 Without prejudice to paragraphs 2.7.1 and 2.7.3 of Part 1 of this schedule, the *Contractor* will provide and will procure that any Subcontractor will provide the Employee Liability Information to the *Employer* at such time or times as are required by TUPE, and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.
- 2.7.3 The *Contractor* will and will keep indemnified in full the *Employer* and at the *Employer’s* request any Incoming Contractor against all Direct Losses arising from any claim by any Party as a result of the *Contractor* or Subcontractor failing to provide or promptly to provide the *Employer* and/or any Incoming Contractor where requested by the *Employer* with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity will not apply in respect of the Retendering Information to the extent that such information was originally provided to the *Contractor* by the *Employer* and was materially inaccurate or incomplete when originally provided.

## 2.8 Termination of Agreement

- 2.8.1 On the expiry or earlier termination of this contract, the *Employer* and the *Contractor* agree that it is their intention that TUPE will apply in respect of the provision thereafter of any works and services equivalent to one or more of the works and services which are part of the *service* but the position will be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.
- 2.8.2 For the purposes of paragraph 2.7.1.1 and this paragraph 2.8, “**Returning Employees**” will mean those employees wholly or mainly engaged in the provision of the *service* as the case may be as immediately before the expiry or termination of this contract whose employment transfers to the *Employer* or an Incoming Contractor pursuant to TUPE. Upon expiry or termination of the contract for whatever reason (such date being termed the “**Return Date**”), the provisions of this paragraph 2.8 will apply:



- 2.8.2.1 The *Contractor* will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the *Contractor* or the Subcontractor (who had been engaged in the provision of the service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the *Contractor* or Subcontractors up to the Return Date are satisfied,
- 2.8.2.2 Without prejudice to paragraph 2.8.2.1 of Part 1 of this schedule, the *Contractor* will:
- 2.8.2.2.1 remain (and procure that Subcontractors will remain) (as relevant) responsible for all the *Contractor's* or Subcontractor's employees (other than the Returning Employees) on or after the time of expiry or termination of the contract and will indemnify the *Employer* and any Incoming Contractor against all Direct Losses incurred by the *Employer* or any Incoming Contractor resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the *Contractor's* or Subcontractor's employees who do not constitute the Returning Employees,
- 2.8.2.2.2 in respect of those employees who constitute Returning Employees the *Contractor* will indemnify the *Employer* and any Incoming Contractor against all Direct Losses incurred by the *Employer* or any Incoming Contractor resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the *Contractor* or any Subcontractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the *Employer* or any Incoming Contractor.
- 2.8.2.3 The Employer will be entitled to assign the benefit of this indemnity to any Incoming Contractor.
- 2.8.2.4 The Employer will indemnify the Contractor (for itself and for the benefit of each relevant Subcontractor) in respect of those employees who constitute Returning Employees against all Direct Losses incurred by the Contractor or any relevant Subcontractor in connection with or as a result of any failure by the Employer or any Incoming Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Contractor or any relevant Subcontractor.

**2.9 Subcontractors**

2.9.1 In the event that the *Contractor* enters into any subcontract in connection with this contract, it will impose obligations on such Subcontractor in the same terms as those imposed on it pursuant to this paragraph 2 and paragraph 3 of Part 1 of this schedule and will procure that the Subcontractor complies with such terms. The *Contractor* will indemnify and keep the *Employer* indemnified in full against all Direct Losses, incurred by the *Employer* or any Incoming Contractor as a result of or in connection with any failure on the part of the *Contractor* to comply with this paragraph and/or the Subcontractor's failure to comply with such terms.

**2.10 Data Protection**

2.10.1 Where the *Employer* holds information in respect of any of the *Contractor's* employees, the *Employer* will comply with (and ensure that all its employees comply with) any notification requirements under the Data Protection Act and will observe its obligations under the Data Protection Act which arise in connection with the contract.

### 3 PENSIONS

#### 3.1 **Contractor to become an Admission Body**

3.1.1 Where the *Contractor* or a Subcontractor employs any Eligible Employees from a Relevant Transfer Date and chooses to offer those Eligible Employees membership of the LGPS, the *Contractor* will procure that it and/or each relevant Subcontractor will become an Admission Body in accordance with the [.....] Pension Fund Admissions Policy a copy of which is attached at Annex 4 of this Schedule 1. The *Contractor* will before the Relevant Transfer Date execute and procure that each relevant Subcontractor executes a “**Contractor Admission Agreement**” which is substantially in the form set out in Annex 1 of this Schedule 1 which will have effect from and including the Relevant Transfer Date.

#### 3.2 **Contractor Admission Agreement**

3.2.1 The *Employer* will before the Relevant Transfer Date execute any Contractor Admission Agreements as referred to in paragraph 3.1.1 of Part 1 of this schedule and will procure that the Administering Authority executes each such Contractor Admission Agreement before the Relevant Transfer Date.

#### 3.3 **Indemnity for a breach of the Contractor Admission Agreement**

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

#### 3.4 **Indemnity or Bond**

3.4.1 Without prejudice to the generality of the requirements of this paragraph 3, the Contractor will use all reasonable endeavours to procure that it and each relevant Subcontractor will as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Contractor Admission Agreements and which is substantially in the form set out in Annex 1 of this schedule.

#### 3.5 **Right of set-off**

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

#### 3.6 **Contractor ceases to be an Admission Body**

3.6.1 If the Contractor or any Subcontractor employs any Eligible Employees from a Relevant Transfer Date and:

3.6.1.1 the *Contractor* or any relevant Subcontractor does not choose to offer those Eligible Employees membership of the LGPS or

3.6.1.2 the *Employer*, the *Contractor* or any relevant Subcontractor are of the opinion that it is not possible to operate the provisions of paragraphs 3.1 to 3.4 of Part 1 of this schedule inclusive or

3.6.1.3 if for any reason after the Relevant Transfer Date the *Contractor* or any relevant Subcontractor ceases to be an Admission Body other than on the date of termination or expiry of the contract or because it ceases to employ any Eligible Employees;

then the provisions of paragraphs 3.1 to 3.4 of Part 1 of this schedule inclusive will not apply (without prejudice to any rights of the *Employer* under those paragraphs) and the provisions of paragraph 3.7 of Part 1 of this schedule will apply.

