

Partnering Information

The Partnering Information contains three elements: (i) Performance Measures; (ii) the Strategic Indicators; (iii) the *service level table*.

The Performance Measures measure the Contractor's compliance with the requirements of the Service Information i.e. the services are completed without Defects within the timescale required by the Service Information / Task Order.

The Strategic Indicators measure performance against the Employer's objectives of supporting the **people, communities and economy** of Shropshire.

The *service level table* is used with Option X17 of the contract

The Employer, the Contractor and the Service Manager carry out their respective duties in accordance with the Partnering Information

The Employer and the Contractor establish the Shropshire Highways Alliance and the Operations Board in accordance with the Service Information

The Boards review the performance as measured by the three elements of the Partnering Information and in accordance with their terms of reference recommend:

- actions to be taken by the Employer, the Contractor and the Service Manager to improve performance or support the improvement of performance
- the addition, deletion or amendment of indicators and/or any aspect thereof

The Employer, the Service Manager and the Contractor take into account the recommendations of the Boards when carrying out their respective duties in accordance with the Partnering Information

The Employer takes into account the Contractor's performance against the Performance Measures and the Strategic Indicators when deciding whether or not to offer an extension to the Service Period.

The Employer, the Contractor and the Service Manager comply with clause 10.1 of the contract

Performance Measures

The Performance Measures are stated in the Table 1 below.

From the starting date until the end of the Service Period, the Contractor reports to the Service Manager his performance against each of the Performance Measures. The reports are provided at the frequency stated in the Table 1.

If the Contractor does not achieve the Target Performance Level for a Performance Measure he submits a proposal to the Service Manager his proposal for improving performance. **Note to tenderers - the Employer and the Contractor will agree the Target Performance Level for each PM during the mobilisation period. If the Parties are unable to agree a Performance Target the Employer sets the Performance Target. In setting a ePerformance Target, the Employer considers recent performance by the Shropshire highway service against the Strategic Indicator or a broadly comparable indicator with the expectation that performance will increase year on year during the Service Period.**

The Employer may add, remove or amend a Performance Measure. The Employer discusses a change with the Contractor before implementing a change.

Table 1 - Performance Measures

Service Area	PM Ref	Performance Measure	Target Performance Level	Reporting Frequency	Method of Calculation of Performance
Reactive Works	RW 1	% of instructed highway repairs that are completed without Defects within the specified response time	95%	Monthly	
	RW 2	% of instructed street light repairs that are completed without Defects within the specified response time	95%	Monthly	
	RW 3	% of instructed fly tipping incidents that cleared without Defects within the specified response times	95%	Monthly	
	RW 4	% of instructed additional street cleansing / sweeping / litter picks completed that are completed without Defects within the specified response times	95%	Monthly	
Emergency Works	EW 1	% of emergencies attended and made-safe within the required response time	95%	Monthly	
Winter Maintenance	WM 1	% of pre-treatment routes commenced within instructed response time	95%	Monthly	
	WM 2	% of pre-treatment routes completed within treatment time	95%	Monthly	
Programmed Works and Schemes	PW 1	% of highways programmed works commenced by the starting date stated in the Task Order	95%	Monthly	
	PW2	% of highways programmed works where Task Completion is on/before the Task Completion Date	95%	Monthly	
	PW 3	% of street lighting programmed works commenced by the starting date stated in the Task Order	95%	Monthly	
	PW 4	% of street lighting programmed works where Task Completion is on/before the Task Completion Date	95%	Monthly	

Strategic Indicators

The Strategic Indicators are stated in the Table 2 below.

From the starting date until the end of the Service Period, the Contractor reports to the Service Manager performance against each of the Strategic Indicators. The reports are provided at the frequency stated in the Table 1.

If the Contractor does not achieve the Performance Target for a Strategic Indicator he submits a proposal to the Service Manager his proposal for improving performance. **Note to tenderers - the Employer and the Contractor will agree the Performance Target for each SI during the mobilisation period. If the Parties are unable to agree a Performance Target the Employer sets the Performance Target. In setting a Performance Target, the Employer considers recent performance by the Shropshire highway service against the Strategic Indicator or a broadly comparable indicator.**

The Employer and the Contractor discuss ways of improving performance and the Parties implement agreed actions

The Employer may add, remove or amend a Strategic Indicator. The Employer discusses the changes with the Contractor.

Table 2 - Strategic Indicators

Objectives	KPI Ref	KPI	Performance Target	Reporting Frequency	Method of Calculation of Performance
Communities	CS 1	% of public satisfied with highway maintenance		Annually	KBI 24 by NHT Survey
	CS 2	% of public satisfied with street lighting		Annually	KBI 25 by NHT survey
	CS 3	% of public satisfied with grounds maintenance services		Annually	
	CS 4	% of customers satisfied with street cleanliness		Annually	
	CS 5	Number of volunteer days provided by Contractor to local communities / events		Annually	person days / £M contract turnover
People	PS 1	Number of apprenticeships provided during the Financial Year		Annually	person days / £M contract turnover
	PS 2	Number of training and work experience days provided to students and unemployed persons		Annually	person days / £M contract turnover
	PS 3	Contractor's staff proud to be working for Shropshire Highways		Annually	% staff measured by annual survey
Economy	ES 1	% of work delivered by subcontractors with a registered office within the SY postcode		Annually	% of contract turnover
	ES 2	Number of actions taken to maintain Level 3 Status		Annually	% of agreed actions completed
	ES 3	Number of implementable innovations submitted to Operations Board for consideration		Annually	Number

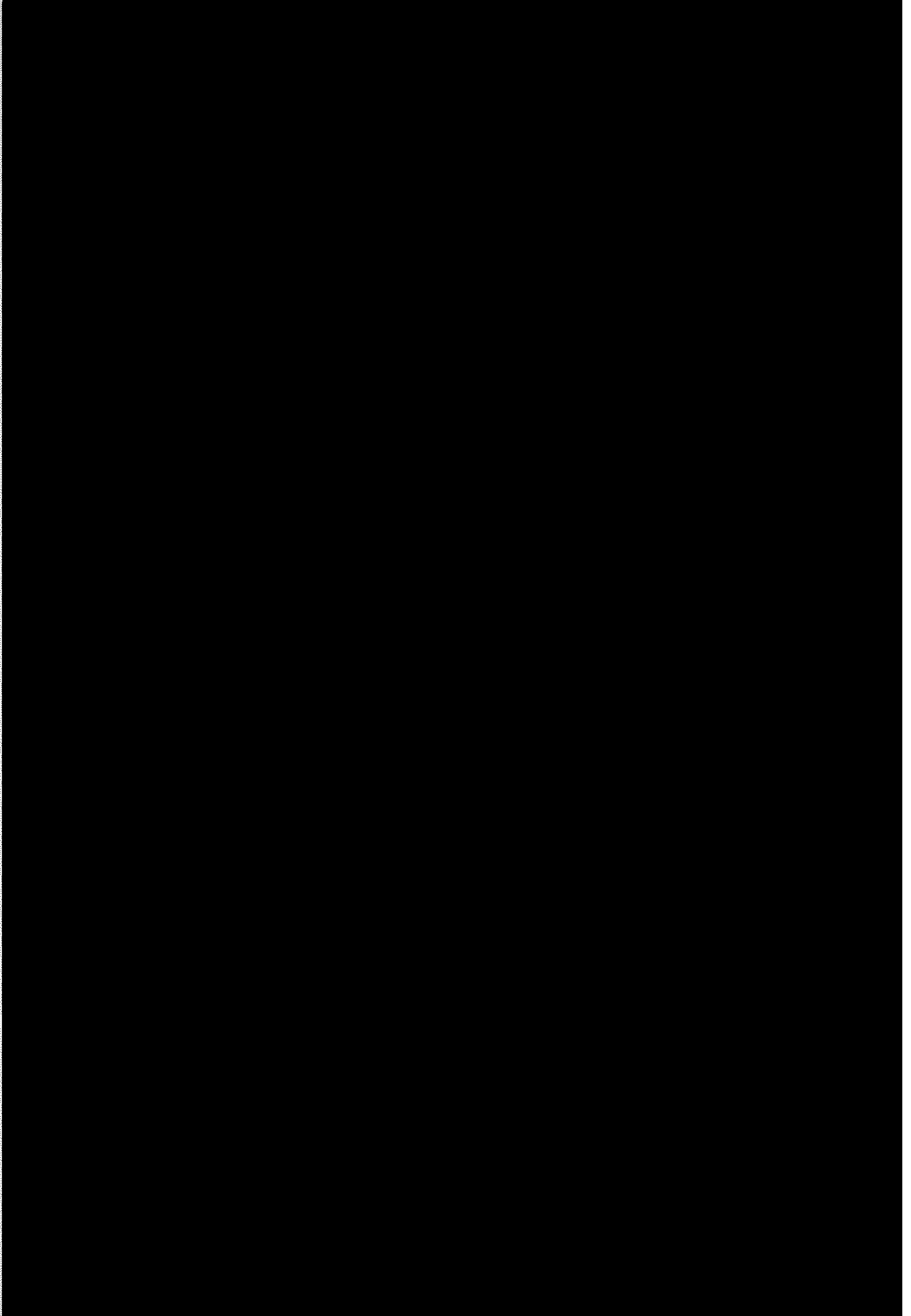
Service Level Table

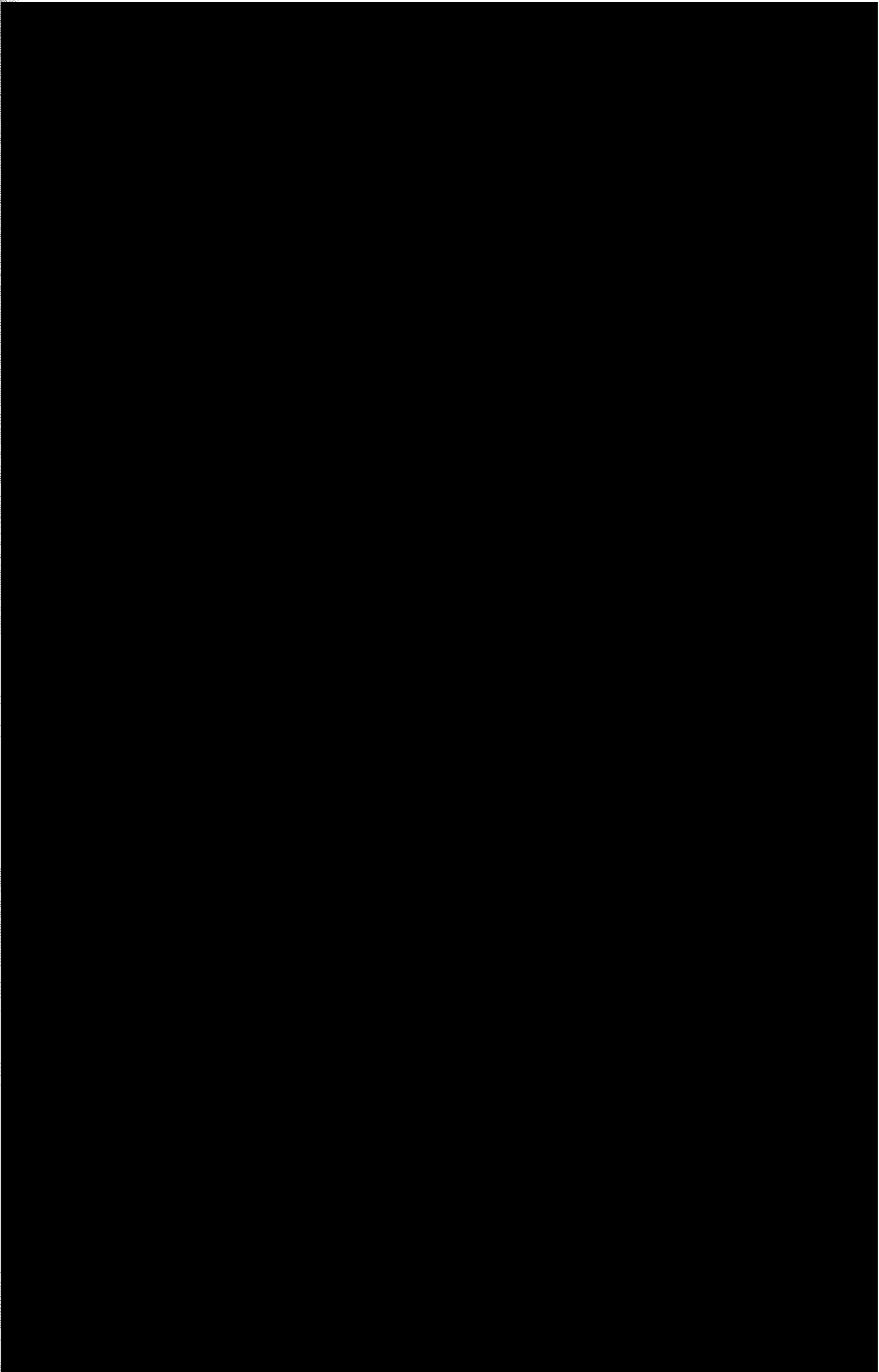
the *service level table* is below

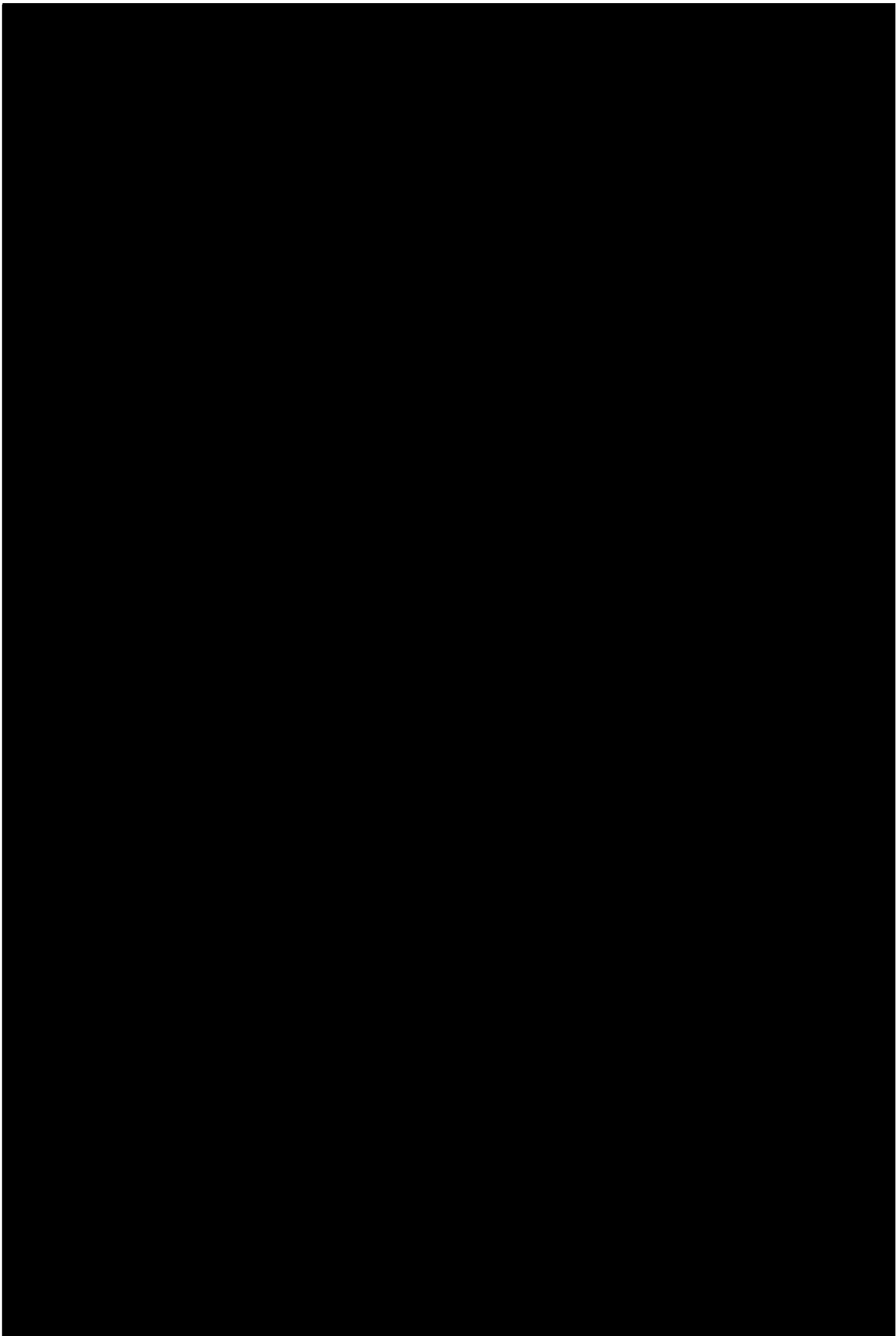
Service Level	Method of Calculation	Amount of low service damages
A Task is not carried out in accordance with the requirements of the Permit issued by the Traffic Manager	Amount per Permit	£135.00
The Contractor fails to use a Road Closure or cancels a Road Closure without giving written notice to the Service Manager 30 days prior to the start of the Road Closure	Amount per Road Closure	£1,600.00
The Contractor does not update Confirm with the date of Task Completion within 48 hours of Task Completion	Amount per Task Order	£20.00
The Contractor does not provide updated Asset Data and/or "As-Built" drawings required by the contract	Amount per Task Order	£20.00
The Contractor does not include the amount for a completed Task Order in an application for payment at the next assessment date.	Amount per Task Order	£250.00
The Contractor does not provide an electrical test certificate within 48 hours of work on electrical installation (e.g. lighting column)	Amount per electrical installation	£25.00

