

SCHEDULE 12

Monitoring and Reporting

1 General Monitoring and Reporting Obligations

1.1 The Service Provider shall, throughout the Term:

- (a) monitor the performance of the Service (and/or procure that each element of the Service is so monitored); and
- (b) attend such meetings and provide such information as is required to assist the Authority in managing and monitoring the Service;

in accordance with this Schedule 12 (*Monitoring and Reporting*).

1.2 The Service Provider shall submit to the Authority's Representative the Monthly Monitoring Report which Report shall, at the Authority Representative's request, be accompanied by a copy of such Report or any part thereof on computer diskette or other electronic storage device in such form and compatible with such software as the Authority Representative shall reasonably require.

1.3 The form of such Report shall be agreed with the Authority Representative, such agreement not to be unreasonably withheld.

1.4 The Service Provider shall at any time and from time to time at its own cost provide to the Authority Representative such information with respect to the Project as the Authority Representative may reasonably require.

1.5 If the Authority Representative considers that any Report either has not been compiled in accordance with the provisions of this Contract or has been based on erroneous information or data, then it may serve a notice to that effect on the Service Provider within twenty (20) Business Days of receipt of such Report objecting to such Report.

1.6 If any such objection has not been resolved by agreement between the Authority Representative and the Service Provider within ten (10) Business Days after the service of such notice, then either of them may refer the matter to the Dispute Resolution Procedure.

1.7 If the resolution (whether by agreement or determination under the Dispute Resolution Procedure) of any objection pursuant to Paragraph 1.6 requires any revision or adjustment to any Report, then the Service Provider shall as soon as practicable issue revised versions of each affected Report and such revised Report shall for all purposes of this Contract take the place of the original Report.

1.8 The Service Provider shall utilise all appropriate forms of monitoring in order to determine whether there are any failures in any of the Performance Requirements of the Output Specification and/or in compliance with the Method Statements, including through the Surveys, Structure Inspections, Structural Assessments and Service Provider Inspections in relation to the relevant Project Network Parts, and any other sources or reports of which the Service Provider is or ought to be aware, and the Service Provider shall note such failures and shall report on them pursuant to this Schedule 12 (*Monitoring and Reporting*).

2 Representatives

The Authority's Representative

2.1 The Authority shall appoint a representative to be the Authority Representative in accordance with Clause 33 (*Representatives*).

Delegation of Authority

2.2 The Authority Representative may at any time and from time to time by notice in writing to the Service Provider delegate some of his functions and authorities under this Contract to any person or persons. Any such notice given in writing to the Service Provider shall specify the following:

- (a) the date on which the delegation of authority took place;
- (b) the nature and extent of the delegation;
- (c) any limitation on the authority so delegated; and
- (d) the name of the person(s) so authorised to act on behalf of the Authority.

Thereafter the acts and omissions of the persons so nominated shall be binding upon the Authority as if those persons were the Authority Representative with the same power to bind the Authority as is set out in Clause 33 (*Representatives*).

The Service Provider Representative

- 2.3 The Service Provider shall appoint a representative to be the Service Provider Representative in accordance with the provisions of Clause 33 (*Representatives*).

Delegation of Authority

- 2.4 The Service Provider Representative may at any time and from time to time by notice in writing to the Authority delegate some of his functions and authorities under this Contract to any person or persons. Any such notice given in writing to the Authority shall specify:

- (a) the date on which the delegation of authority took place;
- (b) the nature and extent of the delegation;
- (c) any limitation on the authority so delegated; and
- (d) the name of the person(s) so authorised to act on behalf of the Service Provider.

Thereafter the acts and omissions of the persons so nominated shall be binding upon the Service Provider as if those persons were the Service Provider Representative with the same power to bind the Service Provider as is set out in Clause 33 (*Representatives*).