### 3.7 Contractor Scheme

3.7.1 The *Contractor* will or will procure that any relevant Subcontractor will not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the *Employer* in writing the occupational pension scheme or schemes which it proposes will be “**the Contractor Scheme**” for the purposes of this paragraph 3.7. Such pension scheme or schemes must be:

3.7.1.1 established within 3 months prior to the Relevant Transfer Date or as soon as reasonably practicable after the Cessation Date (as the case may be) and maintained until any payment to be made under Part 2 of this schedule (Bulk Transfer Terms) is made,

3.7.1.2 reasonably acceptable to the *Employer* (such acceptance not to be unreasonably withheld or delayed),

3.7.1.3 registered within the meaning of the Finance Act 2004 and

3.7.1.4 certified by the Government Actuary’s Department or an actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary’s Department as providing benefits which are the same as, broadly comparable to, or better than those benefits provided by the LGPS.

3.7.2 The Contractor undertakes to the Employer (for the benefit of the Employer itself and for the Employer as agent and trustee for the benefit of the Eligible Employees) that it will and will procure that any relevant Subcontractor will procure that:

3.7.2.1 the Eligible Employees will by 3 months before the Relevant Transfer Date or as soon as reasonably practicable after the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be),

- 3.7.2.2 the Contractor Scheme will provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department will certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees were entitled to under the LGPS at the Relevant Transfer Date or the Cessation Date (as the case may be). In the case of Eligible Employees who are Transferring Original Employees, the benefits provided from the Relevant Transfer Date must be the same as, broadly comparable to or better than the benefits provided by their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS,
- 3.7.2.3 on and from the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:
- 3.7.2.3.1 3 months after the date on which the Eligible Employees are first able to join the Contractor Scheme and
- 3.7.2.3.2 the date on which the Eligible Employee joins the Contractor Scheme, the *Contractor* will provide death benefits for and in respect of the Eligible Employees which are certified by the Government Actuary's Department or an actuary nominated by the *Employer* in accordance with relevant guidance produced by the Government Actuary's Department as being broadly comparable to those that would otherwise have been provided in respect of those Eligible Employees by the LGPS.
- 3.7.2.4 if the Contractor Scheme is terminated, a replacement pension scheme will be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant Subcontractor. The replacement scheme must comply with this paragraph 3.7 as if it were the Contractor Scheme and
- 3.7.2.5 before the Relevant Transfer Date or Cessation Date (as the case may be) the Contractor will use best endeavours to procure that the trustees of the Contractor Scheme will undertake by deed to the Employer and to the Administering Authority that they will comply with the provisions of paragraphs 3.7.1.1 to 3.7.1.4, 3.8.1.1, 3.8.1.2 and 3.8.1.4 of Part 1 of this schedule and Part 2 of this schedule (Bulk Transfer Terms) as are relevant to them.
- 3.7.3 Part 2 of this schedule (Bulk Transfer Terms) shall apply in relation to the terms for bulk transfers from the LGPS to the Contractor Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of the contract.
- 3.8 Undertaking from the *Contractor***
- 3.8.1 The Contractor undertakes to the Employer (for the benefit of the Employer itself and for the Employer as agent and trustee for the benefit of the Eligible Employees) that:
- 3.8.1.1 all information which the *Employer* or the Administering Authority or their respective professional advisers may reasonably request from the *Contractor* or any relevant Subcontractor for the administration of the LGPS or concerning any other matters raised in paragraphs 3.7 or 3.8 of Part 1 of this schedule or Part 2 of this schedule (Bulk Transfer Terms) will be supplied to them as expeditiously as possible,

- 3.8.1.2 it will not and will procure that any relevant Subcontractor will not, without the consent in writing of the *Employer* (which will not be unreasonably withheld but will be subject to the payment by the *Contractor* or the relevant Subcontractor of such reasonable costs as the *Employer* or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the *Employer* a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given,
- 3.8.1.3 until the Relevant Transfer Date, it will not and will procure that any relevant Subcontractor will not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 3.1 to 3.6 of Part 1 of this schedule inclusive without the consent in writing of the *Employer* and the Administering Authority (not to be unreasonably withheld or delayed),
- 3.8.1.4 it will not and will procure that any relevant Subcontractor will not take or omit to take any action which would materially affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the provision of the service without the prior written agreement of the Employer (not to be unreasonably withheld or delayed) provided that the Contractor and/or such Subcontractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees.

### 3.9 Claims from Eligible Employees or Trade Unions

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

3.9.1.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of the contract and

3.9.1.2 arise out of the failure of the Contractor and/or any relevant Subcontractor to comply with the provisions of this paragraph 3 before the date of termination or expiry of the contract,

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

### 3.10 Liability for costs

- 3.10.1 The costs of the Employer necessarily and reasonably incurred in connection with the Contractor Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with paragraph 3.7.1.4 will be borne by the Contractor.

- 3.10.2 The actuarial cost of determining the contribution rate for the Contractor or Subcontractor under the Contractor Admission Agreement and the Indemnity or Bond required under paragraph 3.4 of Part 1 of this schedule is to be met by the Employer.

### 3.11 Transfer to another employer

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

3.11.1.1 consults with and inform those Eligible Employees of the pension provisions relating to that transfer and

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

### 3.12 Pension issues on expiry or termination of the contract

The *Contractor* (and procures that each relevant Subcontractor):

3.12.1 maintains such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the *Contractor* or any Subcontractor in the provision of any *service* which is part of the provision of the *service* on the expiry or termination of this contract (including without limitation identification of the Eligible Employees),

3.12.2 promptly provides to the *Employer* such documents and information mentioned in paragraph 3.12.1 above which the *Employer* or the Administering Authority may reasonably request in advance of the expiry or termination of this contract and

3.12.3 fully co-operates (and use best endeavours to procure that the trustees of the Contractor’s Scheme will fully co-operate) with the reasonable requests of the *Employer* or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the *Contractor* or any Subcontractor in the provision of any service which is part of the provision of the service on the expiry or termination of the contract.