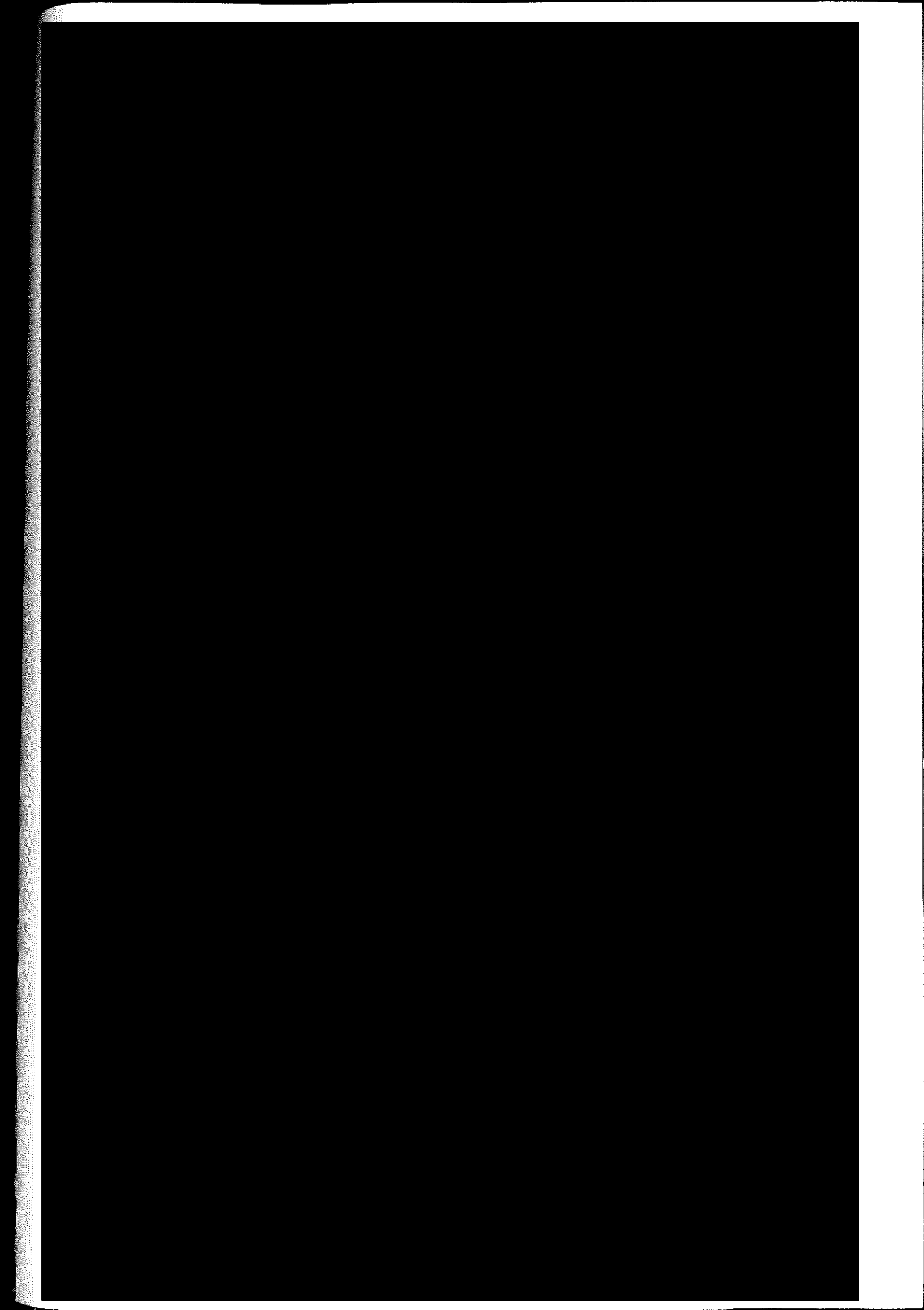
SCHEDULE 5 - WORKFORCE INFORMATION

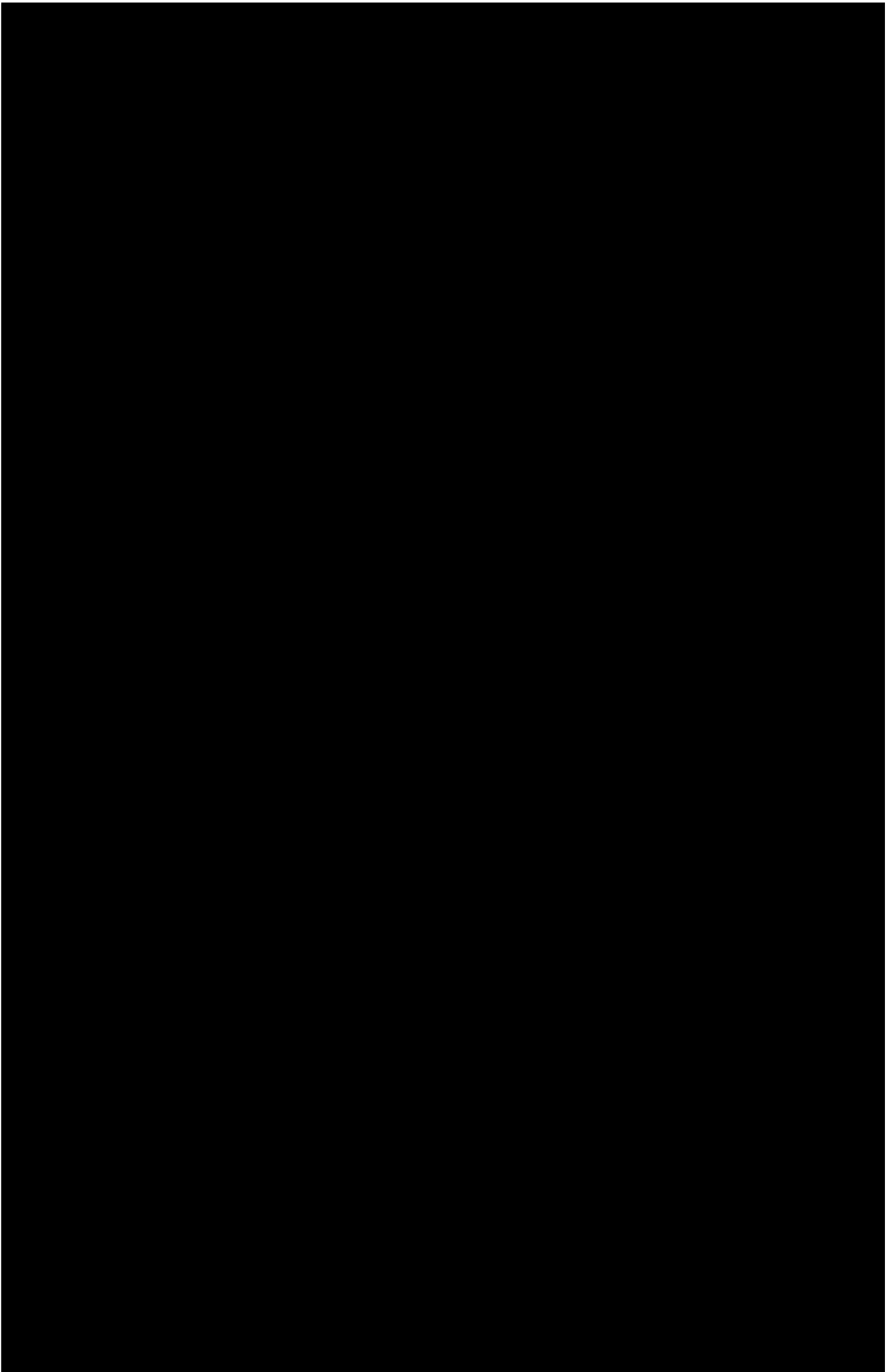
personal info

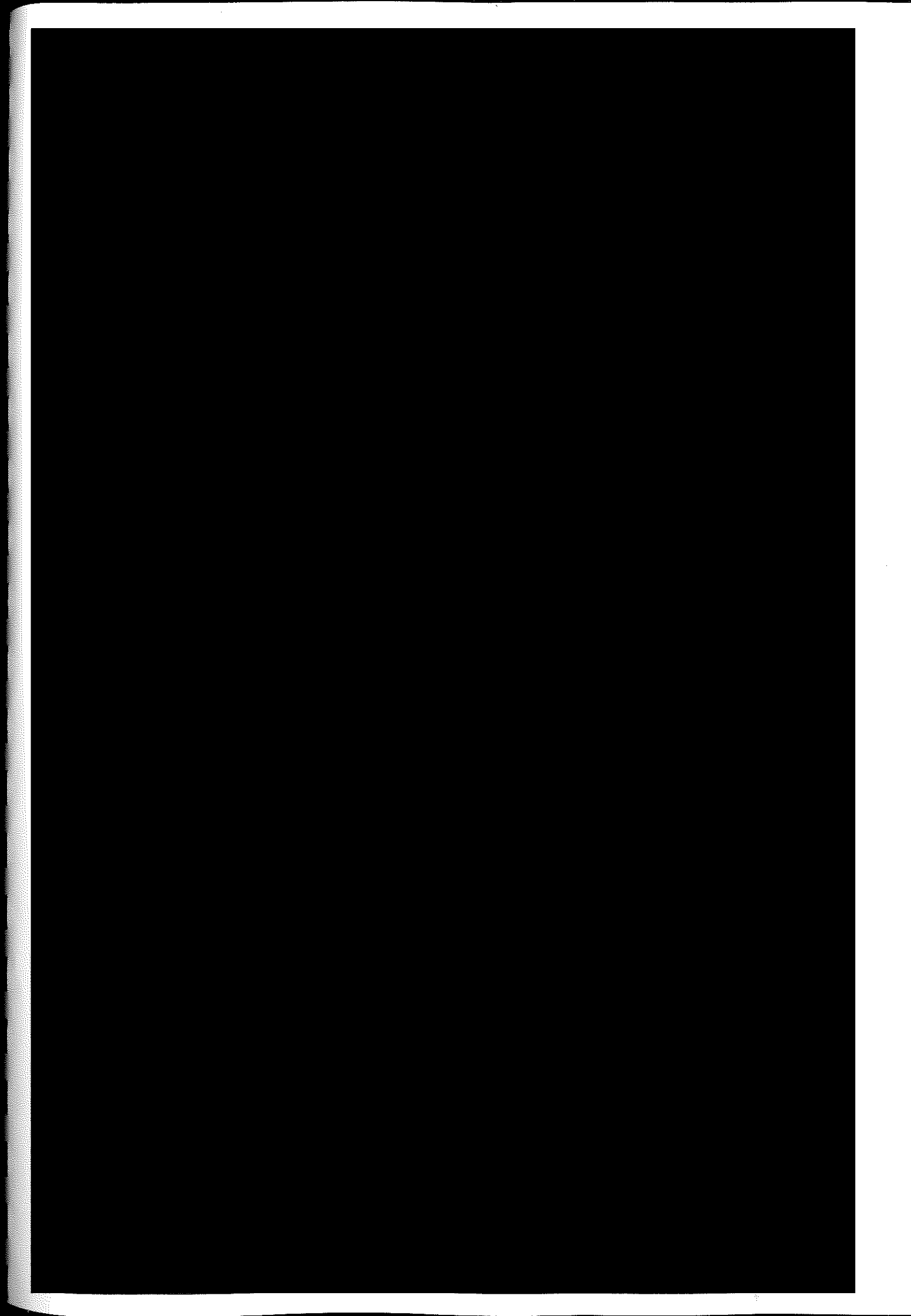


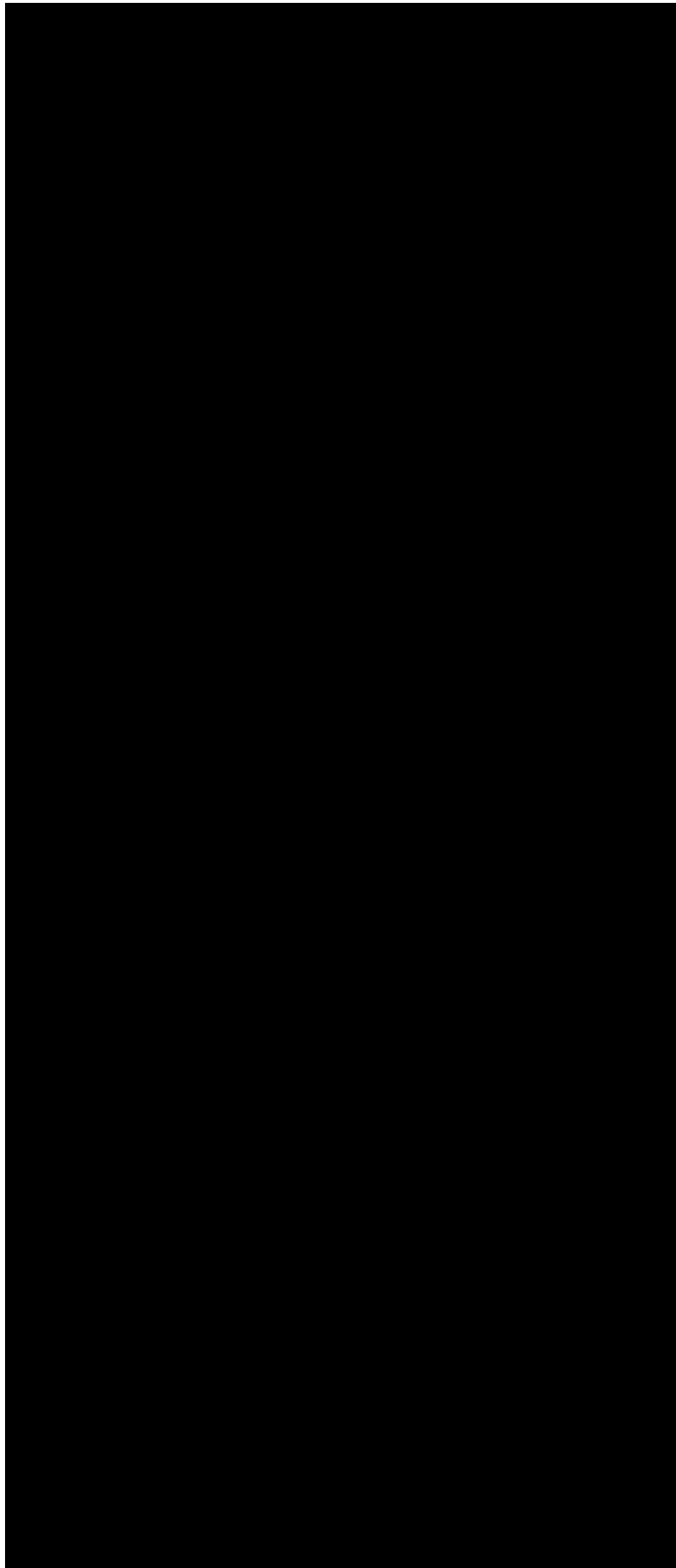












DATED

29th MARCH

2018

SHROPSHIRE COUNCIL

AND

KIER LIMITED

PARENT COMPANY GUARANTEE In relation to
a Highways Services Term Contract between

Shropshire Council and Kier Highways Limited

dated 29th MARCH

2018

THIS PARENT COMPANY GUARANTEE is dated 29th MARCH 2018

BETWEEN:

- (1) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND (the "**Employer**"); and
- (2) **KIER LIMITED** (registered in England and Wales under company number 01611136) whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the "**Guarantor**")

NOW IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this guarantee where the context so admits:

The following expression shall have the following meanings:

"Contract"

means a Highways Improvement and Maintenance Term Contract dated on or about the date of this guarantee between the *Employer* and the *Contractor* for the provision of highways services by the *Contractor* on the *Employer's* highway,

"Contractor"

means Kier Highways Limited,

"Expiry"

means an expiry of the "*service period*" as defined in the Contract,

"Service"

means the highways works and services to be provided by the *Contractor* in accordance with the Contract.

1.2 Successors in Title

The *Employer* and the *Guarantor* shall include both Parties' successors in title and assigns.

1.3 Headings

The headings in this guarantee are inserted for convenience only and shall be ignored in construing the terms and provisions hereof.

1.4 Joint Tenants

Where there are two or more persons included in the expressions "*Guarantor*" or "*Employer*" then such expressions shall include the plural number and any obligations

expressed to be made by or with such Party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.

2 GUARANTEE AND INDEMNITY

- 2.1 The *Guarantor* guarantees to the *Employer* that in the event of a breach of the Contract by the *Contractor* (which for the purposes of this guarantee shall include any default, occurrence or omission by the *Contractor* which results in the termination of the Contract or the determination of the *Contractor's* employment under the Contract and shall not be limited to a breach per se of any term of the Contract) the *Guarantor* shall, subject to the provisions of this guarantee, satisfy and discharge the loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer* as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and by agreement in writing between the *Contractor's* Managing Director and the *Employer*. For the avoidance of doubt the decision of a court or tribunal of competent jurisdiction or agreement reached between the *Contractor* and the *Employer* shall be binding on the *Guarantor*.
- 2.2 If the *Contractor* fails to observe or perform any of its duties or obligations to the *Employer* under the Contract (which for the purposes of this guarantee shall include any default, occurrence or omission by the *Contractor* which results in the termination of the Contract or the determination of the *Contractor's* employment under the Contract and shall not be limited to a breach per se of any term of the Contract), or if the *Contractor* fails to pay any sum, loss, debt, damage, interest, cost or expense due from the *Contractor* to the *Employer* under or in connection with the Contract, the *Guarantor* (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the *Employer* from and against all loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer* by reason of any such failure or non-payment.

3 AMENDMENTS TO THE CONTRACT

- 3.1 The Contract may be modified, amended or supplemented in any way (including, but not limited to, the scope of the *Service*) without the *Guarantor's* consent and references to the Contract in this guarantee shall include all such modifications, amendments or supplements whether made before or after the date hereof. The *Guarantor's* liability under this guarantee (which includes the *Contractor's* duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be affected by:
- 3.1.1 any such modification, amendment or supplement or
 - 3.1.2 any invalidity, avoidance or unenforceability for any reason whatsoever or termination of the Contract or
 - 3.1.3 any waiver, concession, allowance of time, compromise or forbearance given to, or made with, the *Contractor*. The terms of this guarantee shall apply to the terms of any such compromise as they apply to the Contract.

4 LIMITATION ON GUARANTOR'S LIABILITY

- 4.1 The *Employer* hereby agrees that the *Guarantor's* liability under this guarantee shall be limited to and shall not exceed the obligations or liabilities assumed by the *Contractor* under the Contract.

5 ASSIGNMENT

- 5.1 This Guarantee and the benefit conferred by it may be assigned by the Employer to any party to whom it assigns or novates its interest under the Contract, at any time and references to the Employer shall include its assigns. Save for the provision of this Clause 5.1, this Guarantee and the benefit conferred by it may not be assigned by either party without the consent of the other, such consent not to be unreasonably withheld or delayed.

6 DURATION

- 6.1 The obligations of the *Guarantor* under this guarantee shall be released and discharged absolutely upon Expiry save in respect of a demand made in writing by the *Employer* prior to such date. For the avoidance of doubt the establishment and ascertainment pursuant to clause 2 above of the loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer* may occur subsequent to such demand which may be validly given notwithstanding any lack of particulars of breach of the Contract or of the loss, debt, damage, interest, cost or expense sustained or incurred by the *Employer*.

7 RIGHTS OF THIRD PARTIES

- 7.1 Unless expressly stated nothing in this Deed confers any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

8 JURISDICTION

- 8.1 This guarantee and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 8.2 The Parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this guarantee or its subject matter or formation (including non-contractual disputes or claims).

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

personal info

EXECUTED AS A DEED by affixing the COMMON SEAL of SHROPSHIRE COUNCIL

In the presence of:

Authorised signatory:

Print name:

EXECUTED as a DEED)
for and on behalf of)
KIER LIMITED)
acting by a director in the presence of a)
witness)



Witness signature:

Witness name:

Witness address:



Shropshire Council

AND

Kier Highways Limited

AGREEMENT

Relating to

Highways and Environment Term Service Contract

For

Shropshire Council

THIS AGREEMENT is made as a DEED on the 29th day of March 2018

BETWEEN:

- (1) **Shropshire Council** of Shirehall, Shrewsbury, Shropshire, SY2 6ND (the **Employer**) and
- (2) **Kier Highways Limited** whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD and whose registered number is 5606089 (the **Contractor**)

BACKGROUND

The *Employer* has agreed to enter into this Agreement for the provision of maintenance, cleaning and improvement services to the Affected Property throughout the *service period* as more particularly set out in the *conditions of contract*.

AGREED TERMS

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:
 - a. the *conditions of contract*, including the Shorter Schedule of Costs Components in Schedule 6;
 - b. the Service Information annexed to this Agreement within the attached CD-Rom;
 - c. the Price List annexed to this Agreement within the attached CD-Rom;
 - d. the Contract Data part one as attached to this Agreement, incorporating Schedules 1, 2 and 3 to the Contract Data;
 - e. the Contract Data part two as contained within the *Contractor's* tender dated 25th May 2017;
 - f. the *Employer's* invitation to tender as amended and annexed to this Agreement within the attached CD-Rom;
 - g. the *Contractor's* tender dated 25th May 2017 and annexed to this Agreement within the attached CD-Rom;
 - h. the documents identified in the Contract Data annexed to this Agreement within the attached CD-Rom.
4. The *conditions of contract* and other documents which are incorporated into and form part of this Agreement contain all the terms which the *Employer* and the *Contractor* have agreed in relation to the subject matter of this contract, and supersede any written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

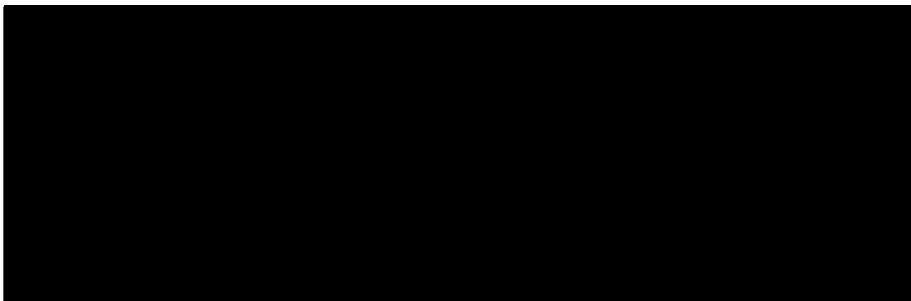
- 5. In this Agreement unless the context otherwise requires:
 - (a) any term used with initial capital letters has the meaning given to it in the *conditions of contract*; and
 - (b) any italicised term has the meaning given to it in the Contract Data.

- 6. If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:
 - (a) this Agreement;
 - (b) the completed Contract Data,
 - (c) the *additional conditions of contract*;
 - (d) the other *conditions of contract*;
 - (e) the Service Information; and
 - (f) any other document forming part of the contract.

- 7. This Agreement may be executed in one or more counterparts and any party may enter into the Agreement by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the parties shall constitute one and the same agreement, and a full original of the Agreement for all purposes.