3 Monthly Service Operations Board Meetings and Reports

Monthly Monitoring Report

- 3.1 A report (the "**Monthly Monitoring Report**") shall be issued to the Authority by the Service Provider no later than five (5) Business Days after the first day of each Month. Each Monthly Monitoring Report shall include the following information in respect of the previous Month:

- (a) details of the actual progress made in relation to the Investment Programmes, together with the expected remaining duration for the outstanding activities within the Investment Programmes;
- (b) a statement of the reasons for any delay in the provision of the Services with details of the actions and timetable to be taken to mitigate delays in the provision of the Services, including any delays, claims, incidents or issues arising in the delivery of the Services in relation to Relief Events, Compensation Events, Force Majeure Events and Excusing Causes;

- (c) details of any failures to comply with any Performance Requirements of the Output Specification including during any applicable Grace Periods but excluding in relation to any Milestone Adjustments and whether such failures were rectified prior to or within the relevant Rectification Period or not, and any Service Points or Direct Service Points or other relevant Adjustments incurred as a result including any failures which are outstanding at the date of the Monthly Monitoring Report;
- (d) further details of the failures referred to in Paragraph (c) above, including:
 - (i) how they were discovered and/or reported, including via the Help Desk;
 - (ii) the date and time they were recorded;
 - (iii) the Initial Performance Requirement classification of the failure;
 - (iv) any Subsequent Performance Requirement classification of the failure following any reclassification of the failure pursuant to Clause 5.1.7 of Schedule 4 (*Payment Mechanism*) and the rationale for such reclassification, and
 - (v) the period of time taken to rectify such failure;
- (e) details of all Surveys, Structure Inspections, Service Provider Inspections and Certification that have taken place in the past Month and due to take place in the forthcoming Month, including a review of the sampling that has been undertaken by the Independent Surveyor, the Independent Bridge Inspector or the Independent Certifier as applicable in the past Month, any increases in the percentage of sampling that has been required to be undertaken pursuant to Clauses 27.10.8.1, 27.14.8.1, 27.15.8.1, 27.18.8.3, 27.19.7.3, 29.7.11.1(b) and/or 29.7.11.2 9b) by the Independent Surveyor, the Independent Bridge Inspector or the Independent Certifier as applicable in the past Month, and the progress made by the Service Provider in implementing any improvement plans which the Service Provider has been required to produce pursuant to Clauses 27.18.8.5, 27.19.7.5, 27.23.9, 27.24.3, 29.7.11.1(d) and/or 29.7.11.2(d);
- (f) details of the progress of any work carried out pursuant to any programmes, plans or reports pertaining to or to be prepared and submitted in accordance with the Output Specification, and any other matter which requires to be reported on pursuant to the Output Specification;
- (g) a summary of any Changes proposed or agreed by the Authority or by the Service Provider including details of any Accruals or De-Accruals and any Maintainability

Assessments that have been carried out, and changes to the Method Statements that are proposed or have been agreed;

- (h) a summary of the effect of any Change in Law or the likely effect of any anticipated Change in Law;
- (i) a statement of the status of all Necessary Consents and/or applications for or withdrawals of Necessary Consents;
- (j) details of any health and safety issues arising from the delivery of the Services shown in tabulated form and/or described in a written report as appropriate, to include, as a minimum, the accident incident rate for Personnel and the public (in so far as such accidents relate to the Service) and any notices served on the Service Provider by the Health and Safety Executive and copies of any internal or third party health and safety performance reviews or audits;
- (k) a summary statement of any quality issues arising (including issues regarding workmanship);
- (l) any issues affecting the availability of any resources, including labour and materials required to carry out the Services and any issues affecting the ability of the Service Provider to connect Powered Apparatus;
- (m) details of the progress of the Service Provider against the Carriageways and Footways Carbon Model Target, Street Lighting Carbon Model Target and Powered Apparatus Energy Carbon Model Target and including details of the activities of the Service Provider in respect of the disposal of waste pursuant to Clause 18 (*Use and Disposal of the Project Network*);
- (n) details of the progress of the Service Provider against the Traffic Management Target;
- (o) details of the number of Certifications that have occurred in respect of Lighting Schemes and Traffic Signal / Control Infrastructure Sites in the previous Month;
- (p) a list of any Snagging Items outstanding at the date of the Monthly Monitoring Report, including details of how the Service Provider plans to address these and the timescale for doing so (acting reasonably), and detailing how any Snagging Items

outstanding at the date of the previous Monthly Monitoring Report but addressed in the interim period have been addressed;