### 3.13 Third Party Rights

3.13.1 The Contractor and any Subcontractor agree that the pension provision contained in paragraphs 3.1, 3.2, 3.6 and 3.7 of Part 1 of this schedule will be directly enforceable by the Eligible Employees against the Contractor or any Subcontractor (as the case may be) under the Contracts (Rights of Third Parties) Act 1999.

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

3.14.1 At the Transfer Date, the Fund will be deemed to be fully funded in respect of the Eligible Employees and the Employer will be responsible for any underfunding prior to the Transfer Date. Any underfunding will be established by the actuarial valuation of the Fund at the date the Contractor or a relevant Subcontractor enters into an Admission Agreement in respect of the Eligible Employees. The arrangements regarding any payment to be made to the Fund for any underfunding up to the Transfer Date will be agreed between the Employer and the Fund.

- 3.14.2 At the date of the expiry or earlier termination of the Service Period, the Contractor will obtain, or procure that the Administering Authority obtains, an actuarial valuation of the Fund (or revision thereto). If the Contractor is required to pay any contribution to the LGPS representing any funding deficit (the “**Exit Contribution**”) the *Employer* shall reimburse the *Contractor* the amount of the Exit Contribution save to the extent that the Exit Contribution results from any of the matters set out in clause 3.14.3. Any such reimbursement is made within 20 Working Days of the relevant actuarial valuation.
- 3.14.3 The Contractor accepts responsibility for any Exit Contribution to the extent it results from one or more of the following:
- 3.14.3.1 the grant by the Contractor of early retirement requests in relation to Eligible Employees,
  - 3.14.3.2 granting an augmentation of benefits in relation to an Eligible Employee in relation to the Fund, including, but not limited to, an augmentation under Regulation 31 of the LGPS Regulations, which is in addition to any augmentation that an Eligible Employee is entitled to as a right under the LGPS Regulations,
  - 3.14.3.3 the reduction or waiver of any contributions due from any Eligible Employee,
  - 3.14.3.4 the award of pay increases to Eligible Employees which in aggregate exceed:
    - 3.14.3.4.1 the percentage rate allowed for pay increases in the latest valuation of the Fund prior to the award of the pay increase in question or
    - 3.14.3.4.2 any pay increases that the *Contractor* is required to make by law (including, for these purposes, pursuant to its obligations arising under, or as a consequence of, the TUPE Regulations, any code of practice and/or any National Joint Council for Local Government services arrangements),or
    - 3.14.3.4.3 any pay increases that the *Contractor* is obliged to offer pursuant to the terms and conditions of employment in place with the Eligible Employees as at the Relevant Transfer Date (including under any collective agreement)
  - 3.14.3.5 the termination of the employment contract of an Eligible Employee who is aged 55 or over at the time, by reason of redundancy or in the interests of efficiency or otherwise allowing such employee to retire on those grounds,
  - 3.14.3.6 the termination of the employment contract of an Eligible Employee on the grounds of permanent ill health or infirmity of mind or body which renders the employee permanently incapable of efficiently discharging the duties of his current employment, in accordance with Regulation 35 of the LGPS Regulations,
  - 3.14.3.7 bringing the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after the age of 55,
  - 3.14.3.8 exercising any discretion to extend the statutory time frames under Regulation 22 of the LGPS Regulations or
  - 3.14.3.9 waiving any reduction to benefits under Regulation 30(6) of the LGPS Regulations.



### **3.15 Payment of contributions to the Fund and any excesses/reductions below the Initial Employer Contribution Rate**

- 3.15.1 In respect of contributions to be paid to the Fund by the Contractor or any relevant Subcontractor, subject to paragraph 3.14.1 of Part 1 of this schedule, the Contractor or relevant Subcontractor shall pursuant to the Contractor Admission Agreement pay to the Administering Authority for the credit of the Fund such contributions as are required under Regulation 67 of the LGPS Regulations in respect of the Eligible Employees.
- 3.15.2 If the contributions payable under paragraph 3.15.1 above exceed the Initial Employer Contribution Rate, then the amount which exceeds the Initial Employer Contribution Rate shall be added as an adjustment to the amount due to the Contractor for each month during the period during which the contributions payable in accordance with the Contractor Admission Agreement exceed the Initial Employer Contribution Rate.
- 3.15.3 If the contributions payable under paragraph 3.15.1 above decrease below the Initial Employer Contribution Rate, the reduction below the Initial Employer Contribution Rate shall be subtracted as an adjustment to the amount due to the Contractor for each month during the period during which the contributions payable in accordance the Contractor Admission Agreement are less than the Initial Employer Contribution Rate.
- 3.15.4 For the avoidance of doubt, the provisions of paragraph 3.15.2 above shall not apply where any such change in *Employer* contribution rate arises from any matters for which the *Contractor* is responsible pursuant to paragraph 3.14.3 above.

### **3.16 Discretionary benefits**

- 3.16.1 Where the Contractor or any relevant Subcontractor is an Admission Body, the Contractor shall and/or shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Employer.
- 3.16.2 Where the award of benefits in paragraph 3.16.1 is not permitted under the Compensation Regulations and/or the LGPS, or the Contractor and/or a Sub Contractor is not an Admission Body, the Contractor shall and/or shall procure that any Subcontractor shall award benefits to the Eligible Employees which are equivalent to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Employer.
- 3.16.3 Under paragraphs 3.16.1 and 3.16.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Employer's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Employer shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any relevant Subcontractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

# SCHEDULE 1 – PART 2 BULK TRANSFER TERMS

## 1 Interpretation and Definitions

In this part of this schedule, unless the context otherwise requires, the following terms will have the meanings given to them below:

**“Actuary’s Letter”**

means the letter to be issued at the appropriate time from the Administering Authority’s Actuary,

**“Administering Authority’s Actuary”**

means [.....],

**“AVCs”**

means Additional Voluntary Contributions or Shared Cost Additional Voluntary Contributions (SCAVCs) as defined in the LGPS Regulations,

**“Due Date”**

means the date 28 days after the last of the conditions in paragraph 3.6 of Part 2 of this schedule has been satisfied,