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

EXECUTED AS A DEED by affixing the COMMON SEAL of THE EMPLOYER



502201

EXECUTED AS A DEED)
 for and on behalf of)
KIER HIGHWAYS LIMITED)
 acting by a director in the presence of a)
 witness)

_____ (name) Director: _____)
)
)
)

Witness signature:)
 Witness name:)
 Witness address:)

Shropshire Council

AND

Kier Highways Limited

AGREEMENT

Relating to

Highways and Environment Term Service Contract

For

Shropshire Council

THIS AGREEMENT is made as a DEED on the day of 2018

BETWEEN:

- (1) **Shropshire Council** of Shirehall, Shrewsbury, Shropshire, SY2 6ND (the **Employer**)
and
- (2) **Kier Highways Limited** whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD and whose registered number is 5606089 (the **Contractor**)

BACKGROUND

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AGREED TERMS

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:
 - a. the *conditions of contract*, including the Shorter Schedule of Costs Components in Schedule 6;
 - b. the Service Information annexed to this Agreement within the attached CD-Rom;
 - c. the Price List annexed to this Agreement within the attached CD-Rom;
 - d. the Contract Data part one as attached to this Agreement, incorporating Schedules 1, 2 and 3 to the Contract Data;
 - e. the Contract Data part two as contained within the *Contractor's* tender dated 25th May 2017;
 - f. the *Employer's* invitation to tender as amended and annexed to this Agreement within the attached CD-Rom;
 - g. the *Contractor's* tender dated 25th May 2017 and annexed to this Agreement within the attached CD-Rom;
 - h. the documents identified in the Contract Data annexed to this Agreement within the attached CD-Rom.
4. The *conditions of contract* and other documents which are incorporated into and form part of this Agreement contain all the terms which the *Employer* and the *Contractor* have agreed in relation to the subject matter of this contract, and supersede any written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

5. In this Agreement unless the context otherwise requires:
 - (a) any term used with initial capital letters has the meaning given to it in the *conditions of contract*; and
 - (b) any italicised term has the meaning given to it in the Contract Data.

6. If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:
 - (a) this Agreement;
 - (b) the completed Contract Data,
 - (c) the *additional conditions of contract*;
 - (d) the other *conditions of contract*;
 - (e) the Service Information; and
 - (f) any other document forming part of the contract.

7. This Agreement may be executed in one or more counterparts and any party may enter into the Agreement by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the parties shall constitute one and the same agreement, and a full original of the Agreement for all purposes.

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

EXECUTED AS A DEED by affixing the COMMON SEAL of THE EMPLOYER

In the presence of:

Authorised signatory:

Print name:

EXECUTED AS A DEED)	
for and on behalf of)	
KIER HIGHWAYS LIMITED)	
acting by a director in the presence of a)	
witness)	
_____ (name))	Director: _____
)	
)	
)	
Witness signature:)	
Witness name:)	
Witness address:)	

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.

- **1 General** • The *conditions of contract* are the core clauses and the clauses for main Option **A** dispute resolution Option **W2** and secondary Options **X2, X4, X17, X19, Y(UK)2, Y(UK)3** and **Z** of the NEC3 Term Service Contract April 2013.
- The service is the provision of maintenance, cleansing and reconstruction services for the highway and other public areas which are the responsibility of the *Employer*.

- The *Employer* is:

Name: Shropshire Council
Address: Shirehall, Abbey Foregate, Shrewsbury
Shropshire, SY2 6ND

- The *Service Manager* is:

Name: [REDACTED]
Address: Shirehall, Abbey Foregate, Shrewsbury
Shropshire, SY2 6ND
Email: [REDACTED]

- 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 used to Provide the Service.
- The Service Information is in: the document “Service Information DMCH 012 Highways and Environment Term Service Contract” forming Volume 2 of the *Employer’s* invitation to tender
- 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.
- The *period for reply* is: 3 weeks
- 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 will be included in the Risk Register:
.....
.....
.....

3 Time • The *starting date* is 1st April 2018

- The *service period* is 7 years

5 Payment • The assessment interval is one month.

- The currency of this contract is pound sterling (£).
- The *interest rate* is 8% per annum above the official bank base rate of the Bank of England.

8 Insurance • The minimum amount of cover for insurance against loss of or damage caused by the *Contractor* to the *Employer's* property is £20,000,000.00

- 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 £20,000,000.00
- 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 £20,000,000.00

Optional statements If no plan is identified in part two of the Contract Data

- The *Contractor* submits a first plan for acceptance within 10 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 21 days after the date on which payment becomes due.

If there are additional *Employer's* risks

- These are no additional *Employer's* risks:

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 £ N/A

If additional insurances are to be provided

- The *Employer* provides these additional insurances:

1. Insurance against [.....N/A.....]

Cover / indemnity is [.....]

The deductibles are [.....]

2. Insurance against [.....N/A.....]

Cover / indemnity is [.....]

The deductibles are [.....]

- The *Contractor* provides these additional insurances:

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 the replacement cost for any one event

The deductibles are not more than GBP 10,000 but increased to GBP 15,000 in respect of civil engineering contracts where the estimated contract value at inception is in excess of GBP 20,000,000 and increased to GBP 150,000 in respect of each and every Event in respect of Damage to the permanent and/or temporary works caused by defect in design, plan, specification, material or workmanship

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

Cover / indemnity is £10,000,000.00 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. Cover is maintained for a period of 12 years from the end of the Service Period.

The deductibles are not more than GBP 1,000,000 each and every claim or series of claims arising out of one single incident.

- | | | |
|----------------------|--------------|---|
| Option A | • | The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than one month |
| Option X17 | • | The service level table is in Schedule 3 |
| Option X19 | • | The <i>Contractor</i> submits a Task Order Programme to the <i>Service Manager</i> within 5 days of receiving the Task Order. |
| Option Y(UK)3 | term | person or organisation |
| | All excluded | <i>All excluded</i> |
| <hr/> | | |
| Option ZM21 | • | Option 1 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. |
| Option Z | | The <i>additional conditions of contract</i> are set out in Annex Z. |

ANNEX Z – ADDITIONAL CONDITIONS OF CONTRACT

Annex Z contains the *additional conditions of contract* and comprises:

- i) ZM clauses amending the Core Clauses (from HMEP);
- ii) ZA clauses amending Main Option A (from HMEP);
- iii) Z clauses of the *Employer* amending the Core Clauses and inserting additional clauses

ZM - Amendments to the Core Clauses of the *conditions of contract*

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 or
- 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 after clause 11(2) 16

Area Network is the highway network for which the *Employer* is responsible and set out in the Service Information

Documents are information of any nature produced or provided in the course of Providing the Service.

Financial Year is the period commencing on 1 April in each calendar year and ending on 31 March in the following calendar year.

Service Period is the *service period* unless later changed in accordance with this contract.

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

NOT USED – See Z4

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.

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

- Property**
- 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

NOT USED – See Z101

ZM11: TUPE

- ZM11.1 To the extent that the Transfer Regulations 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 the Transfer Regulations may apply at the end of the Service Period the provisions set out in clauses Z115 to Z118 and Schedules 1 and 2 apply.

ZM12: Freedom of Information

NOT USED – See Z108

ZM13: Data Protection

NOT USED – See Z102

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

The *Contractor's* Design

ZM20.1 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: Price adjustment for inflation

Defined terms

ZM21.1

- (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 2015 Series 4).

Work Category Indices

- ZM21.2 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 2015 Series 4) or

- 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.

Price Adjustment Factor

- ZM21.3 (a) The Service Manager will identify the Work Category that applies to each Task Order. The Service Manager will consult the Contractor about the most appropriate Work Category before he issues the Task Order. The Price Adjustment Factor and the Price Adjustment Amount will be calculated in accordance with ZM21.4 where IA = the Latest Work Category Index (for the identified Work Category) at the time that the Task Order is issued and VB = the total of the Prices for the Task.

The Price List will not indicate which Work Category applies to each item in the Price list.

- (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.

Calculation of Price Adjustment Factor and Price Adjustment Amount

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

ZM21.4 Option 1 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.

Price adjustment to amount due

ZM21.5 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.

ZM22: Efficiency Savings

ZM22.1 Subject to clause ZM22.2, at each anniversary of the Contract Date, the Prices of the *service* are reduced by the relevant percentage stated in the *efficiency saving table*.

ZM22.2 Clause ZM22.1 above shall not apply to those part(s) of the service where the unit of measurement used to calculate the Price is either:

- a percentage; or
- a unit of time (e.g. hour, day, week, month)

ZA clauses - Amendments to Main Option A clauses of the *conditions of contract*

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 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 this contract requires the Contractor to insure and
- preparation for and conduct of adjudication or proceedings of the tribunal.

(3) **NOT USED**

ZA2: The Contractor's discount – NOT USED

Shropshire Highways Z Clauses

Z4: EXTENDED SERVICE PERIOD

Z4.1 Add new clause 33:-

Extended service period	33	
	33.1	The <i>Employer</i> may in its absolute discretion offer to the <i>Contractor</i> an extension to the Service Period in respect of all or part of the <i>service</i> . The Service Period is only extended in increments of one year. The Service Period is not extended by more than three increments.
	33.2	The Employer notifies the Contractor not less than 104 weeks prior to the end of Service Period of his offer to extend the Service Period.
	33.3	Within two weeks of the <i>Employer's</i> offer, the <i>Contractor</i> either accepts or rejects the offer. If the <i>Contractor</i> accepts the offer, the Service Period is extended.
	33.4	Neither Party has any redress or claim against the other if the Service Period is not extended.
	33.5	In deciding whether or not offer an extension to the Service Period the <i>Employer</i> takes into account the performance against the Performance Measures and Strategic Indicators in Schedule 3 (Partnering Information). The <i>Employer</i> is not bound to offer an extension to the Service Period.

Z5: TESTS AND INSPECTIONS

Add new clause 40.7

- 40.7 Until 12 months after the end of the Service Period the *Service Manager* may instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include:
- uncovering, dismantling, re-covering and re-erecting work,
 - providing facilities, materials and samples for tests and inspections done by the *Service Manager* and
 - doing tests and inspections which the Service Information does not require.

Delete clause 42 and replace with the following

Notifying and Correcting Defects

- 42**
- 42.1 Until 12 months after the end of the Service Period, the *Service Manager* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Service Manager* of each Defect as soon as he finds it. The *Contractor* corrects a Defect whether or not the *Service Manager* notifies him of it.
- 43.2 The *Contractor* corrects a Defect within a time which minimises the adverse impact on the *Employer* or Others but no later than 4 weeks of the date on which a Defect is found unless otherwise agreed by the *Service Manager*.
If the *Contractor* does not correct a Defect within the time required by this contract, the *Service Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount.
- 43.3 The *Contractor*, the *Service Manager* and the *Employer* arrange access to the Affected Property in order to correct a Defect in accordance with the Service Information.

Z11: COMPENSATION EVENTS

Z11.1 Core Clause 60: Compensation Events

After the last bullet point in Core Clause 60.1(1) add the following:

or

- a change made to correct an ambiguity or discrepancy in or between any of the documents forming part of this contract where the occurrence of that ambiguity or discrepancy is attributable to the Contractor.

At the end of Core Clause 60.1(9) add:

unless it was reasonable for the *Service Manager* to carry out the test or inspection, having regard to previous instances of work which did not comply with the requirements of this contract.

Z12: TERMINATION

Z11.1 Core Clause 93: Payment on Termination

In Core Clause 93.2 at the end of paragraph A3 add:

which shall include the reasonable costs of procuring a replacement *Contractor*.

Z21: QUALITY STATEMENT

Z21.1 The quality statement submitted by the *Contractor* with his tender sets out certain aspects of the *Contractor's* proposals for Providing the Service. The *Contractor* complies with the quality statement when Providing the Service. Compliance with the quality statement does not affect the *Contractor's* responsibility to Provide the Services in accordance with the Service Information.

Z21.2 The *Contractor* warrants:

- that the representations contained in the quality statement are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer*.
- that the quality statement does not constitute a qualification to his tender.

Z27: RECOVERY OF SUMS DUE FROM THE CONTRACTOR

Z27.1 Whenever under the contract any sum of money shall be recoverable from or payable by the *Contractor* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the *Contractor* under the contract or any other contract with the *Employer*, and this and such contract or contracts shall for all purposes be deemed to be mutual dealings for the purposes of the Insolvency Act 1986 as amended or superseded.

Z28: RETENTION

Z28.1 During the final 12 months of the Service Period, the change in the amount due since the last payment certificate at each assessment date will be subject to retention at the rate of 2.5%.

Z28.2 Each amount retained during the final 12 months of the Service Period is held by the *Employer* until 12 months from the end of the Service Period. The amounts retained are not adjusted for inflation.

Z28.4 12 months after the end of the Service Period, the *Service Manager* calculates an amount by subtracting the amounts that the *Contractor* has paid to the *Employer* for the *Employer* having Defects corrected by other people in accordance with this contract since the end of the Service Period from the total of the amounts retained by the *Employer* during the final 12 months of the Service Period. If the amount calculated is greater than zero the *Employer* pays the amount to the *Contractor*. If the amount calculated is less than zero, the *Contractor* pays the amount to the *Employer*.

Z28.5 Any work provided by the *Contractor* or his Subcontractor which is guaranteed against Defect or non-performance will be honoured by the *Contractor* for the full duration of the guarantee period regardless of the end date of the Service Period.

Z29: TAX AND NATIONAL INSURANCE CONTRIBUTIONS

Z29.1 This contract falls within the scope of the Construction Industry Scheme Regulations and the *Contractor* must be registered as required in Z29.2.

Z29.2 The *Contractor* must provide the *Employer* with details of his HM Revenue & Customs new Construction Industry Scheme registration details for verification; namely:

- i) Company Unique Tax Reference (UTR);
- ii) Company Name;
- iii) Company Trading Name;

iv) Company Registration Number.

Z31: PREMISES

Z31.1 The *Contractor* throughout the Service Period occupies and is responsible for the *Employer's* Premises as stated in the Service Information.

Z38: MINIMUM ANNUAL VALUE OF SERVICE TO BE PROVIDED

Z38.1 The *Employer* does not guarantee the *Contractor* a minimum value of Task Orders issued in any one Financial Year.

Z38.2 If the cumulative value of the Task Orders issued in any one Financial Year is less than £10 million, not linked to inflation, the *Employer* pays the *Contractor* an amount calculated as [$\text{£10 million} - \text{cumulative value of Task Orders issued in the Financial Year}$] x the direct fee percentage. The amount is calculated at the end of the relevant Financial Year.

Z48: CHANGE OF CONTROL OF CONTRACTOR

Z48.1 The *Contractor* shall notify the *Employer* immediately if the *Contractor* undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("Change of Control"). The *Employer* may terminate the contract by giving notice in writing to the *Contractor* with immediate effect within six (6) months of:-

- (i) being notified that a Change of Control has occurred; or
- (ii) where no notification has been made, the date that the *Employer* becomes aware of the Change of Control, but shall not be permitted to terminate where the *Employer* granted prior written approval of the Change of Control.

Z48.2 If the *Employer* terminates the contract in accordance with Z48.1, the amount due is A1 of the termination table.

Shropshire Council Corporate Z Clauses

Z100 DEFINITIONS RELATING TO CLAUSES Z101 TO Z112 INCLUSIVE

Z100.1 The words used in Z Clauses Z101 to Z112 inclusive, shall have the following meaning:

'Contract'	means the Contract between the <i>Employer</i> and the <i>Contractor</i>
“Commercially Sensitive Information”	comprises the information of a commercially sensitive nature relating to the <i>Contractor</i> , its Intellectual Property Rights or its business which the <i>Contractor</i> has indicated to the <i>Employer</i> in writing that, if disclosed by the <i>Employer</i> , would cause the <i>Contractor</i> significant commercial disadvantage or material financial loss;
“Confidential Information”	any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the <i>Employer</i> or the <i>Contractor</i> , including Intellectual Property Rights, together with all information derived from the above, and/or personal data and sensitive personal data within the Data Protection Legislation, and any other information clearly designated as being confidential (whether or not it is marked as "confidential")
" Contractor Personnel"	all employees, agents, consultants and <i>Contractors</i> of the <i>Contractor</i> and/or of any Subcontractor;
“ Employer Representative”	the representative appointed by the <i>Employer</i>
“EIR”	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
‘Employment Checks’	means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, disclosure and barring checks and occupational health checks.
“Exempt Information”	means any information or class of information (including but not limited to any document, report, Contract or other material containing information) relating to this Contract or otherwise relating to the Parties to this Contract which potentially falls within an exemption to FOIA (as set out therein)
“FOIA”	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall

“FOIA notice”	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Law”	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
“Public body”	as defined in the FOIA 2000
‘Regulated Activity’	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
“Regulatory Bodies”	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the <i>Employer</i> and "Regulatory Body" shall be construed accordingly;
“Services”	means any and all of the services to be provided by the <i>Contractor</i> under this Contract including those set out in any schedules or service descriptions.
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.
‘Writing’	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received.

Z101. CONFIDENTIALITY

Z101.1 NOT USED

Z101.2 The *Contractor* shall keep secret and shall not divulge to any third party (except sub- *Contractors* accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-contract) all information given by the *Employer* in connection with the Contract or which becomes known to the *Contractor* through his performance of the Contract or use the same other than for the purpose of executing the Contract.

Z101.3 The *Contractor* shall not mention the *Employer's* name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without the *Employer's* prior consent in *Writing*.

- Z101.4 The *Contractor* will keep confidential any information it becomes aware of by reason of the operation of this Contract.
- Z101.5 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- Z101.5.1 treat the other Party's Confidential Information as confidential; and
 - Z101.5.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent
- Z101.6 Clause Z101.5 shall not apply to the extent that:
- Z101.6.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information;
 - Z101.6.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - Z101.6.3 such information was obtained from a third party without obligation of confidentiality;
 - Z101.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - Z101.6.5 it is independently developed without access to the other Party's Confidential Information.
- Z101.7 The *Contractor* may only disclose the *Employer's* Confidential Information to the *Contractor* Personnel who are directly involved in the provision of the service and who need to know the information, and shall ensure that such *Contractor* Personnel are aware of and shall comply with these obligations as to confidentiality.
- Z101.8 The *Contractor* shall not, and shall procure that the *Contractor* Personnel do not, use any of the *Employer's* Confidential Information received otherwise than for the purposes of this Contract
- Z101.9 Nothing in this Contract shall prevent the *Employer* from disclosing the *Contractor's* Confidential Information:

- Z101.9.1 to any consultant, *Contractor* or other person engaged by the *Employer*;
- Z101.9.2 for the purpose of the examination and certification of the *Employer's* accounts or any other form of audit of the *Employer*; or for the *Service Manager* to validate the *Contractor's* accounts and records of Defined Cost.
- Z101.10 The *Employer* shall use all reasonable endeavours to ensure that any government department, employee, third party or Subcontractor to whom the *Contractor's* Confidential Information is disclosed pursuant to this Contract is made aware of the *Employer's* obligations of confidentiality.
- Z101.11 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- Z101.12 The provisions of this Clause shall survive the expiration or termination of this Contract.

Z102. PROTECTION OF PERSONAL DATA

- Z102.1 (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.
- Z102.2 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.
- Z102.3 Notwithstanding the general obligation in clause Z102.2, 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

shall provide the *Employer* with full cooperation and assistance in accordance with the *Employer's* instructions and within the relevant

timescales set out in the Data Protection Act, in relation to any complaint or request made to enable the request or complaint to be dealt with in accordance with 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 and shall indemnify the *Employer* against any loss or damage sustained or incurred by the *Employer* as a direct result of any breach of this clause Z102 by the *Contractor*.

Z102.4 This clause applies both during and after the *service period*.

Z102A. PROTECTION OF PERSONAL DATA (IMPLEMENTATION OF THE GENERAL DATA PROTECTION REGULATION)

Z102A.1 With effect from 25th May 2018 this clause Z102A and the definitions set out herein shall become an operative clause within this Contract.

Z102A.2 After the 25th May 2018, where there is any conflict, ambiguity or inconsistency between this clause Z102A (including any associated definitions) and the remainder of this Contract, clause Z102A shall take precedence

Z102A.3 In interpreting this clause the words and expressions set out below shall have the following meanings and any other words and expressions used are as defined elsewhere in this Agreement:

- **Data Protection Legislation:** (i) the General Data Protection Regulation ((EU) 2016/679) and the Law Enforcement Directive (Directive (EU) 2016/680) for as long as it is directly applicable in the UK and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; (ii) any successor legislation to the GDPR or the Data Protection Act 1998; (iii) all applicable Law about the processing of personal data and privacy.
- **Controller, Processor, Data Subject, Personal Data, Personal Data Breach , Data Protection Officer** shall have the meaning given in the GDPR;
- **Data Loss Event:** any event that results, or may result, in unauthorised access to, or unauthorised or unlawful processing of, Personal Data held by the *Contractor* under this Agreement, and/or actual or potential loss and/or damage to or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
- **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

- **Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- **Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
- **Sub-processor:** any third party appointed to process Personal Data on behalf of the *Contractor* related to this Agreement.

Z102A.4 Both parties will comply with all applicable requirements of the Data Protection Legislation and agree to take account of any guidance issued by the Information Commissioner's Office. This clause Z102A is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

Z102A.5 The parties acknowledge that for the purposes of the Data Protection Legislation, the *Employer* is the Controller and the *Contractor* is the Processor. The only processing that the *Contractor* is authorised to do is as set out in this agreement which includes Schedule 1 sets out the scope, nature and purpose of processing by the *Contractor*, the duration of the processing and the types of Personal Data and categories of Data Subject.