- (q) details of any destroyed or severely damaged Project Network Parts that the Service Provider becomes aware of in the period since the previous Monthly Monitoring Report, together with a description of the action taken or proposed in relation to such Project Network Parts;
- (r) an update on the implementation of the Annual Communications Plan to be delivered by the Service Provider pursuant to Service Standard 1 of the Output Specification;
- (s) details of any changes in the Personnel or any other organisation relating to the provision of the Services;
- (t) any proposed or ongoing HWA Works being undertaken by the Authority;
- (u) any complaints received relating to the Service or the failure of the Service Provider to carry out the Service or regarding the behaviour of any Personnel, and details of any requests or enquiries received by the Service Provider relating to the Service from members of the public;
- (v) the progress of any matters which are (at the time) subject to the Review Procedure;
- (w) the status of any outstanding requests from the Service Provider for Authority Approval pursuant to Schedule 2 (*Output Specification*);
- (x) an update on any technological or other innovations taking place in the industries relating to the Services;
- (y) details of all Claims in the past month on any of the insurance policies referred to in Clause 67 (*Insurance*), including full details of any incident giving rise to any Claim (save to the extent already notified under Clause 67) and the status of any outstanding Claims;
- (z) details of any other matter giving rise to a payment or Adjustment in accordance with the provisions of this Contract;
- (aa) details of any outstanding information required from the Authority and/or the Service Provider in accordance with the provisions of this Contract;

- (bb) the status of any actions arising from the last Monthly Monitoring Report;
- (cc) identifying any conflicts (if any) between and/or in any Project Documents;
- (dd) any information as required pursuant to Clause 8.4 in relation to the occurrence of any Latent Defect;
- (ee) details of the Services performed pursuant to those Performance Requirements within Schedule 2 (*Output Specification*) that include a time for the fulfilment of the Performance Requirement within the wording of the Performance Requirement itself;
- (ff) in the first Month of the second and each subsequent Contract Year, the Actual Electricity Consumption which shall be in the form of the Electricity Consumption Report produced in accordance with clause 3 of Schedule 9 (Electricity Market Test)
- (gg) any other details or information relating to the Project, the Service and/or the operation of the Contract that the Authority may reasonably require.

Service Operations Board Meeting

3.2 A meeting (the "**Service Operations Board Meeting**") shall take place no later than ten (10) Business Days after receipt of the Monthly Monitoring Report (or at more frequent intervals as may be required by the Authority acting reasonably), with the venue and the date of such meeting to be arranged by the Authority and notified by the Authority to the Service Provider. The purpose of the Service Operations Board Meeting shall be to review and discuss any matters arising from the Monthly Monitoring Report, and the Terms of Reference shall apply to the Service Operations Board Meetings (provided that in the event of any conflict between the provisions of this Schedule 12 and the Terms of Reference, this Schedule 12 shall prevail). No Service Operations Board Meeting shall commence unless a quorum of Authority members is present. If such quorum is not present within half an hour from the time appointed for the Service Operations Board Meeting, or if during the meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the present attendees may determine.

3.3 The Service Operations Board Meetings shall be attended by:

3.3.1 three (3) representatives of the Authority, such representatives to be:

- (a) the Authority Representative;

(b) the Technical Manager in respect of the Project; and

(c) the New Works Manager in respect of the Project;

(or such nominees replacing the representatives set out at (b) and (c) above having approximately equivalent authority to those appointees), such three attendees to constitute a quorum for the Service Operations Board Meeting, and

3.3.2 two (2) representatives of the Service Provider, such representatives to include the Service Provider Representative and the other attendee shall have approximately equivalent authority to those appointees referred to in paragraphs 3.3.1 (a) to (c) inclusive,

and the Authority Representative and the Service Provider Representative shall each procure the attendance of persons appropriate in relation to the agenda of the meeting and who have the necessary knowledge (as non-voting attendees only), provided that each Party shall ensure that such persons shall at all times be subject to an appropriate duty of confidentiality in accordance with Clause 89 (*Confidentiality*).