**“Contractor’s Actuary”**

means an actuary to be appointed by the *Contractor* and/or relevant Subcontractor for the purposes of this schedule,

**“Contractor’s Scheme”**

means the pension scheme or schemes nominated by the *Contractor* and/or relevant Subcontractor in accordance with paragraph 3.7 of Part 1 of this schedule,

**“Contractor’s Scheme Actuary’s Letter”**

means the letter (together with its attachments) prepared by the Contractor’s Actuary stating the methods and assumptions to be used for the purpose of Part 2 of this schedule and provided as soon as reasonably practicable following the Relevant Transfer Date,

**“Contractor’s Scheme Required Amount”**

means the Contractor’s Scheme Required Liabilities adjusted by the Investment Roll-up in respect of the period from the date immediately preceding the Relevant Transfer Date to the date immediately preceding the Pension Payment Date (or such earlier date as the transfer is made),

**“Contractor’s Scheme Required Liabilities”**

means the value of the liabilities relating to the Transferring Members, as at the Relevant Transfer Date, calculated in accordance with the Contractor’s Scheme Actuary’s Letter,

**“Investment Roll-up”**

means as defined in the Actuary’s Letter,

**“Shortfalls”**

Has the meaning set out in paragraph 7.3 of Part 2 of this schedule,

**“Transfer Amount”**

means the amount or amounts referred to in paragraph 3.1 of Part 2 of this schedule,

**“Transferring Member”**

means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Contractor’s Scheme under paragraph 2 of Part 2 of this schedule,

**2 The Contractor’s Scheme**

The *Contractor* will (and will procure that each relevant Subcontractor will) invite each Eligible Employee who joins the Contractor’s Scheme in accordance with paragraph 3.7 of Part 1 of this schedule to consent to a transfer of benefits being made for him from the Fund to the Contractor’s Scheme. The *Contractor* and/or relevant Subcontractor must issue this invitation no later than one month after the Relevant Transfer Date. The invitation must be in a form acceptable to the *Employer* and the Administering Authority (such acceptance not to be unreasonably withheld or delayed by the *Employer*) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the *Contractor* and/or relevant Subcontractor of this consent in writing no later than three months after the date of the invitation. The *Contractor* will (and will procure that each relevant Subcontractor will) provide the *Employer* and the Administering Authority with the names of the Transferring Members no later than four months after the Relevant Transfer Date.

**3 Transfer Amount from the Fund**

3.1 The *Employer* will use reasonable endeavours to ensure that the Administering Authority transfers from the Fund to the Contractor’s Scheme on the Due Date an amount in respect of the relevant Transferring Members’ service in the Fund before the Relevant Transfer Date calculated in accordance with the Actuary’s Letter and the LGPS Regulations.

3.2 As soon as reasonably practicable following the Relevant Transfer Date, the *Contractor* will (and will procure that each relevant Subcontractor will) promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority’s Actuary may require for the calculation of the Transfer Amount and will warrant that this data is in all material respects true, complete and accurate.

3.3 As soon as reasonably practicable following the Relevant Transfer Date, the *Employer* will promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority’s Actuary may require for the calculation of the Transfer Amount and will warrant that this data is in all material respects true, complete and accurate.

3.4 The *Employer* will use its reasonable endeavours to procure that:

3.4.1 as soon as reasonably practicable after the Administering Authority’s Actuary has been provided with the necessary data and information, the Administering Authority’s Actuary will calculate the Transfer Amount in accordance with the Actuary’s Letter and the LGPS Regulations and

3.4.2 within one week of completing this calculation, the Administering Authority’s Actuary will notify the Contractor’s Actuary in writing of the particulars of the calculation and the data on which the calculation is based.

The Contractor’s Actuary will then have one month (or such longer period as the Parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary’s Letter. The calculation will be final and binding on the Parties if the Contractor’s Actuary raises no objection within this stated period.

3.5 If the Contractor's Actuary objects in writing under paragraph 3.4 above and the Administering Authority's Actuary and the Contractor's Actuary cannot subsequently agree the Transfer Amount within one month (or such longer period as will be agreed between the Parties) of the objection, then the amount will be determined by an independent actuary to be nominated by the Administering Authority and the Contractor and/or relevant Subcontractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either Party. The independent actuary will act as an expert and not as an arbitrator, and his decision will be final and binding on the Parties. The independent actuary's costs will be payable equally by the Administering Authority and the Contractor and/or relevant Subcontractor.

**3.6 Payment to the Contractor's Scheme of the Transfer Amount will only be made on the following conditions:**

3.6.1 the Transfer Amount has been agreed or determined under paragraphs 3.4 or 3.5 above and in accordance with the LGPS Regulations,

3.6.2 the Contractor and/or relevant Subcontractor has complied with all its obligations under this schedule and

3.6.3 the trustees of the Contractor's Scheme have confirmed in writing that:

3.6.3.1 a payment should be made in accordance with the LGPS Regulations and that they will accept payment on the terms set out in paragraph 2 of Part 2 of this schedule,

3.6.3.2 they will accept liability for each Transferring Member's accrued contracted out rights under the Fund and

3.6.3.3 they will accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.

**4 Past Service Benefits**

The Contractor will (and will procure that each relevant Subcontractor will) ensure that the Contractor's Scheme provides in respect of each Transferring Member such benefits as the Administering Authority's Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer Date if he had remained a member of the LGPS.

**5 Additional Voluntary Contributions**

Nothing in this schedule will apply to AVCs or to benefits secured by them. However, the Employer must ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) will be transferred to the Contractor's Scheme. The Contractor will (and will procure that each relevant Subcontractor will) ensure that the Contractor's Scheme provides benefits for each relevant Transferring Member which is equivalent to the assets transferred.

**6 No Assistance**

The Contractor will not (and will procure that each relevant Subcontractor will not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the Contractor's Scheme in respect of the Transferring Members.

