

ANNEXURE 3

Handwritten initials 'M' and 'M' in black ink, positioned to the right of the text 'ANNEXURE 3'.

**Form of Independent Certifier's Appointment, Independent Surveyor's Appointment,
Independent Machine Surveyor's Appointment and Independent Bridge Inspector's
Appointment**

1. Form of Independent Certifier's Appointment



DATED

2012

(1) THE SHEFFIELD CITY COUNCIL

- and -

(2) AMEY HALLAM HIGHWAYS LIMITED

- and -

(3) URS INFRASTRUCTURE & ENVIRONMENT UK LIMITED

**APPOINTMENT OF
INDEPENDENT CERTIFIER**
relating to

the rehabilitation, maintenance and operation
of the Project Network pursuant to the
Government's Private Finance Initiative

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	APPOINTMENT.....	3
3.	DURATION.....	7
4.	FEES	7
5.	LIMITATIONS ON AUTHORITY	9
6.	TERMINATION.....	9
7.	CONFIDENTIAL INFORMATION AND COPYRIGHT	12
8.	PROFESSIONAL INDEMNITY INSURANCE	12
9.	NOTICES	14
10.	ASSIGNMENT	15
11.	CUMULATIVE RIGHTS AND ENFORCEMENT	16
12.	WAIVER.....	16
13.	SEVERABILITY	17
14.	COUNTERPARTS.....	17
15.	VARIATION.....	17
16.	DISPUTE RESOLUTION PROCEDURE.....	17
17.	GOVERNING LAW AND JURISDICTION	17
18.	THIRD PARTY RIGHTS	18

BETWEEN

- (1) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S1 2HH ("Authority");
- (2) **AMEY HALLAM HIGHWAYS LIMITED** (company registration number 08121168) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("Service Provider");
- (3) **URS INFRASTRUCTURE & ENVIRONMENT UK LIMITED** (company registration number 00880328) whose registered office is at Scott House, Alencon Link, Basingstoke, Hampshire, RG21 7PP ("**Independent Certifier**").

RECITALS

- A The Authority and the Service Provider have entered into an agreement for the rehabilitation, maintenance and operation of the Project Network pursuant to the Government's private finance initiative ("**Contract**") under the terms of which they have jointly agreed to appoint an independent certifier.
- B The Independent Certifier is an independent adviser willing to provide services to the Authority and the Service Provider.
- C The Authority and the Service Provider jointly engage the Independent Certifier to perform the duties and obligations which are ascribed to the Independent Certifier in the Contract upon the terms of this agreement (and which are set out in Appendix 1) upon the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, the following terms shall have the meanings given to them below:

"**Additional Fees**" means the fees to be paid to the Independent Certifier in respect of any Additional Services in accordance with clause 2.2;

“Additional Services” means any services which the Counterparties request from the Independent Certifier in addition to the Certification Services pursuant to clause 2.2;

"Certification Services" means the services set out in Appendix 1 to this agreement.

“Core Investment Period” means the period commencing on the Service Commencement Date and ending on the Planned CIP Completion Date or as such period is extended in accordance with the terms of the Contract

"Counterparty" means each of the Authority and the Service Provider, and

"Counterparties" means both of them;

"Fees" means the fees for the Services provided;

"Final Date for Payment" has the meaning given to it in clause 4.3;

“Insolvency Event” means the occurrence of any one or more of the following events:

- (a) a court makes an order that the Independent Certifier or its Holding Company be wound up or a resolution for a voluntary winding-up of the Independent Certifier or its Holding Company is passed;
- (b) any receiver or manager in respect of the Independent Certifier or its Holding Company is appointed or possession is taken by or on behalf of any creditor of any property of the Independent Certifier or its Holding Company that is the subject of a charge;
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Independent Certifier or its Holding Company;
- (d) an administration order is made or an administrator is appointed in respect of the Independent Certifier or its Holding Company;

"Joint Notice" means a notice in writing issued jointly by the Counterparties;

"Party" means any party to this agreement; and

"Planned CIP Completion Date" shall be the end of the fifth (5th) Milestone Year, being 31st December 2017.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Contract have the same meanings in this agreement as in the Contract.
- 1.3 The headings in this agreement do not affect its interpretation.
- 1.4 Unless the context otherwise requires, all references to clauses and Appendices are references to clauses of and Appendices to this agreement.