Z102A.6 The *Contractor* shall notify the *Employer* immediately if it considers that any of the *Employer's* instructions infringe the Data Protection Legislation, and where the *Contractor* has reasonable concerns as to the legality of the *Employer's* instructions the parties shall use their reasonable endeavours to resolve any concerns raised to ensure such instructions do not infringe the Data Protection Legislation.

Z102A.7 The *Contractor* shall provide all reasonable assistance to the *Employer* in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the *Employer*, include:

- a systematic description of the envisaged processing operations and the purpose of the processing;
- an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- an assessment of the risks to the rights and freedoms of Data Subjects; and

- the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

Z102A.8

Without prejudice to the generality of clause Z102A.4, the *Contractor* shall, in relation to any Personal Data processed in connection with the performance by the *Contractor* of its obligations under this agreement:

- a) process that Personal Data only in accordance with Schedule 1 or otherwise on the written instructions of the *Employer* unless the *Contractor* is required to do otherwise by Law. If it is so required the *Contractor* shall promptly notify the *Employer* before processing the Personal Data prohibited by Law;
- b) ensure that it has in place Protective Measures, reviewed and approved by the *Employer* as appropriate, to protect against a Data Loss Event having taken account of the:
 - (i) the nature of the data to be protected;
 - (ii) the harm that might result from a Data Loss Event;
 - (iii) the state of technological development; and
 - (iv) the cost of implementing any Protective Measures;
- c) take reasonable steps to ensure the reliability and integrity of any *Contractor* Personnel who have access to the Personal Data;
- d) use all reasonable efforts to ensure that all personnel who have access to and/or process Personal Data:
 - (i) do not process Personal Data except in accordance with this Agreement;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the *Employer* or as otherwise permitted by this Agreement;
 - (iii) are obliged to keep the Personal Data confidential; and
 - (iv) have undergone appropriate training in the use, care, protection and handling of Personal Data to ensure the *Contractor's* obligations under this clause and the Data Protection Legislation are met in the performance of the *services*;
- e) not transfer any Personal Data outside of the European Union unless the prior written consent of the *Employer* (not to be unreasonably withheld) has been obtained and the following conditions are fulfilled:
 - (i) the *Employer* or the *Contractor* has provided appropriate safeguards in relation to the transfer as determined by the *Employer*;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the *Contractor* complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the *Contractor* complies with reasonable instructions notified to it in advance by the *Employer* with respect to the processing of the Personal Data;
- f) at the written direction of the *Employer*, delete or return Personal Data and copies thereof to the *Employer* on termination of the agreement unless required by Law to retain the Personal Data; and
 - g) maintain complete and accurate records and information to demonstrate its compliance with this clause Z102A and allow for audits by the *Employer* or the *Employer's* designated auditor which shall occur no more frequently than once every 12 months, unless the *Employer*, acting reasonably, requires additional audits as a result of receipt of notification of a Data Loss Event or the *Contractor's* failure to comply with the obligations of this clause. The *Employer* shall use reasonable endeavours to provide 7 days' notice of any routine audit.

Z102A.9

With the exception of sub-clause e) below, where notification shall occur immediately, the *Contractor* shall notify the *Employer* promptly if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request) except, where the Data Subject Access Request relates to employment information in respect of an employee of the *Contractor*, and it is requested to keep that confidential from the Employer;
- b) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- c) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement provided that it is not required by law to keep such communication confidential;
- d) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- e) becomes aware of a Data Loss Event.

Z102A.10

Taking into account the nature of the processing, the *Contractor* shall provide the *Employer* with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint,

communication or request made under clause Z102A.8 (and insofar as possible within the timescales reasonably required by the *Employer*) including by promptly providing:

- (a) the *Employer* with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the *Employer* to enable the *Employer* to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the *Employer*, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the *Employer* following any Data Loss Event;
- (e) assistance as requested by the *Employer* with respect to any request from the Information Commissioner's Office, or any consultation by the *Employer* with the Information Commissioner's Office.

Z102A.11 The *Contractor* shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

Z102A.12 The *Contractor* shall designate a data protection officer if required by the Data Protection Legislation.

Z102A.13 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the *Contractor* must:

- (a) notify the *Employer* in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the *Employer*;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause Z102A such that they apply to the Sub-processor; and
- (d) provide the *Employer* with such information regarding the Sub-processor as the *Employer* may reasonably require.

Z102A.14 The *Contractor* shall remain fully liable for all acts or omissions of any Sub-processor.

Z102A.15 Notwithstanding any other provision of this Agreement, the *Contractor* agrees to indemnify and keep indemnified the *Employer* against all reasonable costs, claims, damages or expenses incurred by the *Employer* or for which the *Employer* may become liable due to any defective

performance of or any failure by the *Contractor* or its employees or agents to comply with any of its obligations under this Agreement.

Z102A.16 Either party may, at any time on not less than 30 days' notice, revise this clause by proposing new appropriate clauses (which shall apply when replaced by attachment to this Agreement) to ensure that it complies with any guidance issued by the Information Commissioner's Office and the parties agree to work in good faith to agree alternative wording to comply with such guidance.

Z103. PUBLIC INTEREST DISCLOSURE ('WHISTLE BLOWING')

Z103.1 The *Contractor* will ensure that his employees and agents are made aware of the *Employer's* policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide the *Employer* with evidence of doing so upon request.

Z104. ANTI-BRIBERY AND CORRUPTION

NOT USED

Z105. EQUALITIES

Z105.1 The *Contractor* and any Subcontractor employed by the *Contractor* shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Works or Services under this Contract, or in its employment practices.

Z105.2 Without prejudice to the generality of the foregoing, the *Contractor* and any Sub- *Contractor* employed by the *Contractor* shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.

Z105.3 In addition, the *Contractor* and any Subcontractor employed by the *Contractor* in providing services to the *Employer* will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it.

Z105.4 The *Contractor* and any Subcontractor employed by the *Contractor* will take all reasonable steps to observe as far as possible the Codes of Practice

produced by the Equalities and Human Rights Commission, which give practical guidance to *Employers* on the elimination of discrimination.

Z105.5 In the event of any finding of unlawful discrimination being made against the *Contractor* or any Subcontractor employed by the *Contractor* during the Service Period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the *Contractor* shall inform the *Employer* of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

Z105.6 The *Contractor* and any Subcontractor employed by the *Contractor* will provide a copy of its policies to the *Employer* at any time upon request. In addition, the *Employer* may reasonably request other information from time to time for the purpose of assessing the *Contractor's* compliance with the above conditions.

Z106. HUMAN RIGHTS

NOT USED

Z107. HEALTH AND SAFETY AT WORK

Z107.1 The *Contractor* will at all times in Providing the Service comply with the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to the *Employer* at any time upon request.

Z108. FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

Z108.1 The Parties acknowledge that the FOIA and EIR may apply to this contract. The Parties undertake to facilitate compliance with the information disclosure requirements pursuant to the FOIA and EIR in the manner provided for in clause Z108 to the extent that such requirements relate to information held by a Party on behalf of the other Party in connection with this contract.

Z108.2 Request for Information has the meaning set out in section 8 of the FOIA.

Z108.3 Before responding to a Request for Information, the *Employer* will consider in its absolute discretion

- the availability of exemptions under the FOIA, 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.

Z108.4

Before

- responding to a Request for Information (which, where the FOIA 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 (which shall be one week from the date of the Request for Information, unless the *Employer*, acting reasonably, considers there are overriding factors for requiring a response within a shorter time period) 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).

Z108.5

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* including considering any information which the *Contractor* has notified to the *Employer* as being Commercially Sensitive Information, in respect of which the *Contractor* acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the *Employer* may be obliged to disclose such information.

Z108.6

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 FOIA, the *Employer* may be obliged, or in its discretion decide, under the FOIA 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 FOIA or EIR is not in breach of any confidentiality agreements between the Parties.

Z108.7

The *Contractor* shall and shall procure that its Subcontractors shall:

- transfer to the *Employer* all Requests for Information that it receives in connection with this contract as soon as practicable and in any event within two Working Days of receiving a Request for Information;.
- provide the *Employer*, at the *Contractor's* expense, with a copy of all Information in its possession, or power in the form that the *Employer* requires within five Working Days (or such other period as the *Employer* may specify) of the *Employer's* request; and
- provide, at the *Contractor's* expense, all necessary assistance as reasonably requested by the *Employer* to enable the *Employer* to

respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

Z108.8 In no event shall the *Contractor* respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.

Z108.9 The *Employer* shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Contract or otherwise relating to any other party.

Z109. AUDIT AND MONITORING

Z109.1 The *Contractor* will allow access for the *Employer's* officers to all relevant information and premises for the purposes of audit and the monitoring of the Contract and comply with all reasonable requests or directions by the *Employer* to enable the *Employer* to verify and/or procure that the *Contractor* is in full compliance with its obligations under this Contract.

Z109.2 The *Contractor* agrees that where requested in writing during the Service Period it will ensure that an appropriately authorised representative of the *Contractor* shall attend any Committee meetings of the *Employer* upon being requested to do so by the *Employer* to discuss the Contract.

Z110. CONTRACT STATUS AND TRANSPARENCY

Z110.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any associated tender documentation provided by the *Contractor* (the Tender Submission) is not Confidential Information. The *Employer* shall be responsible for determining in its absolute discretion whether any of the content of the Contract or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.

Z110.2 Notwithstanding any other term of this Contract, the *Contractor* hereby gives his consent for the *Employer* to publish this Contract and the Tender Submission in its entirety, including from time to time agreed changes to the Contract, to the general public.

Z110.3 The *Employer* may consult with the *Contractor* to inform its decision regarding any exemptions but the *Employer* shall have the final decision in its absolute discretion.

Z110.4 The *Contractor* shall assist and cooperate with the *Employer* to enable the *Employer* to publish this Contract and the Tender Submission.

Z111. EMPLOYMENT CHECKS, SAFEGUARDING AND ANTI-SLAVERY

Z111.1 Before the *Contractor* engages or employs any person in the provision of the *services*, or in any activity related to, or connected with, the provision of the *services*, the *Contractor* must without limitation, complete the Employment Checks and any other checks required by the Disclosure and Barring Service.

Z111.2 Prior to the engagement by the *Contractor* of any staff or Subcontractor engaged to provide any part of the *services* where such individuals will have contact with children up to the age of eighteen years old or where the performance of the *services* may involve contact with vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006) the *Contractor* shall procure in respect of all staff or potential staff or other persons intended to perform any part of the *services*:

- that each person being considered for engagement be questioned as to whether he/she has any convictions; and
- that the results of a Disclosure and Barring Service (DBS) check of the most extensive available kind is obtained in accordance with Part V of the Police Act 1997 (as amended) and that each DBS check should include a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Service may involve contact with children and/or Safeguarding Vulnerable Groups Act 2006 where the performance of the service may involve contact with vulnerable adults.

Where existing staff are allocated to provide any part of the *services* referred to in this clause the *Contractor* shall ensure that prior to an individual commencing the provision of the *services* the individual shall be subject to a satisfactory checks in accordance with this clause.

Z111.3 The *Contractor* warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the *Contractor* in the provision of a *service* that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

Z111.4 The *Contractor* shall immediately notify the *Employer* of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause Z111 have been met.

- Z111.5 The *Contractor* shall refer information about any person carrying out the *services* or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the *services* or activity (or would have, if such person had not otherwise ceased to carry out the *services* or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults.
- Z111.6 Where the service requirement, specification or Task Order specifies that the *service* or activity to be provided under this Contract involves a Regulated Activity, or the *Employer* otherwise notifies the *Contractor*, acting reasonably, that the *Contractor's* Personnel are required to be subject to a Disclosure and Barring Service check, the *Contractor* shall comply with clause Z111.2 above.
- Z111.7 In performing his obligations under this Contract, the *Contractor* shall and shall ensure that each of its Subcontractors shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015

Z112. COMPLAINTS PROCEDURE

- Z112.1 The *Contractor* shall operate a complaints procedure in respect of any goods, services or works provided under these terms & conditions, to the entire satisfaction of the *Employer*, and comply with the requirements of any Regulatory Body to which the *Contractor* is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:
- Z112.1.1 is easy to access and understand
 - Z112.1.2 clearly sets out time limits for responding to complaints and keeping the complainant and the *Employer* informed of progress;
 - Z112.1.3 provides confidential record keeping to protect employees under this contract and the complainant
 - Z112.1.4 provides information to management so that services can be improved
 - Z112.1.5 provides effective and suitable remedies
 - Z112.1.6 is regularly monitored and audited and which takes account of complainant and *Employer* feedback
- Z112.2 The *Contractor* shall ensure that:
- Z112.2.1 under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint.

- Z112.2.2 someone who is independent of the matter complained of carries out the investigation
- Z112.2.3 the complainant is made aware that they are entitled to have the complaint investigated by the *Employer* if they are not satisfied with either the process of investigation or finding of the *Contractor's* investigations
- Z112.2.4 the *Contractor* will ensure that it responds to the complainant within a max of 10 days of receiving the complaint
- Z112.3 The *Contractor* will make its complaints procedure available on request
- Z112.4 The *Contractor* shall ensure that all its employees and persons employed under this contract are made aware of its complaints procedure and shall designate one employee (who shall be identified to the *Employer*) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint
- Z112.5 The *Contractor* shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the *Employer* on request or at 12 monthly intervals in any event.
- Z112.6 Where the *Employer* is investigating a complaint the *Contractor* is required to participate fully in all investigations within the timescales requested by the *Employer*
- Z112.7 The *Contractor* should note that if a complaint is made to the *Employer* by a third party relating to the goods, services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and the *Employer* requires the *Contractor* to fully to co-operate in such investigation. If the *Employer* is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the *Contractor* the *Contractor* shall indemnify the *Employer* in respect of the costs arising from such maladministration or injustice.

Z113 – **NOT USED**

Z114 – **NOT USED**

Z115 TUPE (Transfer of Undertakings (Protection of Employment)) AND PENSIONS

In interpreting these provisions relating to the Transfer Regulations, as defined below, the following words and expressions shall have the following meanings, whether used in the singular or the plural and whatever their gender:

- “Employment Liabilities”** means without limitation any costs, claims, demands, fines or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities, including those incurred by or attributed to the *Contractor* or *Contractor* of the *Employer* (which shall, for the avoidance of doubt, include any incurred as a result of an indemnity or warranty given or to be given by the *Employer* to a *Contractor* or Subcontractor);
- “Employee Liability Information”** the information that a transferor is obliged to notify to a transferee under regulation 11(2) of the Transfer Regulations:
- (a) the identity and age of the employee;
 - (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
 - (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
 - (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the *Contractor* arising out of the employee's employment with the transferor;

	(e)	information about any collective agreement that will have effect after the Transfer Date in relation to the employee under regulation 5(a) of the Transfer Regulations.
“Exit Transferring Employees”		means the employees of the <i>Contractor</i> or any Subcontractor of the <i>Contractor</i> who are wholly or mainly employed in providing the Services or are assigned to the Services or in respect of partial termination of this Agreement wholly or mainly employed in or assigned to the relevant part of such Services;
“Legislation”		in relation to the United Kingdom:
	(a)	any Act of Parliament;
	(b)	any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
	(c)	any exercise of the Royal Prerogative; and
	(d)	any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
“LGPS”		means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;
“New Contractor”		means any third party engaged to supply works which are the same as or similar to any or all of the Services following the termination or expiry of the Agreement in full or part;
“New Employees”		those employees other than the Transferring Employees and the Transferring Original Employees, recruited by the <i>Contractor</i> or a Subcontractor of the <i>Contractor</i> to provide the Services who will be working alongside the Transferring Employees and the Transferring Original Employees;
“Outgoing Contractor”		any agent or Contractor or Subcontractor appointed by the <i>Employer</i> to carry out works and services fundamentally the same as the <i>service</i> in relation to the Affected Property immediately prior to the Relevant Transfer Date,
“Relevant Employees”		the employees who are the subject of a Relevant Transfer;
“Relevant Transfer”		a relevant transfer for the purposes of the Transfer Regulations;
“Services”		means any and all of the <i>service</i> to be provided by the <i>Contractor</i> under this Contract including those set out in any schedules or services descriptions;

“Transfer Date”	means the date of the transfer of employment of employees of the <i>Employer</i> to the <i>Contractor</i> pursuant to the Transfer Regulations;
“Termination Date”	the date of termination of all or part of this Agreement in accordance with its terms;
“Transferring Employees”	means the employees of the <i>Employer</i> who are transferring by virtue of a Relevant Transfer under this Agreement;
“Transfer Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or consolidated from time to time;
“Working Days”	Any day on which the UK clearing bank are open for business.

Z116 TUPE (Transfer of Undertakings (Protection of Employment))

Z116.1 Relevant Transfer

The parties acknowledge that, pursuant and subject to the Transfer Regulations, the contracts of employment of any Relevant Employees together with any collective agreements, will have effect from the Transfer Date as if originally made between the *Contractor* and/or its Subcontractors and the Relevant Employees (or between the *Contractor* and/or its Subcontractors and the relevant trade unions, as the case may be) except subject to Paragraphs **Z117.11** and **Z117.12** (Pensions) in so far as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or to any Relevant Employee who objects under Regulation 4(7) of the Transfer Regulations.

Z116.2 The parties agree that they will comply with their obligations under sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

Z116.2A The *Employer* and the *Contractor* agree that at the Transfer Date there are no individuals presently employed by the *Employer* whose contracts of employment are intended, by virtue of the transfer to the *Contractor* of responsibility for the provision of the Services in accordance with this Agreement and in accordance with the Transfer Regulations, to have effect after the Transfer Date (or at any other time) as if originally made between those persons and the *Contractor* and/or relevant Subcontractor.

Z116.3 Apportionment of Emoluments

The *Employer* shall be responsible for all emoluments and outgoings in respect of the Transferring Employees employed by the *Employer* (including

all wages, bonuses, commissions, holiday entitlement accrued up to the Transfer Date, PAYE, National Insurance contributions and pension contributions) in respect of the period prior to (but excluding) the Transfer Date save in relation to emoluments and outgoings (including rights arising in relation to early retirement and redundancy) arising on or in connection with termination of employment on or after the Transfer Date. The *Employer* shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the *Contractor*, as required by the Transfer Regulations.

Z116.3A Employment costs

- Z116.3A.1 The *Employer* has supplied to the *Contractor* information, prior to the time for return of tenders 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 First Employee List). 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.
- Z116.3A.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) Working 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". 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*.

Z116.3A.3 Without prejudice to clause Z116.3A.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:

- a) provide the *Employee Liability Information* to the *Contractor* at such time or times as are required by the *Transfer Regulations* and
- b) update the *Employee Liability Information* to take account of any changes as required by the *Transfer Regulations*. The *Employer* gives no warranty as to the accuracy or completeness of the *Employee Liability Information* supplied by the *Outgoing Contractor*.

Z116.3A.4 The *Contractor* has provided to the *Employer*, and the *Employer* has agreed, the details set out in *Schedule 5 (Workforce Information)* which show, in respect of each of the parts of the *service*, the following information:

Z116.3A.4.1 the outline organisational structure which the *Contractor* proposes to establish to provide the *service* (the "*Proposed Workforce*");

Z116.3A.4.2 the 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

Z116.3A.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*. 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*.

Z116.3A.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 Z116.3A.6, Z116.3A.7 and Z116.3A.9) there

shall be a corresponding adjustment to the Prices to compensate for any such difference.

Z116.3A.6 If the circumstances described in clause Z116.3A.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.

Z116.3A.7 In calculating any adjustment to be made to the Prices pursuant to clause Z116.3A.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 and populate the Proposed Workforce as reasonably necessary for the Provision of the Service;
- (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 Z116.3A.5 and which arise from a Change in Law shall be dealt with in accordance with the provisions of clause Z116.3A.5 and shall not be taken into account for the purposes of clause X2 (Change in Law);
- (d) no adjustments under clause Z116.3A.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 able 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 Z116.3A.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 Z116.3A.7 if any indemnity given by the *Employer* under any other provision of this contract would apply.

Z116.3A.8 Either party may propose an adjustment to the Prices pursuant to clause Z116.3A.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 Z116.3A.5.

Z116.3A.9 In relation to all matters described in clauses Z116.3A.6 and Z116.3A.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.

Z116.3A.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.

Z116.3A.11 In addition to the Employee Liability Information covered under Regulation 11(2) of the Transfer Regulations, 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.