## 7 Shortfall<sup>37</sup>

- 7.1 The *Contractor* (or the relevant Subcontractor) shall procure that the Contractor's Actuary shall calculate the Contractor's Scheme Required Liabilities and the Contractor's Scheme Required Amount as soon as reasonably practicable and (subject to the Contractor's Actuary being in receipt of such information as he reasonably requires to certify the amount) in any event within 2 months of the *Contractor* (or its relevant Subcontractor) finalising the list of Transferring Members or within 2 months of the date the information is provided under paragraphs 3.2 and 3.3 of Part 2 of this schedule (whichever is the later) and notify the *Employer* of his determination.
- 7.2 The *Contractor* (or its relevant Subcontractor) and the *Employer* shall instruct the Contractor's Actuary and the Administering Authority's Actuary respectively to endeavour to agree with the Contractor's Actuary's certification of the Contractor's Scheme Required Amount within 1 month of acknowledging receipt of it. On the Contractor's Actuary and Administering Authority's Actuary so agreeing the certificate shall be taken to have been agreed.
- 7.3 Where the Contractor's Scheme Required Amount is greater than the Transfer Payment, the *Contractor* (or its relevant Subcontractor) shall instruct the Contractor's Scheme Actuary to issue, by no later than 7 days of the date of the last of the calculations of the Transfer Amount and the Contractor's Scheme Required Amount being regarded as final, a letter to both the *Employer* and the *Contractor* (or its relevant Subcontractor) confirming the total amount of the difference ("**Shortfall**") required by the trustees of the Contractor Scheme as a condition to their agreeing to accept the Transfer Amount. In relation to the Shortfall, the *Employer* shall make payment to the *Contractor* (or its relevant Subcontractor) of such amount. The amount in terms of this paragraph 7.3 shall be paid to the *Contractor* (or its relevant Subcontractor) by the *Employer* at the same time as the Transfer Amount is paid by the Fund to the Contractor Scheme.

The *Contractor* (or its relevant Subcontractors) undertakes to the *Employer* that it will make payment of such amount to the trustees of the *Contractor's* Scheme within 7 days following receipt by the *Contractor* (or its relevant Subcontractor) of cleared funds from the *Employer*.

## 8 Exit Provisions

- 8.1 The *Contractor* undertakes to the *Employer* (for the benefit of the *Employer* itself and for the *Employer* as agent and trustee for the benefit of the Eligible Employees) that on:
- 8.1.1 the expiry or termination of this contract or
  - 8.1.2 the expiry or termination of any subcontract in the case of a relevant Subcontractor or
  - 8.1.3 the employment of any Eligible Employee transferring to a New Employer in accordance with paragraph 3.11 of Part 1 of this schedule (or otherwise),

<sup>37</sup> This wording sets out a potential mechanism for dealing with any Shortfall on bulk transfer from the LGPS to the Contractor's Scheme which may be included if the Parties agree such a mechanism once the *Contractor* (or relevant Subcontractor) has put forward their reasoned statement of need as to why such Shortfall protection is required.

the *Contractor* will (and will procure that each relevant Subcontractor will) procure that the trustees of the Contractor's Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the *Contractor's* Scheme to the pension scheme of the *Employer*, any future *Contractor* (or their Subcontractors), any new Subcontractor or any New Employer (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the Employer) than the bulk transfer terms set out in the Actuary's Letter. In addition to this, the *Contractor* will procure that the New Employer complies with the requirements of paragraph 7.1 of Part 2 of this schedule.

- 8.2 If the transfer payment paid by the trustees of the Contractor's Scheme is less (in the opinion of the Administering Authority's Actuary or an actuary appointed by the *Employer*) than the transfer payment which would have been paid had paragraph 8.1 of Part 2 of this schedule been complied with, the *Contractor* will (and/or will procure that each relevant Subcontractor will) pay to the *Employer*, any future *Contractor* (or their Subcontractor), any new Subcontractor or any New Employer (as appropriate) (or as such person will direct) the amount of the difference.

## 9 Employer's Costs

Any costs of the *Employer* necessarily and reasonably incurred in connection with Part 2 of this schedule will be borne by the *Contractor*.

# SCHEDULE 1 – ANNEX 1 – DRAFT ADMISSION AGREEMENT

# SCHEDULE 1 – ANNEX 2 – DRAFT GUARANTEE BOND



# SCHEDULE 1 – ANNEX 3 – TUPE INFORMATION<sup>38</sup>

---

<sup>38</sup> Use HMEP TUPE Tender Data Spreadsheet to provide the required information

# SCHEDULE 2 – ANNEX 1 – PRICE ADJUSTMENT FOR INFLATION

Work Category <sup>39</sup>

<sup>39</sup> The *Employer* inserts the applicable Work Categories in the table.

# SCHEDULE 2 – ANNEX 2 – PRICE ADJUSTMENT FOR INFLATION<sup>40</sup>

Resource Cost Indices	Proportions for Work Category Indices <sup>41</sup>								
	Routine, Cyclic and Time Charge Works	Renewals and Construction Works	Professional Services	Machine Surfacing	Hand Surfacing /Patching	Surface Dressing	Road Markings	Street Lighting	Vehicle Maintenance
R10/1 People – Management and Administration	11.1%	11.1%	88.9%	11.1%	11.1%	11.1%	11.1%	11.1%	11.1%
R10/2 People – Labour	62.4%	35.8%		9.6%	29.1%	11.8%	29.6%	33.6%	36.3%
R10/3 Equipment – Road Vehicles	13.7%	6.3%	3.3%	0.9%	8.0%	11.4%	16.7%	12.4%	10.0%
R10/4 Equipment – Operational Plant	3.3%	9.8%		2.8%	5.1%	1.1%	0.9%	1.3%	1.1%
R10/5 Aggregates		1.2%				18.7%			
R10/6 Ready Mixed Concrete		7.4%						2.2%	
R10/7 Cast and Spun Iron Products		0.3%							
R10/8 Plastic Products		0.3%						2.2%	
R10/9 Coated Macadam and Bituminous Products				70.0%	35.7%				
R10/10 DERV Fuel	5.9%	5.7%	2.2%	0.4%	3.4%	4.9%	3.3%	2.2%	3.7%
R10/11 Gas Oil Fuel	1.4%	2.1%		1.4%	2.2%	0.4%	0.6%	0.6%	1.1%

<sup>40</sup> Delete this table and insert “not used” if Option 1 applies.