2. APPOINTMENT

- 2.1 The Counterparties jointly engage the Independent Certifier and the Independent Certifier agrees to perform the Certification Services and any Additional Services commissioned pursuant to clause 2.2 upon the terms and conditions set out below.
- 2.2 If the Counterparties require any Additional Services:
 - 2.2.1 subject to clause 2.5, the Counterparties shall issue a Joint Notice to the Independent Certifier specifying:
 - 2.2.1.1 the services required;
 - 2.2.1.2 which of the Counterparties will pay the Fees associated with the relevant services (or, if both are to pay, the proportion of the Fees for which they will each be responsible); and
 - 2.2.1.3 the proposed timing of payment of the Fees associated with the relevant services;
 - 2.2.2 within a reasonable time after issue of the Joint Notice the Independent Certifier shall provide the Counterparties with a written quote of the cost of the relevant services, which cost shall:
 - 2.2.2.1 wherever possible be based on the rates contained in part 2 of Appendix 2; and
 - 2.2.2.2 take into account any reduction in work or other expense which may occur as a result of the required variation to the Services,

together with any other information reasonably required by either Counterparty (such as a method statement setting out how the Independent Certifier intends to carry out the relevant services); and

2.2.3 if the Counterparties are satisfied with the Independent Certifier's proposals they shall issue a further Joint Notice instructing the Independent Certifier to undertake the Additional Services and the Independent Certifier shall undertake the Additional Services at the time agreed by the Parties or, in the absence of agreement, as soon as reasonably practicable.

2.3 The Independent Certifier shall provide the Certification Services independently, fairly and impartially to and as between each of the Counterparties. Whilst the Independent Certifier may take account of any representations made by the Counterparties the Independent Certifier shall not be bound to comply with any representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise his professional judgement.

2.4 The Independent Certifier shall provide the Certification Services:

2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project;

2.4.2 in accordance with Good Industry Practice, all Legislation and Highways Standards; and

2.4.3 in accordance with the methodology set out in Appendix 3.

For the purposes of this clause 2.4 "**Good Industry Practice**" shall mean using standards, practices, methods and procedures (as practised in the United Kingdom) and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or other person (as the case may be) engaged in a similar type of undertaking as under this agreement under the same or similar circumstances.

2.5 Subject to clause 2.6 all instructions to the Independent Certifier may only be given by the Service Provider Representative (or its alternate appointed pursuant to clause 33 of the Contract (*Representative*)), provided that the Service Provider shall ensure

that such instructions by the Service Provider Representative are not in contradiction to any of the terms of the Contract or any other instruction given by the Authority Representative pursuant to clause 30 of the Contract.

- 2.6 Where the Service Provider is in breach of any of its obligations pursuant to clause 27 of the Contract, the Authority Representative may, after giving written notice pursuant to clause 30 of the Contract of such breach, give instructions, acting alone, to the Independent Surveyor, provided that the Authority shall ensure that such instructions by the Authority Representative are not in contradiction to any of the terms of the Contract or any other instruction given under this agreement or under the Contract by the Service Provider Representative.
- 2.7 The Independent Certifier shall comply with all reasonable instructions given to it by the Counterparties except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the Certification Services or its authority or responsibilities under this agreement or prejudices or might prejudice the exercise by the Independent Certifier of its professional judgment in accordance with clauses 2.3 and 2.4 above. The Independent Certifier shall promptly confirm in writing to each of the Counterparties whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.8 The Counterparties agree to co-operate with and provide reasonable assistance to the Independent Certifier to familiarise the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this agreement.
- 2.9 The Independent Certifier shall be deemed to have full knowledge of the provisions of the Contract, and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of either of the Counterparties which are set out in the Contract. The Service Provider shall deliver to the Independent Certifier a true and accurate copy of the Contract as soon as practicable following:
- 2.9.1 the date of this agreement; and
- 2.9.2 any variation to the Contract which is likely to affect the performance of the Certification Services by the Independent Certifier.