Z116.4 **Cover by *Employer* for pre-transfer liabilities**

Subject to Paragraph Z116.6 the *Employer* shall be liable for and shall indemnify the *Contractor* in respect of any Employment Liabilities which may be incurred by the *Contractor* as a result of:

- (a) subject to Paragraph (b) below, the employment or termination of employment of each of the Transferring Employees prior to (but excluding) the Transfer Date and which arise wholly or mainly as a result of acts or

omissions of the *Employer* prior to (but excluding) the Transfer Date in relation to the Transferring Employees; and

- (b) any failure by the *Employer* to comply with its obligations under Regulation 13(2) of the Transfer Regulations except where the failure arises from the failure of the *Contractor* or any Subcontractor of the *Contractor* to comply with its/their obligations under Paragraph Z116.5 below or Regulations 13 and/or 14 of the Transfer Regulations.

Z116.4A Cover by Outgoing Contractor for pre-transfer liabilities

Where the Outgoing Contractor's contract requires the Outgoing Contractor to indemnify and keep indemnified in full the *Employer* and any future *Contractor* or Subcontractor against all losses arising from the employment or termination of employment of any Relevant Employee prior to (but excluding) the Transfer Date and which arise wholly or mainly as a result of acts or omissions of the Outgoing Contractor (or Subcontractor) the benefit of that indemnity shall be secured by the *Employer* for the *Contractor* in the event of any Employment Liabilities sustained by the *Contractor* or any Subcontractor of the *Contractor*.

Z116.5 Contractor Responsibilities

The *Contractor* shall:

- (a) assume responsibility for all emoluments and outgoings in relation to the Transferring Employees (including but not limited to all wages, bonuses, commissions, PAYE, National Insurance contributions and pension contributions) in respect of the period from and including the Transfer Date;
- (b) comply with Paragraphs **Z117.11** and **Z117.12** (Pensions);
- (c) provide (and shall procure that its Subcontractors shall provide) the *Employer* and, where appropriate, the *Employer's* Subcontractors with all information and co-operation necessary to ensure the smooth transfer of the Transferring Employees and the rights, powers, duties and liabilities relating to it or them and to enable the *Employer* and as appropriate its Subcontractors to discharge their obligations to inform and consult any appropriate representatives (as defined by Regulation 13 of the Transfer Regulations) about the transaction contemplated by this Agreement far enough in advance of the transaction to enable meaningful consultation to take place.

Z116.6 Contractor Indemnity

The *Contractor* shall be liable for and shall indemnify the *Employer* against any Employment Liabilities which arise out of or in connection with:

- (a) the employment or termination of employment of any person (including the Transferring Employees) engaged in connection with the provision of the Services at any time on or after the Transfer Date;
- (b) any act or proposal by the *Contractor* or any of its Subcontractors prior to or following the Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and/or to make a substantial change in working conditions of any Transferring Employee to the material detriment of that Transferring Employee. For the purposes of this sub-paragraph the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the same meanings as for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations;
- (c) any failure of the *Contractor* or any Subcontractor to provide the information and co-operation referred to in Paragraph Z116.5 above or failure to comply with their obligations under Regulations 13 and 14 of the Transfer Regulations;
- (d) the employment and/or termination of employment whether before or after the Termination Date of any persons employed or engaged by the *Contractor* or any of its Subcontractors (other than any employee who immediately before the Termination Date is an Exit Transferring Employee and whose name is included on the final list of Exit Transferring Employees provided in accordance with the provisions of Paragraph Z116.8 (b)) whose employment or claims arising out of their employment or its termination transfer to the *Employer*, its Subcontractors or a New *Contractor* following the Termination Date pursuant to or by virtue of the Transfer Regulations or who claim that their employment or such claims so transfer; and
- (e) any act, proposal or communication made by:
 - the *Contractor* or its Subcontractors; and/or
 - the *Employer* or its Subcontractors (which is made as a result of any act, proposal or communication made by the *Contractor* or its Subcontractors);

prior to or following the Transfer Date which relates to pension provision for any person assigned to the Services on or following the Transfer Date.

Z116.7 **Employee Information**

The *Contractor* for itself and on behalf of its Subcontractors acknowledges and confirms that it has made full enquiries in respect of and received all information required in accordance with Regulation 11 of the Transfer Regulations and is satisfied by such information received. The *Contractor* agrees that it shall (and it shall procure that its Subcontractors shall) always pursue any failure by the *Employer* to provide any specific information relating to any of its employees, including the Transferring Employees, as a claim for a breach of a warranty under the Agreement (or Subcontractor agreement with the *Contractor* as appropriate) prior to commencing any

claim, action or demand under Regulation 11 of the Transfer Regulations. If the *Contractor* pursues a claim action or demand in respect of any failure of the *Employer* to comply with any provision of Regulation 11 of the Transfer Regulations, the *Contractor* agrees and acknowledges for itself and on behalf of its Subcontractors:

- (a) that it has notified its Subcontractors of this paragraph and that its Subcontractors have acknowledged and agreed (as evidenced by the Subcontractors in writing) the terms of this paragraph; and
- (b) that, taking into account the indemnities, warranties and terms of this Agreement, they are adequately protected in respect of any loss that might be sustained by the *Contractor* or its Subcontractors and which is attributable to the Failure and that as anticipated by Regulation 12(5) of the Transfer Regulations it is just and equitable that the Tribunal make no award for compensation under Regulation 12(3)(b) of the Transfer Regulations and, in the alternative, if the Tribunal determines that it is just and equitable for an award of compensation to be made then the *Contractor* for itself and on behalf of its Subcontractors agrees that such award should be no more than £500 for the relevant employee.

Any reference to a Subcontractor of the *Contractor* in this Paragraph Z116.7 shall be deemed to include any Subcontractors at the Transfer Date and any of the *Contractor's* future Subcontractors.

Z116.8 **Retendering and provision of information**

Within seven (7) days of notice of the termination of the *Contractor's* engagement under this Contract (in the event that this Contract is terminated early) or no later than twelve (12) months prior to expiry of the term of this Contract (whichever is earlier) or as a consequence of the *Employer* notifying the *Contractor* of its intention to retender this Agreement:

- (a) the *Contractor* shall (and shall procure that its Subcontractors shall) provide to the *Employer* a list of all persons employed or engaged by the *Contractor* or any of its Subcontractors in providing the Services or in the case of partial termination in providing the relevant part of such Services ("**Personnel**") and for each member of the Personnel their job description, length of service, remuneration and the amount of time spent on the provision of the Services and shall update such information at intervals requested by the *Employer* (the "**Retendering Information**");
- (b) the *Contractor* shall (and shall procure that its Subcontractors shall) provide to the *Employer* a list of the names and job titles of all Exit Transferring Employees and shall provide an updated version of such list at intervals requested by the *Employer*;
- (c) the *Contractor* shall and shall procure that its Subcontractors shall supply to the *Employer* in writing and allow the *Employer* to take copies of such

information in the *Contractor's* and its Subcontractor's possession and control as the *Employer*, its Subcontractors or any new *Contractor* may require for the purpose of establishing:

- (i) the terms and conditions of employment of all Exit Transferring Employees and assessing any payroll or other costs including, without limitation, emoluments and outgoings (including pension contributions in respect of any employee), all benefits (whether contractual or not);
- (ii) the ages and start dates of all Exit Transferring Employees; and
- (iii) details of any other agreement or arrangement (including with any trade union or other representative body) which may affect the employment of any Exit Transferring Employees which may fall upon the *Employer* or a new *Contractor* as a direct or indirect result of the transfer of the Services or the relevant part of such Services to the *Employer* or a New *Contractor*.

Thereafter the *Contractor* undertakes to notify the *Employer* promptly of any material changes to such information as and when they occur.

The *Contractor* hereby authorises the *Employer* to use or disclose such of the foregoing information to any New *Contractor* and to such other third parties as the *Employer* may reasonably consider necessary for the purposes of putting the continued provision of the Services or the relevant part of the Services out to tender and, if requested by the *Employer* to do so, liaise with and provide such information directly to any new *Contractor* or such other third parties as the *Employer* may direct.

Z116.9 The *Contractor* hereby undertakes to ensure that all information disclosed pursuant to Paragraph Z113.8 shall be full, true and accurate and up-to-date to the best of its knowledge and belief having made due and careful enquiry.

Z116.10 At least thirty (30) days prior to the Termination Date, the *Contractor* shall provide to the *Employer* and any New *Contractor* a final list of the names of all Exit Transferring Employees which shall be complete, accurate and up-to-date in all material respects (the "Final Exit List") and the *Contractor* shall immediately notify the *Employer* of:

- (i) any changes to the Final Exit List prior to the Termination Date;
- (ii) any such Exit Transferring Employee whose name is on the Final Exit List but who after provision of the Final Exit List later objects to a transfer pursuant to Regulation 4(7)) of the Transfer Regulations prior to the Termination Date; and
- (iii) any such Exit Transferring Employee whose name is on the Final Exit List but who has given or been given notice of termination of his employment after provision of the Final Exit List but prior to the date of termination of this Contract.

and the *Contractor* warrants to the *Employer* and the New *Contractor* that the Final Exit List will be true and accurate in all material respects and that

nor persons are employed or engaged in the provision of the Services other than those included on the Final Exit List.

Z116.11 The *Contractor* shall not and shall procure that its Subcontractors shall not during the period of twelve (12) months immediately preceding the Termination Date, or at any time after notice of the termination (or automatic termination) of the *Contractor's* engagement under this Contract (whichever is earlier), without the prior written consent of the *Employer*:

- (i) other than for a reason falling within section 98 of the Employment Rights Act 1996 terminate or give notice to terminate the employment of any Exit Transferring Employee;
- (ii) other than in the ordinary course of business, increase the number of Exit Transferring Employees by more than five (5) per cent;
- (iii) propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of any Exit Transferring Employees;
- (iv) replace, relocate or reassign to duties unconnected with the Services any Exit Transferring Employees; or
- (v) assign or redeploy to the Services any person who was not previously an Exit Transferring Employee.

Z116.12 The *Contractor* shall and shall procure that any Subcontractors shall ensure at all times that it has the right to provide the information required under this clause Z116 under the Data Protection Act 1998 and shall comply with its/their duties to provide employee liability information in accordance with Regulation 11 of the Transfer Regulations but in addition will provide the information specified in that Regulation no later than thirty 30 days before the Termination Date and shall be liable for and shall indemnify the *Employer* against any Employment Liabilities arising out of or in connection with any breach of this Paragraph Z113.12 or of Regulation 11 of the Transfer Regulations.

Z116.13 The *Contractor* warrants for itself and for and on behalf of any Subcontractors that it/they have complied and will comply with all duties to comply with employee identification checks and the Immigration, Asylum and Nationality Act 2006 and have obtained evidence that all personnel have permission to work in the United Kingdom up to and including the Termination Date. The *Contractor* shall indemnify the *Employer* against any Employment Liabilities which arise out of or in connection with any breach of this Paragraph Z113.13.

Z116.14 **Termination of Contract**

- (a) Upon termination of the *Contractor's* engagement under this Contract for whatever reason the provisions of this clause shall have effect regardless of whether Legislation shall determine there is a relevant transfer for the purposes of the Transfer Regulations.
- (b) The *Contractor* shall or shall procure that all wages, salaries and other benefits of the Exit Transferring Employees and other employees or former

employees of the *Contractor* or its Subcontractors and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Exit Transferring Employees and such other employees or former employees of the *Contractor* or its Subcontractors are satisfied.

- (c) The *Contractor* or its Subcontractors shall remain responsible for all the *Contractor's* or its Subcontractors' employees at that time save to the extent that any such employees shall be inherited by a New *Contractor* or by the *Employer* by virtue of the Transfer Regulations. Irrespective of whether the Transfer Regulations shall apply upon termination of the *Contractor's* engagement under this Contract, the *Contractor* shall provide (or will procure that the relevant its Subcontractors shall provide) the *Employer* or the New *Contractor* (as the case may be) with an indemnity against all Employment Liabilities arising from any claim whatsoever by any person in respect of their employment with the *Contractor* or its Subcontractors or its termination. The *Employer* shall be entitled to assign the benefit of the indemnity to any successor *Contractor* or New *Contractor*
- (d) The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to a relevant transfer for the purposes of the Transfer Regulations.

Z116.15 **Enforcement of Employment Provisions**

Each party undertakes, if a claim, demand or action is made or threatened that may give rise to a claim for indemnity under these TUPE and Pensions clauses then that party shall as the case may be:

- (a) notify the indemnifying party of the claim, demand or action in writing within 5 business days of it first being made or threatened or it not reasonably practicable to do so then as soon as reasonably practicable;
- (b) give the indemnifying party promptly all reasonable co-operation, assistance and information which may be relevant to the claim, demand or action; and
- (c) not admit, defend, compromise, negotiate or settle the claim or action without consent of the indemnifying party (such consent not to be unreasonably withheld) in writing.

Z116.16 **New Contractor**

Any New *Contractor* or Subcontractor of the *Employer* shall be entitled to enforce the provisions of this Paragraph pursuant to Section 1 of the Contracts (Rights of Third Parties) Act 1999 provided always that the parties to this Contract may vary or terminate this Contract by agreement between them without requiring the consent of any New *Contractor* or Subcontractor of the Authority and need not comply with Section 2(1) of the Contract (Rights of Third Parties) Act 1999.

Z117 **EMPLOYEES AND PENSIONS**

Employees

Z117.1 **Conduct of Staff**

- (a) Whilst engaged at the *Employer's* Premises the *Contractor* shall (and shall procure that any of its Subcontractors, employees, servants, agents shall):
- (i) comply with the *Employer* policies relating to the conduct of staff (including those in respect of security arrangements) as disclosed to the *Contractor* and may be made and enforced by the *Employer* from time to time acting reasonably; and
 - (ii) comply in all respects with all Legislation from time to time in force and relating to equal opportunities and all forms of unlawful discrimination.
- (b) The *Employer* shall notify the *Contractor* of any proposed change to the *Employer's* policies as soon as practicable.
- (c) The *Contractor* shall take and/or procure appropriate disciplinary action against any person employed by the *Contractor* and/or any of its Subcontractors who transgress any such rules, regulations and requirements (which may at the discretion of the *Employer* include the removal from work in or about the *Employer's* Premises).

Z117.2 **Contractor's Employees**

Other than as expressly provided in this Agreement, the *Contractor* shall be entirely responsible for the employment and conditions of service of the *Contractor's* employees and shall procure that any of its Subcontractors are likewise responsible for their employees.

Z117.3 **Admission to the *Employer's* Premises**

The *Contractor* shall at least ten (10) Working Days before the date on which the *Contractor* first provides any of the Services provide the *Employer* with a written list of the names and addresses of all employees or other persons who it expects may require admission to the *Employer's* Premises in connection with the provision of the Services and giving such other particulars as the *Employer* may reasonably require. The *Contractor* shall update this information as and when any such individuals are replaced or complemented by others, not less than three (3) Working Days before their inclusion save that this additional notification shall only apply in respect of employees requiring admission to the *Employer's* Premises for a continuous period of one (1) day.

Z117.4 **Refusal of Admission**

The *Employer* reserves the right to refuse to admit to any of the *Employer's* Premises any person, employed or engaged by the *Contractor*, or a Subcontractor including those identified in accordance with Paragraph Z117.3, whose admission would be, in the reasonable opinion of the

Employer, detrimental to the provision of the Services and/or to health and safety and/or public safety and shall be obliged to give any reasons for such refusal.

Z117.5 Decision to Refuse Admission

Subject to the *Employer's* compliance with Paragraph Z117.4 above, the decision of the *Employer* as to whether any person is to be refused admission to the relevant premises pursuant to Paragraphs Z117.3 or Z117.4 shall be final and conclusive, provided that the *Employer* shall be required to give any reasons for such refusal.

Z117.6 Employer's Employees

The *Employer* shall be entirely responsible for the employment and conditions of service of its own employees.

Z117.7 Removal from Employer's Premises

The *Contractor* shall comply with and/or procure compliance with any notice issued by the *Employer* from time to time requiring the removal from the *Employer's* Premises of any person employed thereon who in the opinion of the *Employer* (which it shall be required to explain and disclose to the *Contractor*) is not acceptable on the grounds of security or other reasonable grounds and that such persons shall not be employed again in relation to Services without the written consent of the *Employer*. Where the *Contractor* wishes to dispute any such notice, the relevant individual shall not attend the *Employer's* Premises pending the outcome of the dispute.

Z117.8 New Employees

The *Contractor* shall (and shall procure that any of its Subcontractors shall) comply with the requirements set out in the Pensions Act 2008 in respect of pension provision for New Employees.

Z117.9 ADR and other code obligations relating to new employees

- (a) During the term of this Agreement, the *Contractor* shall (and shall procure that its Subcontractors shall) on request by the *Employer* provide the *Employer* with accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees, the Transferring Original Employees and the New Employees, where this is required to monitor compliance with the obligations under this Paragraph **Z117.9**.
- (b) The *Employer* and the *Contractor* shall (and the *Contractor* shall procure that any of its Subcontractors shall) in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance with obligations under this Paragraph **Z117.9**

- (c) Where it appears to the *Employer* or the *Contractor* that it is not possible to resolve the matter by continuing discussions between them pursuant to Paragraph **Z117.9(b)** or where an employee of the *Contractor* or Subcontractor or any recognised trade union writes to the *Employer* to confirm that it has been unable to resolve its complaint directly with the *Contractor* or its Subcontractor in relation to the obligations under this Paragraph **Z117.9**:
- (i) the *Employer* shall first write to the *Contractor* to seek an explanation for the alleged failure to comply with the *Contractor's* obligations under this Paragraph **Z117.9**. The *Contractor* shall provide such an explanation in writing within 5 Working Days of receipt of the request from the *Employer*;
 - (ii) if the response provided by the *Contractor* satisfies the *Employer* that the *Contractor's* obligations under this Paragraph **Z117.9** have been met, then the *Employer* will inform the complainant of this and the matter will be deemed to have been concluded;
 - (iii) in the event that the *Employer* is not satisfied with the response provided by the *Contractor* the *Employer* shall write to the *Contractor* within five (5) Working Days to require the *Contractor* to take immediate action to resolve this dispute; and
 - (iv) if, following such a request by the *Employer* the *Contractor* still appears to the *Employer* not to be complying with the obligations under this Paragraph **Z117.9**, the matter shall be dealt with in accordance with the process for the resolution of disputes in the *conditions of contract*.

Z117.10 Subcontractors

If the *Contractor* enters into a Subcontractor contract in connection with this Agreement or the Services, it shall impose obligations on its Subcontractors in the same terms as those imposed on it pursuant to Paragraphs **Z116 and Z117** and shall procure that the Subcontractor complies with such obligations.

Pensions

Z117.11 The provisions in Schedules I & 2 apply.

Z117.12 The *Contractor* shall (and shall procure that any of its Subcontractors shall) comply with the requirements set out in the Transfer of Employment (Pension Protection) Regulations 2005 in respect of the relevant Transferring Employees to whom the Fair Deal requirements (as set in Schedules I and II) do not apply to.

Z118 TRANSITION TO NEW CONTRACTOR

Z118.1 During the final twelve (12) months of the term of this Agreement (where this expires by effluxion of time) or during the period of any notice of termination

of the *Contractor's* engagement under this Agreement (or any part hereof) and in either case for a period of six (6) months thereafter, the *Contractor* shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any New *Contractor*, and for the purposes of this Paragraph **Z118.1** the meaning of the term "co-operate" shall include:

- (a) liaising with the *Employer* and/or any New *Contractor*, and providing reasonable assistance and advice concerning the Services and its transfer to the *Employer* or to such New *Contractor*;
- (b) allowing any such New *Contractor* access (at reasonable times and on reasonable notice) to the *Employer's* Premises but not so as to interfere with or impede the provision of the Services; and
- (c) providing to the *Employer* and/or to any New *Contractor* all and any information concerning the *Employer's* Premises and the Services which is required for the efficient transfer of responsibility for its performance.