<sup>41</sup> This table reflects the Work Categories and the Resource Cost Index proportions currently used by BCIS to calculating the Work Category Indices. This table should be amended to reflect any other Work Categories required and / or any reapportionment of the weightings attributed to the Resource Cost Indices for each Work Category.

Resource Cost Indices	Proportions for Work Category Indices								
	Routine, Cyclic and Time Charge Works	Renewals and Construction Works	Professional Services	Machine Surfacing	Hand Surfacing /Patching	Surface Dressing	Road Markings	Street Lighting	Vehicle Maintenance
R10/12 Metal Sections		3.8%							
R10/13 Waste Disposal		4.3%			2.2%				
R10/14 Precast Concrete		2.4%							
R10/15 Bitumen				1.6%	1.0%	38.4%			
R10/16 Thermoplastic		2.4%					35.6%		
R10/17 Electrical Supplies		4.9%						32.2%	
R10/18 ICT Costs	0.4%	0.4%	1.7%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%
R10/19 Property Maintenance	0.4%	0.4%	1.1%	0.4%	0.4%	0.4%	0.4%	0.4%	3.8%
R10/20 Insurance	1.4%	1.4%	2.8%	1.4%	1.4%	1.4%	1.4%	1.4%	1.4%
R10/21 Vehicle Parts									31.1%
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

## SCHEDULE 3 – PARTNERING INFORMATION<sup>42</sup>

---

<sup>42</sup> Set out how the Parties are to work together to achieve the *Employer's* objectives.

# CONTRACT DATA

## PART TWO – DATA PROVIDED BY THE *CONTRACTOR*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**Statements given in all contracts**

- The *Contractor* is:
  - Name .....
  - Address .....
  - .....
  - .....
- The *direct fee percentage* is .....%:
- The *subcontracted fee percentage* is ..... %:
- The key people<sup>43</sup> are:
  - (1) Name .....
  - Job .....
  - Responsibilities .....
  - Qualifications .....
  - Experience .....
  - (2) Name .....
  - Job .....
  - Responsibilities .....
  - Qualifications .....
  - Experience .....

<sup>43</sup> Key people include the Project Manager, Contract Manager, Commercial Manager, Quality Manager, Safety Manager and Environmental Manager or equivalent.

(3) Name .....  
Job .....  
Responsibilities .....  
Qualifications .....  
Experience .....

- The *fair payment charter* is:

.....

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

.....  
.....  
.....  
.....

- The *commercially sensitive information* is:

- (1) .....
- (2) .....
- (3) .....
- (4) .....
- (5) .....
- (6) .....
- (7) .....
- (8) .....

**Optional Statements**

If the *Contractor* is to provide Service Information for his plan

- The *Contractor's* Service Information for the *Contractor's* plan is in:

.....

If a plan is identified in the Contract Data<sup>44</sup>

- The plan identified in the Contract Data is:

.....

**If Option A is used**

- The *discount table* is:

<b>Part of the <i>service</i></b> <sup>45</sup>	
<b>cumulative Price for Services Provided In Year range</b>	<b><i>discount percentage (%)</i></b>
Less than [£ .....]	[.....]
[£ .....] to [£ .....]	[.....]
[£ .....] to [£ .....]	[.....]
[£ .....] to [£ .....]	[.....]
[£ .....] to [£ .....]	[.....]
Greater than [£ .....]	[.....]

**If Option A, C or E is used**

- The *price list* is:

.....

<sup>44</sup> Employer deletes this entry if Contract Data Part one requires the *Contractor* to submit a plan for acceptance after the Contract Date.

<sup>45</sup> Employer defines parts of the *service* to which discount is to be applied. Provide additional tables if different discount percentages are to be applied to different parts of the *service*.



- If Option A or C is used • The tendered total of the Prices<sup>46</sup> is:

<b>service component</b>	<b>service</b>	<b>Price</b>
[.....]	[.....]	[£ .....]
[.....]	[.....]	[£ .....]
[.....]	[.....]	[£ .....]
[.....]	[.....]	[£ .....]
<b>TOTAL</b>		<b>[£ .....]</b>

- The *efficiency saving table*<sup>47</sup> is:

<b>Part of the service<sup>48</sup></b>	
<b>Anniversary of Contract Date</b>	<b>Percentage reduction in the Prices</b>
1 <sup>st</sup> anniversary	[...] %
2 <sup>nd</sup> anniversary	[...] %
3 <sup>rd</sup> anniversary	[...] %
<sup>49</sup>	

<sup>46</sup> Employer completes *service* components and *service* columns if Option A or C applies and Prices are provided by the Contractor with his tender.

<sup>47</sup> If clause ZAC2 Efficiency Savings is not used this table is deleted.

<sup>48</sup> Employer defines parts of the *service* to which the percentage reduction in the Prices is to be applied. Provide additional tables if different percentage reductions are to be applied to different parts of the *service*.

<sup>49</sup> Extend or reduce as appropriate.

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

- The percentage for people overheads is ..... %
- The published list of Equipment is the latest edition of the list published by .....  
.....
- The percentage for adjustment for Equipment in the published list is .....(%) (state plus or minus)

- The rates for other Equipment are

<b>Equipment</b>	<b>size or capacity</b>	<b>rate</b>
.....	.....	.....
.....	.....	.....
.....	.....	.....

- The hourly rates for Defined Cost of design outside the Affected Property are

<b>category of employee</b>	<b>hourly rate</b>
.....	.....
.....	.....
.....	.....

- The percentage for design overheads is ..... %
- The categories of design employees whose travelling expenses to and from the Affected Property are included in Defined Cost are

.....

.....

.....

**Data for the Schedule of Cost Components If Option C or E is used**

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

<b>Equipment</b>	<b>time-related charge</b>	<b>per time period</b>
.....	.....	per
.....	.....	per
.....	.....	per

- Rates for special Equipment are

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

- The percentage for Affected Property overheads<sup>50</sup> is .....%
- The hourly rates for Defined Cost of manufacture and fabrication outside the Affected Property are:

category of employee	hourly rate
.....	.....
.....	.....
.....	.....