3.4 The Authority may divide the Service Operations Board Meeting into sub meetings to review particular areas contained in the Monthly Monitoring Report, but such sub meetings shall comply with the requirements of Clauses 3.2 and 3.3 of this Schedule 12 (Monitoring and Reporting).

3.5 The Authority Representative shall minute the Service Operations Board Meetings and shall distribute minutes within five (5) Business Days of the relevant Service Operations Board Meeting to all attendees of the Service Operations Board Meeting.

3.6 The Service Provider shall reflect the content of the Monthly Monitoring Report (as amended by the Service Operations Board Meeting minutes pursuant to Paragraph 3.7 below) in respect of those items listed in Clause 3.1 which are part of the Monthly Payment in the next occurring Draft Monthly Payment Report, which shall be dealt with in accordance with the provisions of Clause 56 (*Payment and Financial Matters*).

3.7 The minutes of the Service Operations Board Meeting shall be discussed and agreed at the next occurring Service Operations Board Meeting and thereafter the Authority Representative shall incorporate any amendments agreed and distribute the agreed minutes to all other attendees at the meeting within fifteen (15) Business Days of the relevant Service Operations Board Meeting at which the minutes were agreed.

Management Board

4.1 A meeting (the "**Management Board Meeting**") shall take place no later than five (5) Business Days after receipt of the Authority's response to the Draft Monthly Payment Report pursuant to Clause 56.5 (*Response to Payment Report*) (or at more frequent intervals as may be required by the Authority acting reasonably), with the venue and the date of such meeting to be arranged by the Authority and notified by the Authority to the Service Provider. The purpose of the Management Board Meeting shall be to review and discuss any matters arising from the Draft Monthly Payment Report or any issues relating to payment, or any wider issues as determined pursuant to the Terms of Reference, and the Terms of Reference shall apply to the Management Board Meetings. No Management Board Meeting shall commence unless a quorum of Authority members is present. If such quorum is not present within half an hour from the time appointed for the Management Board Meeting, or if during the meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the present attendees may determine.

4.2 The Management Board Meetings shall be attended by:

4.2.1 three (3) representatives of the Authority, such representatives to be:

- (a) the Authority Representative;
- (b) the Assistant Commercial Director of the Authority; and
- (c) the Contract Manager (Commercial Services);

(or such nominees replacing the representatives set out at (b) and (c) above having approximately equivalent authority to those appointees), such three attendees to constitute a quorum for the Management Board Meeting, and

4.2.2 two (2) representatives of the Service Provider, such representatives to include the Service Provider Representative, and the other attendee shall have approximately equivalent authority to those appointees referred to in paragraphs 4.2.1 (a) to (c) inclusive,

and the Authority Representative and the Service Provider Representative shall each procure the attendance of persons appropriate in relation to the agenda of the meeting and who have the necessary knowledge (as non-voting attendees only), provided that each Party shall ensure

that such persons shall at all times be subject to an appropriate duty of confidentiality in accordance with Clause 89 (*Confidentiality*).

- 4.3 The Authority Representative shall minute the Management Board Meetings and shall distribute minutes within five (5) Business Days of the relevant Management Board Meeting to all attendees of the Management Board Meeting.
- 4.4 The Service Provider shall reflect the content of the Monthly Monitoring Report (as amended by the Management Board Meeting minutes pursuant to Paragraph 4.5 below) in respect of those items listed in Clause 3.1 which are part of the Monthly Payment in the next occurring Draft Monthly Payment Report, which shall be dealt with in accordance with the provisions of Clause 56 (*Payment and Financial Matters*).
- 4.5 The minutes of the Management Board Meeting shall be discussed and agreed at the next occurring Management Board Meeting and thereafter the Authority Representative shall incorporate any amendments agreed and distribute the agreed minutes to all other attendees at the meeting within fifteen (15) Business Days of the relevant Management Board Meeting at which the minutes were agreed.