Z118.2 The *Contractor* shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New *Contractor* or to the *Employer*, as the case may be, and the *Contractor* shall take no action at any time during the Service Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

SCHEDULE I – PENSION ARRANGEMENTS

In addition to the definitions set out in Clauses Z100 and Z115, in this schedule words and phrases with a first capital letter (or any derivation thereof) shall have the following meanings:

Definitions

"Administering Authority"	Shropshire Council acting in its capacity as the administering authority of the Shropshire County Pension Fund for the purposes of the LGPS Administration Regulations
"Admission Agreement"	the agreement to be entered into in accordance with regulation 3 of the LGPS Regulations, by the Administering Authority, the <i>Employer</i> and the <i>Contractor</i> or Subcontractor, as appropriate in the Administering Authority's standard form.
"Admission Body"	a transferee admission body for the purposes of regulation 6(2)(a)(i) of the LGPS Administration Regulations;
"Appropriate Pension Provision"	in respect of Eligible Employees, either: i) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or ii) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.
"Bond"	The bond to be executed in the Administering Authority's standard form to the value specified in the Admission Agreement.
"Cessation Date"	any date on which the <i>Contractor</i> or the relevant Subcontractor ceases to be an Admission Body under paragraph 6 of this Schedule other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees;

"Compensation Regulations"	the Local Government (Discretionary Payments) Regulations 1996 and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006 in each case as amended;
"Direct Losses"	all damage, losses, liabilities, claims, actions costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law;
"Eligible Employees"	<p>(a) the Transferring Employees who are active members of or eligible to join the LGPS on the Relevant Transfer Date;</p> <p>(b) the Transferring Original Employees who are active members of or eligible to join the LGPS or a broadly comparable pension scheme provided by their existing <i>Employer</i> on the Relevant Transfer Date;</p> <p>for so long as they are employed in connection with the provision of the Services or part of such Services;</p>
"First Contractor"	means the organisation with whom the <i>Employer</i> initially contracted for the provision of services which are fundamentally the same type of services as the <i>service</i> ,
"Fund"	means the Shropshire County Pension Fund
"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;
"Intervening Contract"	a contract with the <i>Employer</i> for the provision of services which are fundamentally the same type of services, at times after they were provided under a contract with the <i>First Contractor</i> and before they are to be provided by the <i>Contractor</i> ,
"Legacy Scheme"	the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to

	become a member of, prior to the Relevant Transfer
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356), as amended;
"New Employees"	those employees other than the Transferring Employees and the Transferring Original Employees, recruited by the <i>Contractor</i> or a Subcontractor of the <i>Contractor</i> to provide the Services who will be working alongside the Transferring Employees and the Transferring Original Employees;
"Original Employees"	those employees of the <i>Employer</i> , 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 <i>Employer</i> and the First <i>Contractor</i> , became employees of someone other than the <i>Employer</i>
"Relevant Transfer Date"	the date on which an Eligible Employee transfers to the <i>Contractor</i> and/or one or more Subcontractor by virtue of a Relevant Transfer;
"Services"	defined in Paragraph Z115 ;
"Subcontractor"	a person to whom the <i>Contractor</i> sub-contracts any of its obligations under this Agreement;
"Transferring Employees"	means the employees of the <i>Employer</i> who are transferring by virtue of a Relevant Transfer under this Agreement;
"Transferring Original Employees"	means an Original Employee: <ul style="list-style-type: none"> (a) whose contract of employment becomes, by virtue of the application of the Transfer Regulations in relation to what is done for the purposes of carrying out the contract between the <i>Employer</i> and the <i>Contractor</i>, a contract of employment with someone other than its existing <i>Employer</i>, and (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of the Transfer Regulations 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*,

1. Pensions

- 1.1 The *Contractor* shall or shall procure that any relevant Subcontractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer Date up to and including the date of the termination or expiry of this Contract.

The provisions of paragraph 1, 2, 3, 7, 8 and 9 shall be directly enforceable by an affected employee against the *Contractor* or any relevant Subcontractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the *Contractor* or Subcontractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

2 Contractor to Become an Admission Body

- 2.1 Where the *Contractor* or a Subcontractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the *Contractor* shall procure that it and/or each relevant Subcontractor shall become an Admission Body. The *Contractor* shall before the Relevant Transfer Date execute and procure that each relevant Subcontractor executes an Admission Agreement which will have effect from and including the Relevant Transfer Date. The *Contractor* or Subcontractor will bear the cost of any actuarial assessment required in order to assess the Employer's contribution rate and Bond value in respect of any Eligible Employee who elects to join the LGPS on or after the Relevant Transfer Date.
- 2.2 For the purposes of calculating the *Employer's* contribution rate, any termination payment, and any other sums due to the administering authority under the Admission Agreement, the Authority shall ensure that the Transferring Employees' past service benefits accrued prior to the Relevant Transfer Date (but excluding any future risks on past service and future service liabilities) are fully funded as at the Relevant Transfer Date, as determined by the Shropshire County Pension Fund's actuary.

3. Admission Agreement

- 3.1 The *Employer* shall before the Relevant Transfer Date execute the Admission Agreement referred to in clause 2 (*Contractor to Become an Admission Body*) and shall use reasonable endeavours to ensure that the Administering Authority executes the Admission Agreement before the Relevant Transfer Date.

4. Indemnity for a Breach of the Admission Agreement

- 4.1 Without prejudice to the generality of this Schedule I, the *Contractor* hereby indemnifies the *Employer* and/or the *New Contractor* and, in each case, their Subcontractors on demand 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 Admission Agreement and of the terms of this Schedule to the extent that the liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused) and of the LGPS Regulations.

5 Indemnity or Bond

- 5.1 Without prejudice to the generality of the requirements of this Schedule I, the *Contractor* shall procure that it and each relevant Subcontractor shall as soon as reasonably practicable, and in any event prior to the Relevant Transfer Date obtain any indemnity or Bond required in accordance with the Admission Agreement.

6. Right of Set Off

- 6.1 The *Employer* shall have a right to set off against any payments due to the *Contractor* under this Agreement, an amount equal to any overdue *Employer* and employee contributions, and other payments (and any interest payable) due from the *Contractor* or from any relevant Subcontractor under the Admission Agreement and under the LGPS Regulations.

7. Contractor Ceases to be an Admission Body

- 7.1 If the *Contractor* or any Subcontractor employs any Eligible Employees from a Relevant Transfer Date and:
- (a) the *Contractor* or any Subcontractor does not wish to offer those Eligible Employees membership of the LGPS;
 - (b) the *Employer*, the *Contractor* or any relevant Subcontractor are all of the opinion that it is not possible to operate the provisions of paragraphs 2 (*Contractor to Become an Admission Body*) to 6 (Right of Set Off) inclusive of this Schedule; or
 - (c) 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 this Agreement or because it ceases to employ any Eligible Employees; or
 - (d) the Administering Authority refuses the *Contractor's* or Subcontractor's application to become an Admission Body;

then the provisions of paragraphs 2 (*Contractor to Become an Admission Body*) to 6 (Right of Set Off) of this Schedule inclusive shall not apply (without prejudice to any rights of the *Employer* under those clauses) and the provisions of paragraph 8

(Contractor Scheme) shall apply.

8. Contractor Scheme

8.1 Where this paragraph applies pursuant to paragraph 7.1 the following shall apply:

(a) The Contractor shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Relevant Transfer Date or Cessation Date (as the case may be) and shall not later than 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 shall be “the Contractor Scheme” for the purposes of this paragraph 8. Such pension scheme or schemes must be:

- (i) established within three (3) months of the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under Schedule II (Bulk Transfer Terms) is made;
- (ii) reasonably acceptable to the Employer (such acceptance not to be unreasonably withheld or delayed);
- (iii) a registered pension scheme, as defined in section 150(2) of the Finance Act 2004, by HM Revenue & Customs under chapter 2, part 4 of the Finance Act 2004; and
- (iv) 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 broadly comparable to those provided by the Legacy Scheme;

8.2 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 shall procure and shall procure that any relevant Sub-Contractor shall procure that:

- (i) the Eligible Employees shall by three 3 months before the Relevant Transfer Date or 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);
- (ii) the Contractor Scheme shall provide benefits in respect of the Eligible Employees’ periods of service on and after the Relevant Transfer Date or the 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 shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under

the LGPS had they continued in membership of the LGPS;

- (iii) on and from the Relevant Transfer Date or Cessation Date (as the case may be) until the earlier of:-
 - (A) three (3) months after the date on which the Eligible Employees are first able to join the Contractor Scheme; and
 - (B) the date on which the Eligible Employees join the Contractor Scheme

the Contractor shall 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;

- (iv) if the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant Sub-Contractor. The replacement scheme must comply with this clause 8 (Contractor Scheme);
- (v) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Contractor Scheme shall undertake by deed to the Employer and to the Administering Authority that they shall comply with the provisions of paragraphs 9.1(a), 9.1(b) and 9.1(d) (Undertaking from the Contractor) and Schedule II (Bulk Transfer Terms)

8.3 Schedule II (Bulk Transfer Terms) shall apply in relation to the terms for bulk transfers from the LGPS to the Contractor's Scheme, Sub-Contractor's Scheme, or any scheme established in accordance with clause 8.1, following the Relevant Transfer Date or Cessation Date (as the case may be) and any subsequent bulk transfers on termination or expiry of this Agreement.

9. Undertaking from the *Contractor*

9.1 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:

- (a) 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 paragraph 7 (*Contractor* Scheme), paragraph 9 (Undertaking from the *Contractor*) or Schedule II (Bulk Transfer Terms) shall be supplied to them as

expeditiously as possible;

- (b) it shall not and shall procure that any relevant Subcontractor shall not, without the consent in writing of the *Employer* (which shall only be given 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 LGPS or 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;
- (c) until the Relevant Transfer Date, it shall not and shall procure that any relevant Subcontractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraph 2 (*Contractor* to Become an Admission Body) to paragraph 6 (*Contractor* ceases to be an Admission Body) inclusive without the consent in writing of the *Employer*, (not to be unreasonably withheld or delayed) and the Administering Authority;
- (d) it shall not and shall procure that any relevant Subcontractor shall 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 Services 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;
- (e) it shall and shall procure that any relevant Subcontractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the *Contractor* Scheme immediately after ceasing to be so engaged unless such an Eligible Employee has voluntarily agreed to the loss of their LGPS membership as part of the change.

10. Discretionary Benefits

- 10.1 Where the *Contractor* or a Subcontractor is an Admission Body, the *Contractor* shall and/or shall procure that any relevant Subcontractor 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*; and
- 10.2 Where the *Contractor* and/or a Subcontractor is not an Admission Body, the *Contractor* shall and/or shall procure that any Subcontractor shall award benefits to the Eligible Employees which are identical 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*.

10.3 Under paragraphs 10.1 and 10.2 (Discretionary Benefits), 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 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 an actuary nominated by the *Employer* has certified to be broadly comparable or equivalent in cash terms.

11. Claims from Eligible Employees or Trade Unions

11.1 The *Contractor* hereby indemnifies the *Employer* and, in each case, their Subcontractors from and against all Direct Losses suffered or incurred by it or them 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:

- (a) 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 this Agreement; or
- (b) arise out of the failure of the *Contractor* and/or any relevant Subcontractor to comply with the provisions of this schedule before the date of termination or expiry of this Agreement.

12. Contracts (Rights of Third Parties) Act 1999

12.1 The *Employer* and the *Contractor* agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this schedule.

13. Liability for Costs

13.1 The costs of the *Employer* necessarily and reasonably incurred in connection with the Admission Agreement (excluding the costs of preparation of the Admission Agreement) and/or of obtaining the necessary certification of comparability in accordance with paragraph 8 (*Contractor* Scheme) shall be borne by the *Contractor*.

14. Transfer to another *Employer*

14.1 Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another *Employer* (by way of a transfer under the Transfer Regulations) the *Contractor* shall and shall procure that any relevant Subcontractor shall:

- (a) consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- (b) procure that the *Employer* to which the Eligible Employees are transferred (the "**New *Employer***") complies with the provisions of this schedule I

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*.

15. Pension Issues on Expiry or Termination

15.1 The *Contractor* shall and shall procure that any relevant Subcontractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the *Contractor* or any Subcontractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the *Employer* such documents and information mentioned in paragraph 15.1(a) which the *Employer* may reasonably request in advance of the expiry or termination of this Agreement; and
- (c) fully co-operate (and procure that the trustees of the *Contractor's* Scheme shall fully co-operate) with the reasonable requests of the *Employer* relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the *Contractor* or any Subcontractor in the provision of the Services on the expiry or termination of this Agreement.

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

16.1. At the Relevant Transfer Date, the Fund will be deemed to be fully funded in accordance with paragraph 2.2 above in respect of the Eligible Employees and the *Employer* will be responsible for any underfunding (but excluding any future risks on past service and future service liabilities) prior to the Relevant 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 Relevant Transfer Date will be agreed between the *Employer* and the Fund.

16.2. 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**”) then:

16.2.1. the *Contractor* shall pay such Exit Contribution to the Fund in accordance with the terms of the Admission Agreement and the LGPS Regulations;

- 16.2.2. the *Contractor* shall notify the *Employer* in writing as soon as reasonably practicable and in any event within 30 Working Days of the Exit Contribution incurred; and
- 16.2.3. subject to the receipt of the information referred to in paragraph 16.2.2 the *Employer* shall reimburse to the *Contractor* the amount detailed in that notification within thirty (30) Working Days save to the extent that the Exit Contribution results from any of the matters set out in clause 16.3.
- 16.3. The *Contractor* accepts responsibility for any Exit Contribution to the extent it results from one or more of the following:
- 16.3.1. the grant by the Contractor of early retirement requests in relation to Eligible Employees,
- 16.3.2. 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,
- 16.3.3. the reduction or waiver of any contributions due from any Eligible Employee,
- 16.3.4. the award of pay increases to Eligible Employees which in aggregate exceed:
- 16.3.4.1. 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
- 16.3.4.2. 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 Transfer Regulations, any code of practice and/or any National Joint Council for Local Government services arrangements), or
- 16.3.4.3. 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)
- 16.3.5. 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,
- 16.3.6. 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,

- 16.3.7. bringing the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after the age of 55,
- 16.3.8. exercising any discretion to extend the statutory time frames under Regulation 22 of the LGPS Regulations or
- 16.3.9. waiving any reduction to benefits under Regulation 30(6) of the LGPS Regulations.

SCHEDULE 2 PENSIONS ARRANGEMENTS – BULK TRANSFER TERMS

1 Interpretation and Definitions

- i) In this Schedule, unless the context otherwise requires, the following terms shall have the meanings given to them below:

"Administering Authority's Actuary"	the actuary appointed by the Administering Authority for the purposes of this Schedule;
"AVCs"	AVCs or SCAVCs as defined in the LGPS Regulations;
"Contractor's Actuary"	the actuary appointed by the <i>Contractor</i> and/or relevant Subcontractor for the purposes of this Schedule II and notified to the Administering Authority;
"Contractor's Scheme"	The pension scheme or schemes nominated by the <i>Contractor</i> and/or relevant Subcontractor in accordance with paragraph 7 of Schedule I of this Agreement;
"Due Date"	the date 28 days after the last of the conditions in paragraph 3.6 of this Schedule has been satisfied;
"Fund"	the Shropshire County Pension Fund;
"Transfer Amount"	the amount or amounts referred to in paragraph 3.1 of this Schedule;
"Transferring Member"	an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the <i>Contractor's</i> Scheme under paragraph 2.1 of this Schedule;

2 The *Contractor's* Scheme

- 2.1 The *Contractor* shall (and shall procure that each relevant Subcontractor shall) invite each Eligible Employee who joins the *Contractor's* Scheme in accordance with paragraph 8 of schedule I of this Agreement 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 Transfer Date or Cessation Date (as the case may be). 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* shall (and shall procure that each relevant Subcontractor shall) 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 payment from the Fund

3.1 The *Employer* shall 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 or Cessation Date (as the case may be) determined by the Administering Authority's Actuary in accordance with the LGPS Regulations.

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

3.4 The *Employer* shall 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 shall calculate the Transfer Amount in accordance with and the LGPS Regulations; and

3.4.2 within one week of completing this calculation, the Administering Authority's Actuary shall 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 LGPS Regulations. The calculation shall 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 of this Schedule 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 shall be agreed between the parties) of the objection, then the amount shall 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 (or an independent actuary nominated by him) on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties. The independent actuary's costs shall be payable by the *Contractor* and/or relevant Subcontractor.
- 3.6 Payment to the *Contractor's* Scheme of the Transfer Amount shall only be made on the following conditions:
- 3.6.1 the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this Schedule 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:
- (a) a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in paragraph 4 of this Schedule;
- (b) they shall accept liability for each Transferring Member's accrued contracted out rights under the Fund; and
- (c) they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.
- 3.7 The payment of the Transfer Amount shall be satisfied by the transfer of readily marketable stocks and shares of the Fund or cash as agreed by the Administering Authority and the trustees of the *Contractor's* Scheme having a mid-market value on the day before the Payment Date equal to the Transfer Amount. If the Administering Authority and the trustees of the *Contractor's* Scheme are not able to agree some or all of the particular assets to be transferred, or the mid-market value of any such assets, the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Fund transferring cash equal to that part of the Transfer Amount in respect of which there has been no agreement as to the assets to be transferred.

4 Past service benefits

- 4.1 The *Contractor* shall (and shall procure that each relevant Subcontractor shall) 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 to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Transfer Date or Cessation Date (as the case may be) if he had remained a member of the Fund.

5 Additional voluntary contributions

- 5.1 Nothing in this Schedule shall apply to AVCs or to benefits secured by them. However, the *Employer* shall use reasonable endeavours to ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the *Contractor's* Scheme. The *Contractor* shall (and shall procure that each relevant Subcontractor shall) ensure that the *Contractor's* Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

6 No assistance

- 6.1 The *Contractor* shall not (and shall procure that each relevant Subcontractor shall 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 Exit Provisions

- 7.1 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:

- 7.1.1 the expiry or termination of this Agreement; or
- 7.1.2 the expiry or termination of any Sub-Contract in the case of a relevant Subcontractor; or
- 7.1.3 the employment of any Eligible Employee transferring to a New *Employer* in accordance with paragraph 14 of Schedule I (or otherwise),

the Contractor shall (and shall procure that each relevant Subcontractor shall) 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 Replacement 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 determined by the Administering Authority's Actuary under paragraph 3.1.

- 7.2 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

7.1 of this Schedule been complied with, the *Contractor* shall (and/or shall procure that each relevant Subcontractor shall) pay to the *Employer*, any New *Contractor* (or their Subcontractor), any new Subcontractor or any New *Employer* (as appropriate) (or as such person shall direct) the amount of the difference.

8. Costs

- 8.1 The costs of the *Employer* and/or the Administering Authority necessarily and reasonably incurred in connection with this Schedule shall be borne by the *Contractor*.

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

DATED

2018

SHROPSHIRE COUNCIL

AND

KIER HIGHWAYS LIMITED

ADMISSION AGREEMENT

Ref: LB/CORP-1099

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

ADMISSION AGREEMENT

THIS DEED is dated the day of Two thousand and Eighteen

BETWEEN :

(1) SHROPSHIRE COUNCIL of The Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND acting in its capacity as the Administering Authority for the Shropshire County Pension Fund (**“the Administering Authority”**) and in its capacity as the scheme employer (**“the Scheme Employer”**); and

(2) KIER HIGHWAYS LIMITED whose registered address is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD and whose registered number is 5606089 (**“the Admission Body”**)

BACKGROUND :

- (1) The Administering Authority is an Administering Authority within the meaning of the Regulations and administers the Fund.
- (2) The Administering Authority is also a scheme employer within the meaning of the Regulations.
- (3) The Admission Body is an admission body within the meaning of paragraph 1(d) of Part 3 of Schedule 2 to the Regulations.
- (4) With effect from the Transfer Date the Admission Body will provide services or assets in connection with the exercise of a function of the Scheme Employer as a result of the transfer of services or assets by means of the Contract
- (5) The Parties have agreed to enter into this admission agreement (**“the Agreement”**) to enable the Admission Body to be admitted to the Scheme and to participate in the Fund so that the Eligible Employees can be or remain members of the Scheme with effect on and after the Transfer Date.
- (6) The terms and conditions of such an admission have been agreed between the parties to this Agreement as follows:-

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement the following definitions and rules of interpretation apply unless the Contract requires otherwise:

“Bond”	means a bond or indemnity with a person or form described in Paragraph 7 of Part 3 of Schedule 2 to the Regulations in a form approved by the Administering Authority;
“Business Day”	means any day other than a Saturday or a Sunday or a Public or Bank Holiday in England;
“Commencement Date”	means the date of this Agreement, or the Transfer Date, whichever is the earlier;
“Contract”	means the contract for the Services between the Scheme Employer and the Admission Body dated 2018;
“Eligible Employees”	means the employees listed in Schedule One who are employed in connection with the provision of the Services or assets referred to in the Contract PROVIDED THAT: i) the employee is and remains employed by the Admission Body in connection with the provision of the Services; and ii) the employee otherwise satisfies the requirements of the Regulations relating to eligibility for and membership of the Scheme;
“Employer’s Contribution Rate”	means the Admission Body’s employer’s contribution rate of 21.6% of the pensionable pay of the Eligible Employees, calculated in accordance with the rates and adjustments certificate obtained in accordance with regulation 62 of the Regulations applicable to the Admission Body and certified by an actuary appointed by the Administering Authority as being the appropriate amount, as revised from time to time in accordance with the Agreement;
“Fund”	means the Shropshire County Pension Fund within the Scheme;
“Guarantee”	a guarantee with a person described in Paragraph 8, Part 3 of Schedule 2 to the Regulations in a form approved by the Administering Authority;

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

“Registered Pension Scheme”	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004;
“Regulations”	means the Local Government Pension Scheme Regulations 2013 (SI 2013/2356);
“Scheme”	means the Local Government Pension Scheme;
“Services”	the highways and environment services which are to be provided to the Scheme Employer by the Admission Body under the Contract;
“Termination Date”	has the meaning prescribed in clause 8.2, 8.3 or clause 8.4 as appropriate;
“Transfer Date”	1 st April 2018

Interpretation

- 1.2 For the purposes of this agreement, the expression “employed in connection with the provision of the Services” shall mean working for at least 50% of normal working time on the Services;
- 1.3 Unless stated otherwise the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires;
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules;
- 1.5 In this Agreement where the context so admits:-
- 1.5.1 words denoting the singular shall include the plural and vice versa and words denoting one gender shall include a reference to other genders
- 1.5.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- 1.5.3 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

- 1.5.4 reference to a statute or any statutory provisions is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and include any subordinate legislation for the time being in force made under it
- 1.5.5 reference to Clauses or Schedules shall be deemed to be references to a Clause or a Schedule of this Agreement and references to a sub-Clause shall be deemed to be a reference to a sub-Clause of the Clause in which the reference appears and reference to paragraphs are to paragraphs of the relevant schedule
- 1.5.6 clause, schedule and paragraph headings are included for ease of reference only and shall not affect this Agreement or its interpretation
- 1.5.7 a reference to writing or written includes faxes but not e-mail;
- 1.5.8 any obligation in this Agreement on a person to do something includes an obligation not to agree or allow that thing to be done;
- 1.5.9 a reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

2. COMMENCEMENT AND DURATION OF AGREEMENT

THIS Agreement shall commence on the Commencement Date and will remain in force until the Termination Date unless terminated earlier in accordance with clause 8 of this Agreement.