2.10 The Independent Certifier shall promptly and efficiently perform the Certification Services as soon as reasonably practicable but consistent with the standards specified in clauses 2.3 and 2.4 above.

2.11 Subject to clause 2.12, the Independent Certifier shall use the following directors or employees in connection with the performance of the Certification Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Certifier of the Certification Services

2.11.1

2.11.2

Such persons shall have full authority to act on behalf of the Independent Certifier for all purposes in connection with this agreement.

2.12 None of the persons mentioned in clause 2.11 shall be removed or replaced unless he/she ceases to work as a director or employee of the Independent Certifier or he/she is unable to work because of death or ill-health or by agreement of the Counterparties. The Independent Certifier shall notify (giving a minimum of ten (10) Business Days' notice) the Counterparties of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing of the Counterparties such approval not to be unreasonably delayed.

2.13 The Parties agree that, notwithstanding the terms and effect of any provision of the Limitation Act 1980 (including any amendment or re-enactment of the same), the Independent Certifier shall only be liable under this agreement in respect of claims whether for any breach of this agreement or in tort, negligence, for breach of statutory duty or otherwise which are notified to the Independent Certifier before the expiration of the period of 12 years from the date of completion of all of the Certification Services under the terms of this agreement.

2.14 The Independent Certifier shall within 14 days of request execute deeds of warranty in favour of each of Amey LG Limited and [REDACTED] in the form set out in Appendix 4 or in such similar or varied terms thereto as the parties may agree and deliver the same duly executed to the Service Provider.

3. DURATION

3.1A It shall be a condition precedent to this document coming into effect that the Service Provider has provided a true copy of the Contract.

3.1 Subject to 3.1A the Certification Services shall commence on the date of this agreement and cease on the earlier of:

3.1.1 termination of this agreement in accordance with clause 6; or

3.1.2 the end of the Core Investment Period.

3.2 This agreement governs all of the Certification Services provided by the Independent Certifier in relation to the Project whether before or after the date hereof.

4. FEES

4.1 The Service Provider shall pay the Fees to the Independent Certifier in respect of the Certification Services. The Independent Certifier shall issue invoices to the Service Provider for the Fees in accordance with part 1 of Appendix 2.

4.2 The Independent Certifier shall be entitled to be paid Additional Fees in respect of any Additional Services it provides. The Independent Certifier shall issue an invoice to the Counterparty responsible for payment on the date agreed by the Parties at the time the Additional Services were commissioned pursuant to clause 2.2 or, if both Counterparties are responsible for payment, the Independent Certifier shall issue an invoice to each of them on the relevant date, in the proportions agreed pursuant to clause 2.2. Where both Counterparties are responsible for payment of Additional Services, their obligations to pay shall be several and not joint.

4.3 The date on which an invoice is received by the Service Provider or the Authority (as appropriate) shall constitute the due date. The final date for payment by the Service Provider or the Authority (as appropriate) shall be thirty (30) days after receipt of the Independent Certifier's invoice ("**Final Date for Payment**").

4.4 Not later than five (5) Business Days after the due date ascertained in accordance with clause 4.3, the Service Provider or the Authority (as appropriate) may give written notice to the Independent Certifier stating the amount which it proposes to pay and the basis on which the amount is calculated.