- The percentage for manufacture and fabrication overheads is .....%
- The hourly rates for Defined Cost of design outside the Affected Property are

**Data for both  
schedules of  
cost  
components  
If Option C or E  
is used**

category of employee	hourly rate
.....	.....
.....	.....
.....	.....
.....	.....

- The percentage for design overheads is .....%
- The categories of design employees whose travelling expenses to and from the Affected Property are included as a cost of design for the *service* and Equipment done outside the Affected Property are

.....

.....

.....

<sup>50</sup> This may be deleted by the *Employer* along with 44 of Charges 4 of the Schedule of Cost Components if it is not required.

- The rates for other Equipment are

<b>Equipment</b>	<b>size or capacity</b>	<b>rate</b>
.....	.....	.....
.....	.....	.....
.....	.....	.....

## SCHEDULE OF COST COMPONENTS

This schedule is part of the *conditions of contract* when Option C or E or more than one main Option is used. In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Service.

- People 1** The following components of the cost of
- people who are directly employed by the *Contractor* and whose normal place of working is within the Affected Property and
  - people who are directly employed by the *Contractor* and whose normal place of working is not within the Affected Property but who are working in the Affected Property.
- 11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked while they are within the Affected Property.
- 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) severance related to work on this contract.
- 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) meeting the requirements of the law
  - (j) pensions and life assurance
  - (k) death benefit
  - (l) occupational accident benefits
  - (m) medical aid
  - (n) a vehicle
  - (o) safety training.

- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid by him according to the time worked while they are within the Affected Property.

Amounts paid by the *Contractor*.

**Equipment 2** The following components of the cost of Equipment which is used within the Affected Property (including the cost of accommodation but excluding Equipment cost covered by the percentage for Affected Property overheads).

- 21 Payments for the hire or rent of Equipment not owned by

- the *Contractor*,
- the *Contractor's* parent company or
- by a company with the same parent company

at the hire or rental rate multiplied by the time for which the Equipment is required.

- 22 Payments for Equipment which is not listed in the Contract Data but is

- owned by the *Contractor*,
- purchased by the *Contractor* under a hire purchase or lease agreement or
- hired by the *Contractor* from the *Contractor's* parent company or from a company with the same parent company

at open market rates multiplied by the time for which the Equipment is required.

- 23 Payments for Equipment purchased for work included in this contract listed with a time-related on cost charge, in the Contract Data, of

- the change in value over the period for which the Equipment is required and
- the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required.

The change in value is the difference between the purchase price and the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made at the next assessment after the change in value has been determined.

If the *Service Manager* agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.

- 24 Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.

If the *Service Manager* agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.

- 25 Payments for the purchase price of Equipment which is consumed.

- 26 Unless included in the hire or rental rates, payments for
- transporting Equipment to and from the Affected Property other than for repair and maintenance,
  - erecting and dismantling Equipment,
  - constructing, fabricating or modifying Equipment as a result of a compensation event,
- 27 Payments for the purchase of materials used to construct or fabricate Equipment.
- 28 Unless included in the hire rates, the cost of operatives is included in the cost of people.

**Plant and Materials 3** The following components of the cost of Plant and Materials.

- 31 Payments for:
- purchasing Plant and Materials,
  - delivery to and removal from the Affected Property,
  - providing and removing packaging and
  - samples and tests.
- 32 Cost is credited with payments received for the disposal of surplus Plant and Materials unless the cost is disallowed.

**Charges 4** The following components of the cost of charges paid by the *Contractor*.

- 41 Payments for provision and use in the Affected Property of
- water,
  - gas and
  - electricity.
- 42 Payments to public authorities, utilities and other properly constituted authorities of charges which they are authorised to make in respect of the *service*.
- 43 Payments for
- (a) cancellation charges arising from a compensation event
  - (b) buying or leasing land
  - (c) compensation for loss of crops or buildings
  - (d) royalties,
  - (e) inspection certificates,
  - (f) charges for access to the Affected Property,
  - (g) facilities for visits to the Affected Property by Others,
  - (h) specialist services,
  - (i) consumables and equipment provided by the *Contractor* for the *Service Manager's* offices.

44 A charge for overhead costs incurred within the Affected Property calculated by applying the percentage for Affected Property overheads<sup>51</sup> stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for

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

**Manufacture and Fabrication 5** The following components of the cost of manufacture and fabrication of Plant and Materials which are

- wholly or partly designed specifically for the *service* and
- manufactured or fabricated outside the Affected Property.

51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.

52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.

**Design<sup>52</sup> 6** The following components of the cost of design of the *service* and Equipment done outside the Affected Property.

61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employee listed.

62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.

63 The cost of travel to and from the Affected Property for the categories of design employees listed in the Contract Data.

**Insurance 7** The following are deducted from cost:

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

<sup>51</sup> This provision is optional and may be deleted by the *Employer*; if it is used, the overhead contents (a) to (j) may be changed by the *Employer*.

<sup>52</sup> This is optional and may be used by the *Employer*.



## SHORTER SCHEDULE OF COST COMPONENTS

This schedule is part of the *conditions of contract*. This schedule is used for assessing compensation events when main Option A is used exclusively. Where main Option A is not used exclusively, this schedule may be used by agreement to assess compensation events. In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Service.

- People 1** The following components of the cost of:
- people who are directly employed by the *Contractor* and whose normal place of working is within the Affected Property,
  - people who are directly employed by the *Contractor* and whose normal place of working is not within the Affected Property but who are working in the Affected Property and
  - people who are not directly employed by the *Contractor* but are paid for him according to the time worked while they are within the Affected Property.

- 11 Amounts paid by the *Contractor* including those for meeting the requirements of the law and for pension provision.

- Equipment 2** The following components of the cost of Equipment which is used within the Affected Property (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).

- 21 Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resultant rate by the time for which the Equipment is required.
- 22 Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
- 23 The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.