3. ADMISSION

- 3.1 From the Transfer Date, the Administering Authority shall permit the Eligible Employees to be or to remain members of the Scheme and to participate as active members of the Fund, unless notified to the contrary by the Admission Body. From that date the Admission Body shall operate as if it were an employing authority for the purpose of the Regulations and shall exercise the responsibilities provided for in the Regulations.
- 3.3 This is to be a closed admission agreement.

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

4. PARTICIPATION

- 4.1 The provisions of the Regulations will apply for determining the rights, obligations and actions to be taken by each party to this Agreement and for the transmission of information between them and each party hereby undertakes with the other to take such action as is required to comply with the Regulations and to take such action promptly.
- 4.2 The provisions of the Regulations will apply to the Eligible Employees in the same way as if the Admission Body were a scheme employer within the meaning of the Regulations.
- 4.3 The Admission Body warrants and represents to the Administering Authority and to the Scheme Employer that, as at the Transfer Date, every Eligible Employee is employed in connection with the provision of the Services for the purposes of this Agreement.
- 4.4 The Admission Body undertakes that it will promptly notify the Administering Authority and the Scheme Employer in writing if any Eligible Employee ceases to satisfy the definition of an Eligible Employee and as such that employee shall then cease to be eligible to be an active member of the Scheme.
- 4.5 The Admission Body shall be liable for and shall indemnify and keep indemnified the Administering Authority against any costs and liabilities which it or the Fund may incur (whether directly or as a result of a loss or cost to the Eligible Employees) arising out of or in connection with any breach by the Admission Body of this Agreement, the Regulations, or any other legal or regulatory requirements applicable to the Scheme.
- 4.6 The Scheme Employer shall be liable for and shall indemnify and keep indemnified the Administering Authority against any costs and liabilities which it or the Fund may incur (whether directly or as a result of a loss or cost to the Eligible Employees) arising out of or in connection with any failure on the part of the Admission Body to comply with its obligations under this Agreement, including such exit payments due in accordance with clause 7.3 below.

5. PAYMENTS

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

5.1 The Admission Body shall pay to the Administering Authority for credit to the Fund such contributions and payments as are due under the Regulations as required by the Administering Authority in respect of the Eligible Employees.

5.2 The Admission Body shall pay to the Administering Authority for credit to the Fund:

5.2.1 the employee pension contributions from time to time deducted from the pay of the Eligible Employee under the Regulations;

5.2.2 the employer contributions and payments as are due under the Regulations based on the Employer's Contribution Rate calculated pursuant to clause 7.1. These contributions will be payable on a monthly basis in arrears;

5.2.3 the any sums calculated under clause 7 and clause 8 arising on termination of the Agreement: and

5.2.4 any other payments required by the Regulations or by other legislation.

5.3 The payments under clause 5.2 must be paid to the Administering Authority no later than the date specified in the Regulations and regulations made under the Pensions Act 1995 or relevant substituting statutory provision.

5.4 The Admission Body shall pay to the Administering Authority for credit to the Fund any revised contributions due under Sub-Clause 7.2.2 within 30 days of receipt of a written request from the Administering Authority. The provisions of this clause 5.4 shall survive termination of this Agreement.

5.5 Where the Admission Body certifies that:

5.5.1 an Eligible Employee who is an active member of the Scheme aged 55 or more is being dismissed by reason of redundancy or is leaving the employment of the Admission Body on grounds of business efficiency;

5.5.2 an Eligible Employee who is an active member of the Scheme is retiring voluntarily with the consent of the Admission Body on or after age 55 and before normal pension age;

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- 5.5.3 it is permitting an Eligible Employee who is an active member of the Scheme to retire on the grounds of ill-health or infirmity of mind or body; or
- 5.5.4 the Admission Body has exercised a discretion under the Regulations, and immediate benefits are payable under the Regulations, the Admission Body shall make a payment to the Administering Authority for credit to the Fund of an amount representing the actuarial strain on the Fund (as certified by an actuary appointed by the Administering Authority) of the immediate payment of benefits.
- 5.6 The amount of the payment in clause 5.5 will be notified to the Admission Body in writing by the Administering Authority. It will be due within 30 days of receipt of the written notification or by such other arrangement as may be agreed between the parties within that period.
- 5.7 Any financial penalty incurred by the Fund arising from the failure of the Admission Body to comply with the terms of this Agreement shall be repaid to the Fund by the Admission Body within 30 days of receiving a written request from the Administering Authority.
- 5.8 If any sum payable under the Regulations or this Agreement by the Admission Body to the Administering Authority or to the Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations the Administering Authority shall require the Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid.
- 5.9 If any sum payable under the Regulations or this Agreement by the Admission Body to the Administering Authority or to the Fund has not been paid by the date on which it becomes due, the Administering Authority acting in its capacity as the Scheme Employer, may set off against any payments due to the Admission Body under the Contract an amount equal to the sum due (including any interest due in accordance with Clause 5.8) and to pay the sum to the Administering Authority for credit to the Fund by a date specified by the Administering Authority.

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

5.10 The Admission Body and the Scheme Employer agree that the right of set-off in clause 5.9 shall be valid and enforceable notwithstanding any provision to the contrary in the Contract.

6. ADMISSION BODY'S UNDERTAKINGS

6.1. The Admission Body undertakes:-

- 6.1.1. to provide or procure to be provided such information relating to the Admission Body's participation in the Fund and the Eligible Employee's participation in the Scheme as is reasonably required by the Administering Authority and within any timescale specified in the Regulations, or by the Administering Authority, as appropriate;
- 6.1.2. to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655) or any statutory re-enactment thereof;
- 6.1.3. to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and subject to Clause 6.1.4 in any employer's guide published by the Administering Authority and provided by the Administering Authority to the Admission Body;
- 6.1.4. where the Contract does not specify the adoption of the Scheme Employer's policies on the exercise of discretions and the Admission Body intends to adopt its own policy, to formulate and publish within three months of the Commencement Date a statement concerning the Admission Body's policy on the exercise of its discretions under Regulation 66 of the Regulations, to keep such policies under review and where the Admission Body determines to revise any of its policies, the Admission Body must publish the revised statement and send a copy of it to the Administering Authority within one month of the determination;
- 6.1.5. to notify the Administering Authority and the Scheme Employer immediately in writing of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;

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6.1.6. without prejudice to the requirements of the Regulations and any employer's guide published by the Administering Authority and provided to the Admission Body, to promptly, and no later than 30 days from the happening of any such event, notify the Administering Authority and the Scheme Employer in writing of:

- a) any material change in the terms and conditions of employment of any of the Eligible Employees which affects or is likely to affect entitlement to benefits under the Scheme for its employees who are members of the Scheme; and
- b) of any termination of employment by virtue of redundancy or in the interests of business efficiency, ill health or for any other reason;

6.1.7. not to do or be a party to any act omission or thing which would prejudice the status of the Scheme as a Registered Pension Scheme;

6.1.8. to notify the Administering Authority and the Scheme Employer immediately of any matter which may affect or is likely to affect, its participation in the Scheme and the Fund and give immediate notice to the Administering Authority and the Scheme Employer of any actual or proposed change in its status which may give rise to a termination of the Contract or this Agreement including but not limited to take-over reconstruction or amalgamation liquidation or receivership and a change in the nature of its business or constitution; and

6.1.9. that in the event of any future transfer during the term of the Contract of any of the Eligible Employees to a sub-contractor or separate organisation for the delivery of the Services or assets provided for in the Contract, to secure that such sub-contractor or organisation complies with the obligations set out in this Agreement in so far as they may otherwise cease to be the obligations of the Admission Body. The provisions of this clause 6.1.9 shall survive termination of this Agreement.

7. REVISION OF EMPLOYER'S CONTRIBUTION RATE AND EXIT PAYMENTS

7.1 The Administering Authority shall periodically and in any event at least once every three years obtain from an actuary a certificate specifying, in the case of the Admission Body, the

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

percentage or amount by which in the actuary's opinion the Employer's Contribution Rate should be increased or reduced. This is with a view to ensuring that, as far as is reasonable possible the value of assets of the Fund in respect of Eligible Employees under the Agreement is neither materially more or materially less than the anticipated liabilities of the Fund in respect of the said Eligible Employees at the date the Contract or this Agreement is due to end. The charges for such actuarial services shall be borne by the Admission Body payable within 30 calendar days of receipt of written notification of such costs from the Administering Authority.

7.2 When this Agreement is terminated under clause 8 the Administering Authority must obtain:-

7.2.1 an actuarial valuation as at the Termination Date of the liabilities of the Fund in respect of the Eligible Employees and former Eligible Employees of the Admission Body under the Agreement and

7.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the exit payment due from the Admission Body in accordance with Regulation 64(2) of the Regulations.

7.3 Where for any reason it is not possible to obtain revised contributions or the exit payment in accordance with clause 7.2 from the Admission Body or from an insurer, or any person providing an indemnity, bond or guarantee on behalf of the Admission Body, the Administering Authority may obtain a further revision of any rates and adjustments certificate for the Fund within the meaning of the Regulations, showing the revised contributions due from the Scheme Employer with a view to ensuring that assets equivalent to the exit payment due from the Admission Body under 7.2 are provided to the Fund over such period of times as the Administering Authority shall consider to be reasonable. The charges for such actuarial services shall be borne by the Scheme Employer payable within 30 calendar days of receipt of written notification of such costs from the Administering Authority.

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

8. TERMINATION

8.1 The Admission Body shall:

8.1.1 notify the Administering Authority of any matter that may affect, or is likely to affect, its participation in the Scheme; and

8.1.2 give immediate notice to the Administering Authority of any actual or proposed change in its status that may give rise to a termination, and for these purposes, a termination includes a take-over, reconstruction or amalgamation, liquidation or receivership and a change in the nature of the Admission Body's business or constitution.

8.2 Subject to Clauses 8.3 and 8.4 this Agreement shall terminate on the earlier of the Termination Date (as determined by clause 8.3 and 8.4) or at the end of the notice period upon any of the parties hereto giving a minimum of three months notice to terminate this Agreement to the other parties to this Agreement but such notice shall not have effect unless a broadly comparable occupational pension scheme is made available to the Eligible Employees who are active members of the Scheme at the Termination Date of this Agreement.

8.3 This Agreement shall automatically terminate on the Termination Date which shall be the earlier of the date of:-

8.3.1 the expiry or earlier termination of the Contract or

8.3.2 the date the Admission Body ceases to be an admission body for the purposes of the Regulations; or

8.3.3 the date the Admission Body ceases to employ any Eligible Employee

8.4 This Agreement may be terminated with immediate effect (which shall then be the Termination Date) by the Administering Authority by notice in writing to the Admission Body in the event of:-

8.4.1 any breach by the Admission Body of any of its obligations under this Agreement

PROVIDED THAT if the breach is capable of remedy the Administering Authority shall

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

- first afford to the Admission Body the opportunity of remedying that breach within such reasonable period as the Administering Authority may specify; or
- 8.4.2 the insolvency winding up or liquidation of the Admission Body; or
- 8.4.3 the failure by the Admission Body to pay any sums due to the Administering Authority or to the Fund within one month of the periods specified in clause 5.2, 5.4, 5.5, 5.7, 7.2.2, or in any other case, within one month of receipt of a notice from the Administering Authority requiring it to do so; or
- 8.4.4 the Admission Body acts (or omits to act) in such a way as to prejudice the status of the Scheme as a Registered Pension Scheme; or
- 8.4.5 the failure by the Admission Body to obtain renew or adjust the level of a bond or indemnity in accordance with Clause 9.3.
- 8.5 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages against the other and all provisions which are expressed to survive this Agreement shall remain in force and effect.
- 8.6 Where any contributions, payments or other sums due under this Agreement or the Regulations (including without limitation any payments by instalments agreed under Clause 6) remain outstanding on the termination of this Agreement the Admission Body shall pay them in full within 30 days of the date of termination. The provisions of this clause shall survive termination of this Agreement.
- 9. BOND, INDEMNITY OR GUARANTEE FROM THE ADMISSION BODY**
- 9.1 Before the Commencement Date, the Admission Body, taking account of actuarial advice and to the satisfaction of the Administering Authority, assessed the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation of the Admission Body, as [REDACTED]
- [REDACTED]

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

- 9.2 The Admission Body warrants that, where required by the Administering Authority, at the Commencement Date there is in place a Bond or, where for any reason it is not desirable for the Admission Body to enter into a Bond, a Guarantee in respect of the level of risk identified in clause 9.1.
- 9.3 The Admission Body shall, to the satisfaction of the Scheme Employer keep under assessment the level of risk arising on premature termination of the provision of service or assets by reason of insolvency, winding up or liquidation of the Admission Body at no more than three yearly intervals. Following such review, where the risk requires it and within 30 days of notification by the Scheme Employer, the Admission Body shall:
- 9.3.1. arrange for the existing Bond or indemnity or Guarantee to be renewed and amended to cover the revised amount of assessed risk; or
 - 9.3.2. secure a new Bond or indemnity or Guarantee to cover the revised amount of the assessed risk.
- 9.4 Where the Bond, indemnity or Guarantee referred to under Clause 9.1 is not for the full period of the Contract the Admission Body shall renew the Bond, indemnity or Guarantee to meet the level of risk exposure which has, prior to the renewal of the bond or indemnity been actuarially assessed to the satisfaction of the Administering Authority and the Scheme Employer. The Admission Body shall as soon as practicable, and not less than 30 days before the expiry date stated in any current bond or indemnity, provide a copy of the renewed Bond or Guarantee to the Administering Authority.

10. NOTICES

- 10.1 ANY notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served on the named party if delivered by hand or sent by prepaid first class post to that party in accordance with the following:
- 10.1.1. served on the Admission Body at its registered office address;

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

10.1.2. served on the Administering Authority at the Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND and addressed to 'Shropshire County Pension Fund'.

10.2 ANY notice served in accordance with clause 10.1 shall be deemed to have been duly given or made:

10.2.1. if delivered by hand upon delivery at the address provided for in this Clause 10 unless such delivery occurs on a day which is not a Business Day or after 4.00 p.m. on a Business Day in which case it will be deemed to have been given at 9.00 a.m. on the next Business Day; or

10.2.2. if sent by prepaid first class post on the second Business Day after the date of posting

11. PUBLIC INSPECTION

Subject to the removal of Schedule 1 in order to protect the personal data of the Eligible Employees, this Agreement shall be made available for public inspection by the Administering Authority at their headquarters' address.

12. DISPUTES

While the Agreement is in force, any party may request a formal review of it to determine whether any amendments should be made. Any reasonable request for such a review shall not be refused by the other party. In respect of any review or any other question that may arise between the parties to this Agreement relating to its construction or to the rights and obligations under the Agreement, any dispute shall be referred in writing to an independent legal adviser or the Secretary of State within the meaning of the Regulations as appropriate for determination.

13. APPLICABLE LAW

SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

13.1 This Agreement and any claim or matter arising under or in connection with this Agreement (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

13.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

14. RIGHTS OF THIRD PARTIES

This agreement and the documents referred to in it are made for the benefit of the parties; they do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it other than the eligible employees.

15. VARIATION

THIS Agreement may be amended or modified in whole or in part at any time by an Agreement in writing executed in the same manner and by or on behalf of the parties.

16. FREEDOM OF INFORMATION

16.1. The Admission Body acknowledges that the Administering Authority is subject to duties under the Freedom of Information Act 2000 ("the Act") and best practice under the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 (the "Code").

16.2. The Admission Body acknowledges that the Administering Authority may, acting in accordance with the Code, be obliged under the FOIA to disclose information concerning the Admission Body:

16.2.1. in certain circumstances without consulting the Admission Body; or

16.2.2. following consultation with the Admission Body and having taken their views into account;

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provided always that where sub-clause 16.2.1 above applies the Administering Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Admission Body advanced notice, or failing that, to draw the disclosure to the Admission Body's attention after any such disclosure.

- 16.3. The Admission Body shall provide all necessary assistance as reasonably requested by the Administering Authority (within any time scale specified as reasonable by the Administering Authority) to enable the Administering Authority to respond to a request for information within the time for compliance as set out in section 10 of the Act.
- 16.4. The Administering Authority shall not in responding to such requests for information disclose any information which it considers is exempt subject to the Administering Authority being required to disclose such information by the Information Commissioner.
- 16.5. The Administering Authority shall in no event be liable for any loss damage harm or detriment howsoever caused arising from or in connection with the reasonable disclosure of information (including any exempt information) under and in accordance with the requirements of the Act in relation to this Agreement.

17. SEVERANCE

- 17.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the intention of the parties.

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18. WAIVER

18.1 Failure or neglect by the Administering Authority to enforce at any time any of the provisions of this Agreement shall not be construed nor shall be deemed to be a waiver of the Administering Authority's rights nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Administering Authority's rights to take subsequent action.

19. ENTIRE AGREEMENT

19.1 Except where expressly provided, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

20. COUNTERPARTS

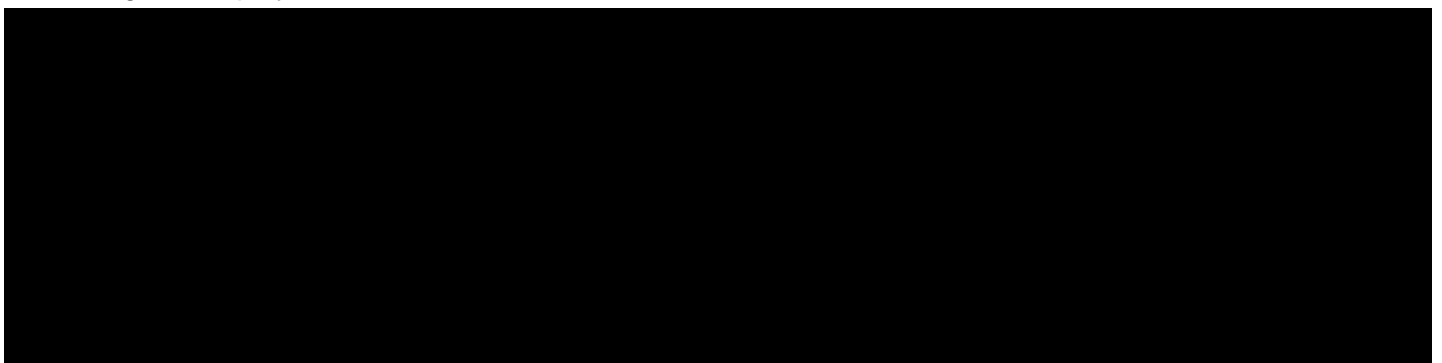
20.1 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

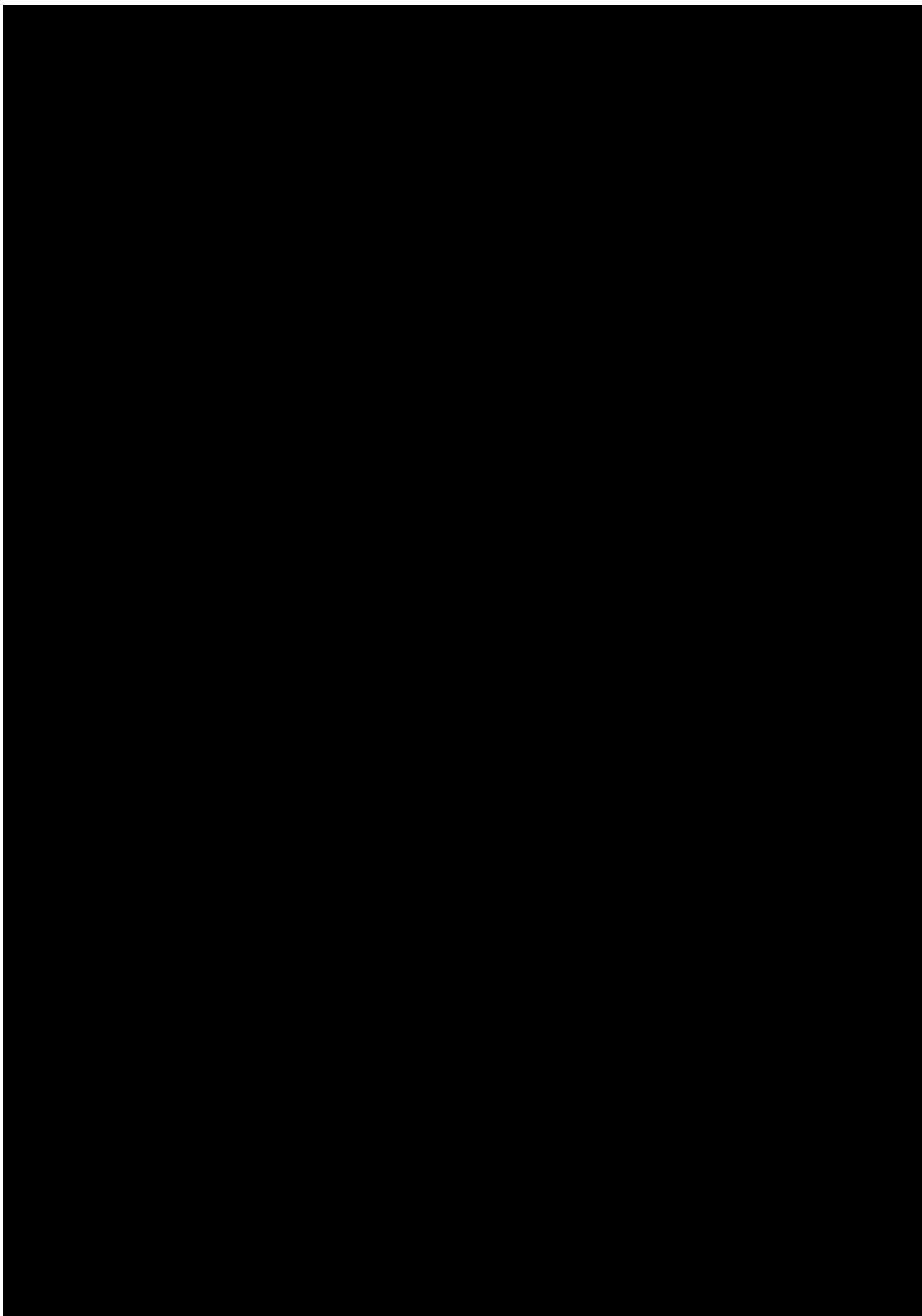
SCHEDULE ONE

ELIGIBLE EMPLOYEES

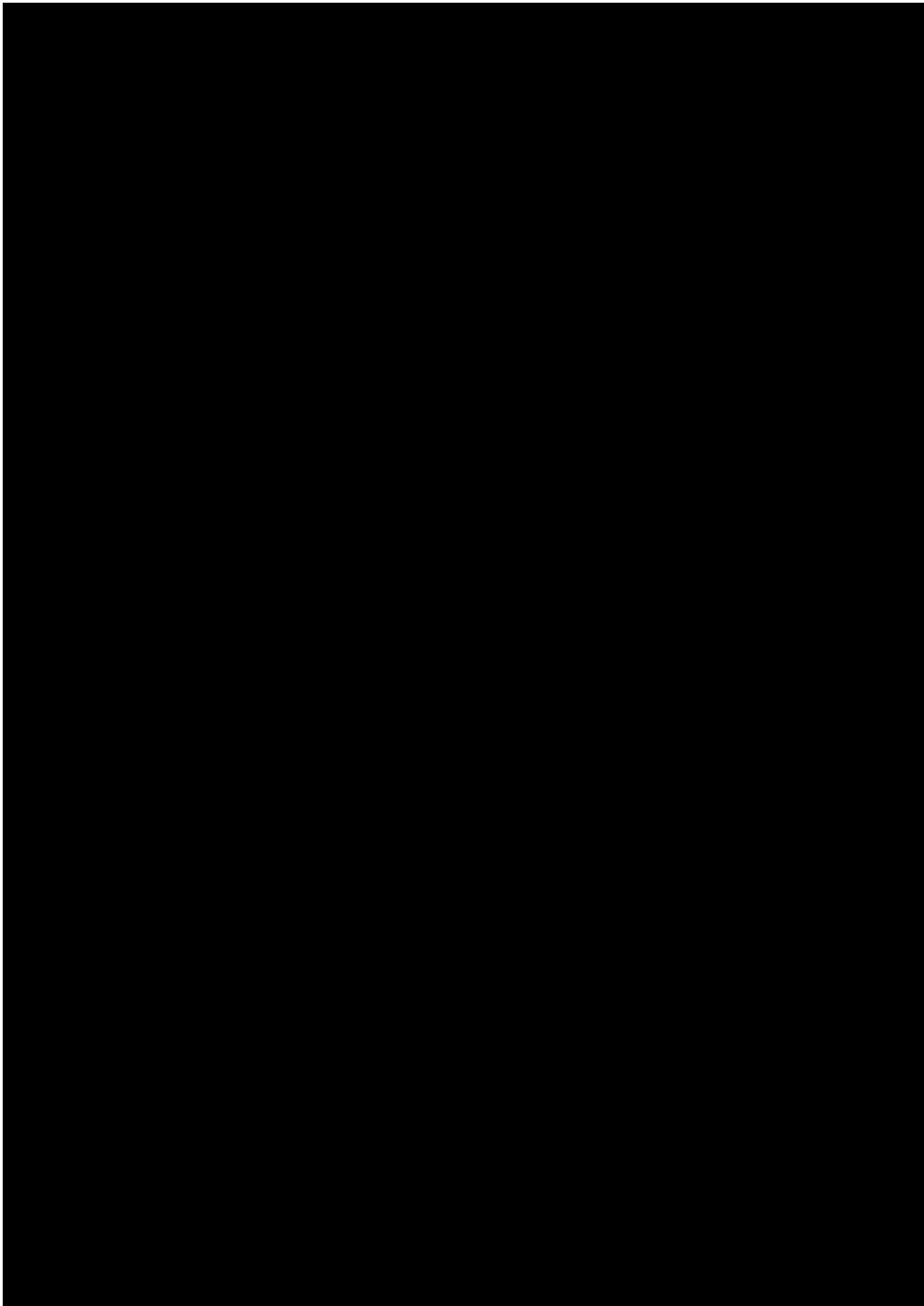
Eligible Employees to be admitted on the Transfer Date:



SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT



SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT



SCHEDULE 1 ANNEX 1 – DRAFT ADMISSION AGREEMENT

EXECUTED as a DEED by affixing)
the COMMON SEAL of)
SHROPSHIRE COUNCIL)
in the presence of:-)

Authorised Officer

Executed as a deed)
for and on behalf of)
KIER HIGHWAYS LIMITED)
acting by a director in the presence of a)
witness)

_____ (name) Director: _____

Witness signature:)
Witness name:)
Witness address:)

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

DATED

BOND AGREEMENT

between

SHROPSHIRE COUNCIL

and

ADMISSION BODY

and

GUARANTOR

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

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10. Third party rights
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SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

THIS BOND AGREEMENT is made the day of 2018

BETWEEN

PARTIES

- (1) **SHROPSHIRE COUNCIL** of Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND as beneficiary (**Administering Authority**).
- (2) **KIER HIGHWAYS LIMITED** a company registered and incorporated under the laws of England with company number 5606089 whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (**Admission Body**).
- (3) **ZURICH INSURANCE PUBLIC LIMITED COMPANY** a public limited company incorporated in Ireland (Registration No. 13460) whose registered office is at Zurich House Ballsbridge Park Dublin 4 Ireland UK branch registered in England and Wales Registration No. BR7985 and whose address for service for the purposes of this Guarantee Bond is Zurich Surety of 2nd Floor, Norfolk House, 7 Norfolk Street, Manchester, M2 1ZU England or such other address as shall be notified in writing from time to time (**Guarantor**).

This Bond Agreement is executed and delivered under the provisions of the Local Government Pension Scheme Regulations 2013 (*SI 2013/2356*) (the Regulations) as amended or supplemented from time to time.

BACKGROUND

- (A) The Administering Authority is the administering authority of the Local Government Pension Scheme (**Scheme**) for Shropshire within the meaning of the Regulations.
- (B) The Admission Body is an admission body within the meaning of paragraph 1(d) of part 3 of Schedule 2 of the Regulations.
- (C) The Guarantor is a body described in and to which paragraph 7, Part 3 of Schedule 2 of the Regulations applies (**Relevant Institution**).
- (D) In this Bond Agreement, words and expressions used bear the meanings set out in the Regulations, unless defined in this Bond Agreement, in the Admission Agreement or the contrary is stated.
- (E) By an agreement entered into between the Administering Authority and the Admission Body dated 2018, the Administering Authority transferred highways and environment term maintenance services in connection with its functions to the Admission Body (the **Contract**).
- (F) The Admission Body and the Administering Authority entered into an agreement dated 2018 (**Admission Agreement**), regulating the participation of eligible employees (as defined in the Admission Agreement) in the Scheme from the 1st April 2018.
- (G) The Administering Authority has agreed to continue with the admission of the Admission Body's eligible employees to the Scheme under the terms of the Admission Agreement, subject to the provision of a bond in the form of this Bond Agreement.

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

- (H) At the Admission Body's request, the Guarantor has agreed to provide this Bond Agreement to the Administering Authority as a bond in approved form in the sum of [REDACTED] (Bond Amount). This is the amount actuarially assessed to the Administering Authority's satisfaction to secure the payment to the Administering Authority of employee and employer contributions, and other sums due from the Admission Body to the Administering Authority under the Admission Agreement or the Regulations for eligible employees.

1. SCHEME LIABILITIES

- 1.1 The Admission Body covenants with and undertakes to the Administering Authority and the Guarantor to make payment of all employer and employee contributions, other payments (including interest payable under the Regulations) and sums due to the Administering Authority under the Admission Agreement or the Regulations for the eligible employees as defined in the Admission Agreement (Scheme Liabilities).
- 1.2 The Guarantor and Admission Body confirm that the Guarantor is a Relevant Institution.

2. RELEVANT EVENT

In this Bond Agreement a Relevant Event shall occur if:

- (a) the Administering Authority terminates the Admission Agreement on or following any of the following events:
- (i) the Admission Body's insolvency, winding up or liquidation;
 - (ii) the Admission Body's breach of any of its obligations under the Admission Agreement (but where the breach is capable of remedy, only where it has not been remedied within a reasonable time); or
 - (iii) the Admission Body's failure to pay any sums due to the fund within a reasonable period of a notice from the Administering Authority requiring payment

and in any such case, the Admission Body fails to pay or discharge the Scheme Liabilities in the manner set out in clause 1; or

- (b) where, at least 30 days before this Bond Agreement expires in accordance with clause 5.1(a), the Admission Body has not procured the issue of a Replacement Bond (as defined in and in accordance with clause 5.4) or, at the Administering Authority's sole discretion, an Extension Notice (as defined in and in accordance with clause 5.5) or
- (c) where, within 30 days of an actuarial assessment of the level of risk covered by the Bond in accordance with the Admission Agreement requiring an amendment to the Bond Amount, the Admission Body fails to procure the delivery of a Replacement Bond or an Extension Notice in the form of Appendix II covering the revised Bond Amount.

3. PAYMENT

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

- 3.1 The Guarantor shall pay to the Administering Authority the sum(s) (not exceeding in the Bond Amount) demanded by the Administering Authority:
- (a) on or at any time following the occurrence of a Relevant Event; and
 - (b) on the Administering Authority certifying in writing that a Relevant Event has occurred and that the amount demanded is due from the Admission Body under the Admission Agreement for Scheme Liabilities.
- 3.2 Any demand served by the Administering Authority under the terms of this Bond Agreement shall be in writing (in the form set out in Appendix I to this Bond Agreement) and the Guarantor shall pay the sum demanded within 14 days of its receipt.
- 3.3 Any demand under this Bond Agreement shall be conclusive evidence (and admissible as such) that any sum stated in it is properly due and payable to the Administering Authority in connection with it.
- 3.4 Any demand under this Bond Agreement shall be in writing addressed to the Guarantor at its address for service specified above, or to another address as the Guarantor shall advise to the Administering Authority by not less than seven days prior notice in writing. It shall be deemed to be served on actual delivery to the Guarantor.

4. MAXIMUM LIABILITY

The maximum aggregate liability of the Guarantor under this Bond Agreement shall not exceed the Bond Amount. This is the sum actuarially assessed to the Administering Authority's satisfaction.

5. EXPIRY DATE

- 5.1 Save as expressly stated in clause 5.2, this Bond Agreement shall expire and the obligations and liabilities of the Guarantor under this shall cease and determine absolutely on the earliest of:
- (a) 31st March 2021;
 - (b) the date on which the Admission Body ceases to be an Admission Body, having discharged all accrued Scheme Liabilities; or
 - (c) the date on which the Guarantor shall have made payments under this Bond Agreement that amount in aggregate to the Bond Amount;

(the Expiry Date.)

- 5.2 The Bond Agreement shall not expire under clause 5.1(a) or clause 5.1(b) in respect of a Relevant Event which has occurred and in respect of which before 5.00 pm on the proposed Expiry Date, a demand is served on the Guarantor in accordance with clause 3.
- 5.3 The Admission Body shall procure (by the delivery to the Administering Authority of a Replacement Bond as defined in clause 5.4 or, at the Administering Authority's sole discretion, an Extension Notice as defined in clause 5.5) that at all times while there shall subsist under the Admission Agreement or under the Regulations any liability or contingent

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

liability for Scheme Liabilities, a bond in substantially the form of this instrument or an indemnity in approved form. In either case, this shall be from a Relevant Institution as shall be acceptable to the Administering Authority to secure the payment by the Admission Body of Scheme Liabilities, as may be actuarially determined on the Administering Authority's behalf.

- 5.4 Subject to clause 5.5, the Admission Body agrees that, for the purposes of clause 2(b), a Relevant Event shall occur if it fails not less than 30 days before the Expiry Date, or for the purposes of clause 2(c) within 30 days of an actuarial assessment requiring a revised Bond Amount to procure the effective execution and delivery to the Administering Authority of a guarantee bond in substantially the terms of this Bond Agreement from the Guarantor or from a Relevant Institution, as defined by and in accordance with clause 5.3 (Replacement Bond).
 - 5.5 Before the Admission Body procures a Replacement Bond, the Administering Authority (at its sole discretion) may, request that the Admission Body instead procure the Guarantor's service of a notice in the form attached at Appendix II (Extension Notice) extending the period of validity of this Bond Agreement to the date set out in the Extension Notice or providing for a revised Bond Amount.
 - 5.6 If the Admission Body procures the Guarantor's service (on the instructions of the Administering Authority) of an Extension Notice not less than 30 days before the Expiry Date, or within 30 days of the actuarial assessment, as appropriate, the provisions of this Bond Agreement shall remain and continue in full force and effect. This is subject only to the amendment of the Expiry Date to the date set out in the Extension Notice (and to the amendment of the Bond Amount, if applicable to the sum set out in the Extension Notice).
 - 5.7 For the avoidance of doubt, nothing in this Bond Agreement requires the Guarantor to serve an Extension Notice.
6. APPLICATION OF PAYMENTS
- 6.1 All sums paid by the Guarantor under the terms of this Bond Agreement shall be held and applied by the Administering Authority to pay and discharge the Scheme Liabilities.
 - 6.2 On payment by the Guarantor following a Relevant Event under clause 2(a), the Administering Authority shall provide to the Guarantor an account of the application of the sums as soon as reasonably practicable, but in any event within 14 days. If any payment made by the Guarantor under the demand shall exceed the amount required to discharge the Scheme Liabilities, the Administering Authority shall refund the overpayment to the Guarantor. For the avoidance of doubt, once the Guarantor has made payments under this Bond Agreement that aggregate to the Bond Amount, this Bond Agreement expires in accordance with clause 5.1. This is despite the fact that any repayments have been made or are due under this clause.
 - 6.3 Following any payment by the Guarantor under clause 2(b) or clause 2(c), the Administering Authority shall be entitled to hold and apply the sums for Scheme Liabilities. The Administering Authority shall not be obliged to repay or release them (or any part of them not applied) to the Guarantor or the Admission Body (if the Admission Body has repaid the sum to the Guarantor in full). This is unless either:

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

- (a) all Scheme Liabilities have been discharged in full; or
- (b) the Administering Authority has received a bond or indemnity in approved form to secure payment by the Admission Body of the Scheme Liabilities.

7. MULTIPLE DEMANDS

The service of any claim or demand by the Administering Authority under the terms of this Bond Agreement shall not preclude the service of any other or further demand (subject only to the provisions of clause 4).

8. CONTINUATION OF OBLIGATIONS AND LIABILITIES

The obligations and liabilities of the Guarantor under this Bond Agreement shall not be reduced, discharged, impaired or affected by:

- (a) the giving of time, or any other indulgence, forgiveness or forbearance by the Administering Body;
- (b) any amendment or variation of the Admission Agreement, the rules applicable to the administration of it or the payment and calculation of benefits under the fund; or
- (c) the insolvency of the Admission Body or any disclaimer of its contracts and liabilities.

9. EXECUTION BY COUNTERPART

This Bond Agreement may be executed in one or more counterparts and any party may enter into the Bond Agreement by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the parties shall constitute one and the same agreement, and a full original of the Bond Agreement for all purposes.

10. THIRD PARTY RIGHTS

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Bond Agreement is not intended to and does not give any rights to enforce any provisions contained in the Bond Agreement to any person who is not a party to the Bond Agreement.

11. VARIATION

This Bond Agreement may be amended or modified in whole or in part at any time by an Agreement in writing executed in the same manner and by or on behalf of the parties.

12. GOVERNING LAW

This Bond Agreement shall be governed by the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the courts of England.

In witness whereof the parties have executed and delivered this Bond Agreement as a deed the day and year first before written.

SCHEDULE 1 ANNEX 2 – DRAFT GUARANTEE BOND

THE COMMON SEAL of
SHROPSHIRE COUNCIL

was hereunto affixed in the presence of:

.....

Authorised signatory

Executed and delivered as a deed by

KIER HIGHWAYS LIMITED acting by

.....Director

.....Director or Company Secretary

Executed and delivered as a deed by

Signed and delivered as a Deed by

..... as Attorney for Zurich Insurance Public Limited Company in
the presence of:

.....

Signature of witness

Name of witness

Address of witness Norfolk House, Manchester

Occupation of witness

SCHEDULE 2 – ANNEX 1

PRICE ADJUSTMENT FOR INFLATION

Work Category
Routine, Cyclic and Time Charge Works (this will included winter service, grounds/street scene and preliminaries)
Renewals and Construction Works
Machine Surfacing
Hand Surfacing / Patching
Surface Dressing
Road Markings
Street Lighting
Vehicle Maintenance

SCHEDULE 2 – ANNEX 2

SCHEDULE 2, ANNEX 2 - PRICE ADJUSTMENT FOR INFLATION

NOT USED

SCHEDULE 3 – PARTNERING INFORMATION

The attached document contains Performance Measures, Strategic Indicators and the *service level table*

SCHEDULE 4 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

[The parties agree that the Employer (having consulted with the Contractor) shall provide the completed Schedule 4 prior to the operational date of clause Z102A]

- The Contractor shall, provided it shall be satisfied that such requests shall be lawful, comply with any further written instructions with respect to processing by the Employer.
- Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS legal requirement to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

SCHEDULE 5 - WORKFORCE INFORMATION

SCHEDULE 6 - 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:

- 2 people who are directly employed by the *Contractor* and whose normal place of working is within the Affected Property,
 - 3 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
 - 4 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 The following components of the cost of manufacture and fabrication of Plant and Materials, which are

- 5 2 wholly or partly designed specifically for the service and
3 manufactured or fabricated outside the Affected Property.

51 Amounts paid by the *Contractor*.

Design 6¹ 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.

¹ This is optional and may be used by the *Employer*.