- 24 Unless the item is in the published list and the rate includes the cost component, payments for
- transporting Equipment to and from the Affected Property other than for repair and maintenance,
  - erecting and dismantling Equipment and
  - constructing, fabricating or modifying Equipment as a result of a compensation event.
- 25 Unless the item is in the published list and the rate includes the cost component, the purchase price of the Equipment which is consumed.
- 26 Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
- 27 Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.

**Plant and Materials 3** The following components of the cost of Plant and Materials.

- 31 Payments for
- purchasing Plant and Materials,
  - delivery to and removal from the Affected Property,
  - providing and removing packaging and
  - samples and tests.
- 32 Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

**Charges 4** The following components of the cost of charges paid by the *Contractor*.

- 41 A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 11 to cover the costs of
- payments for the provision and use in the Affected Property of water, gas and electricity,
  - payments for buying or leasing land, compensation for loss or crops or buildings, royalties, inspection certificates, charges for access to the Affected Property, facilities for visits to the Affected Property by Others and
  - payments for the provision and use of equipment, supplies and services (excluding accommodation) for catering, medical facilities and first aid, recreation, sanitation, security, copying, telephone, telex, fax, radio, CCTV, surveying, setting out, computing and hand tools not powered by compressed air.

- 42 Payments for cancellation charges arising from a compensation event.
- 43 Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the *service*.
- 44 Consumables and equipment provided by the *Contractor* for the *Service Manager's* office.
- 45 Specialist services.

**Manufacture and Fabrication 5** The following components of the cost of manufacture and fabrication of Plant and Materials, which are

- wholly or partly designed specifically for the service and
- manufactured or fabricated outside the Affected Property.

51 Amounts paid by the *Contractor*.

**Design 6<sup>53</sup>** The following components of the cost of design of the *service* and Equipment done outside the Affected Property.

- 61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employee listed.
- 62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
- 63 The cost of travel to and from the Affected Property for the categories of design employees listed in the Contract Data.

**Insurance 7** The following are deducted from cost:

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

<sup>53</sup> This is optional and may be used by the *Employer*.

## ACKNOWLEDGEMENTS

HMEP has reviewed the HMEP Service Information and Specification as part of an on-going review and update of its procurement products. This has led to minor changes being made to the HMEP Agreement and Contract Data since publication of the 2<sup>nd</sup> Edition in 2015. This third edition has been drafted by Peter Higgins of Thomas Telford with guidance from a review team comprising members of the Association of Directors of Environment, Economy, Planning and Transportation (ADEPT) and the Highways Term Maintenance Association (HTMA) supported by Aecom.

HMEP commissioned Thomas Telford to undertake a review feedback received on its 1<sup>st</sup> Edition and to draft the second edition to align the contract to current thinking and experiences. The second edition was drafted by Peter Higgins of PD Consult as a sub-consultant to Thomas Telford with guidance from a HMEP review team comprising members of the Highways Term Maintenance Association (HTMA) and the Association of Directors of Environment, Economy, Planning and Transportation (ADEPT). The updated HMEP Contract was reviewed by Local Highway Authority Client and Procurement officers on 30<sup>th</sup> January 2015. A legal review was provided by John Hughes D'Aeth, Mark Kaye and David Dennison of Berwin Leighton Paisner. The third edition includes minor redrafting completed in consultation with Peter Higgins with guidance from the HMEP review team.

The first edition of the HMEP Form of Contract was developed and drafted by the Collaborative Working Council (CWC) based on the results of a survey of the sector in October 2011. The resulting HMEP Form of Contract was specifically aimed at highways term maintenance procurement. Its development was guided by a HMEP Project Board comprising wide sector representation as indicated below.

HMEP would like to extend its thanks to all those involved in the original release and continued development of its form of contract to meet the needs of the highways maintenance sector.

### REVIEW TEAM – HMEP AGREEMENT & CONTRACT DATA

The HMEP Programme Board would like to acknowledge the help and support it has received from those listed below when undertaking the review of its contract and preparing this third edition.

Matthew Lugg OBE	HMEP Advocate
Gary Thompson	HMEP Project Manager
Peter Higgins	Thomas Telford
James Cuthbert	AECOM
Ashley Beighton	Bath and North East Somerset Council
Konrad Lansdown	North Somerset Council
Peter Theobald	HTMA

The HMEP Programme Board would like to acknowledge the help and support it has received from those listed below when undertaking the review of its contract and preparing the second edition.

Matthew Lugg OBE	HMEP Advocate
Gary Thompson	HMEP Project Manager
Peter Higgins	Thomas Telford
David Whitton	Association of Directors of Environment, Economy, Planning and Transportation (ADEPT) Peer Review Leader (Devon County Council)
Paul Davis	ADEPT (Devon County Council)

Steve Ashley	Highways Term Maintenance Association (HTMA)
David Binding	HTMA
Ian Colyer	HTMA
Peter Theobald	HTMA

The HMEP Programme Board also extends its thanks to the Local Highway Authority review group comprising officers from the following authorities:

Bristol City Council	Cambridgeshire County Council	Central Bedfordshire Council
East Sussex Council	Gloucestershire County Council	North Somerset Council
Solihull Metropolitan Council	Surrey County Council	Telford & Wrekin Council
Warwickshire County Council		

## HMEP PROJECT BOARD

Matthew Lugg OBE	Project Board Chair & Former President of ADEPT
Gary Thompson	HMEP Project Manager
Anthony Radford-Foley	Technical Advisory Group (TAG)
Martin Duffy	Chartered Institution of Highways & Transportation (CIHT)
Peter Higgins, Andy Warrington	Institution of Civil Engineers (ICE)
Kevin Melling	Association for Public Service Excellence (APSE)
Peter Hyde	HTMA
Steven Dennis	Transport for London (TfL) – Transforming London Highways Management
Trevor Collett	London Technical Advisory Group (LoTAG)
John Reed	ADEPT
Sue Housley	Highways England (HE)
Noel Foley	Association of Consulting Engineers (ACE)

In addition to the above organisations the Board would like to acknowledge support from all the local highway authorities, contractors, support consultants and the NEC that took part in the consultations.

## SUPPORT CONSULTANTS

### AECOM

Jason Clarke	Project Director
James Cuthbert	Project Manager

### Thomas Telford

Peter Higgins	Consultant
---------------	------------