- 4.5 Where the Service Provider or the Authority (as appropriate) intends to withhold payment of any amount stated in the invoice, it shall give written notice to the Independent Certifier not later than five (5) Business Days before the Final Date for Payment. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.6 If either Counterparty fails to pay the Independent Certifier any sum payable under this agreement by the Final Date for Payment, the relevant Counterparty shall pay the Independent Certifier simple interest on that sum from the Final Date for Payment until the actual date of payment at the Default Interest Rate and such rate is agreed as a fair and reasonable rate for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.7 If either Counterparty fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to clause 4.5, the Independent Certifier may suspend performance of any or all of the Certification Services. This right is subject to the Independent Certifier first giving both Counterparties not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Service Provider (and/or the Authority (if appropriate)) pays the amount properly due.
- 4.8 Neither Counterparty shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Certifier without the prior approval of the other (such approval not to be unreasonably withheld or delayed).
- 4.9 As soon as the Independent Certifier becomes aware of the same and before acting on the same the Independent Certifier shall inform the Authority and the Service Provider of any instructions which either Counterparty has given him which will or could reasonably be expected to increase the fees payable to the Independent Certifier under the terms of this agreement. The Independent Certifier shall if requested by either the Service Provider or the Authority provide both Counterparties with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in part 2 of Appendix 2.

5. LIMITATIONS ON AUTHORITY

The Independent Certifier shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this agreement.

6. TERMINATION

6.1 Automatic termination

This agreement will terminate immediately upon receipt by the Independent Certifier of a Joint Notice confirming that the Contract has terminated.

6.2 Counterparties' right to terminate

6.2.1 The Counterparties may by Joint Notice immediately terminate this agreement if the Independent Certifier:

6.2.1.1 is in breach of any of the terms of this agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Certifier within twenty one (21) days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy;

6.2.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Certification Services and/or its other duties under this agreement;

6.2.1.3 fails to comply with clauses 2.11 and 2.12;

6.2.1.4 fails or refuses after written warning to provide the Certification Services and/or its other duties under this agreement reasonably and as properly required of him; or

6.2.1.5 is subject to any Insolvency Event.

6.2.2 The Counterparties may terminate this agreement at any time by issuing a Joint Notice to the Independent Certifier giving at least six (6) months notice to the Independent Certifier that such termination will take effect.

6.3 Independent Certifier's right to terminate

- 6.3.1 Subject to clause 6.3.2 the Independent Certifier may terminate this agreement:
- 6.3.1.1 if any amount in excess of £20,000 is due and payable to the Independent Certifier by either of the Counterparties, and thirty (30) days has passed since the Final Date for Payment of such amount; or
- 6.3.1.2 either Counterparty is otherwise in material breach of its obligations.
- 6.3.2 The Independent Certifier shall neither exercise nor seek to exercise any right to terminate its engagement without giving the Counterparties not less than twenty (20) Business Days' written notice of its intention to do so specifying the grounds for the proposed termination and identifying who is in breach of this agreement ("**Step-in Notice**").
- 6.3.3 The Independent Certifier's right to terminate its engagement under this agreement or to discontinue the performance of the Certification Services shall cease if a Counterparty who is not in breach of this agreement gives notice to the Independent Certifier within 20 Business Days of receiving a Step-in Notice under clause 6.3.2 requiring the Independent Certifier to continue the performance of the Certification Services, provided that a Counterparty giving such notice must agree to assume all the obligations of the defaulting Counterparty and undertake to discharge all payments which are or may subsequently become due to the Independent Certifier from the defaulting Counterparty under this agreement.
- 6.3.4 If a Counterparty issues a notice in accordance with clause 6.3.3 this agreement shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Certifier had not arisen and on the basis that all references in this agreement to the defaulting Counterparty thereafter shall be read and construed as references to the Counterparty which issued the notice.
- 6.3.5 Where a Counterparty has given notice in compliance with clause 6.3.3 and has given an undertaking of the type described in that clause the defaulting Counterparty shall reimburse and indemnify that Counterparty against each

and every liability which that Counterparty may have to the Independent Certifier by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Counterparty as a consequence thereof.

6.4 Consequences of Termination

- 6.4.1 Following any termination of this agreement, but subject to any set-off or deductions which the Counterparties may be entitled properly to make as a result of any breach of this agreement by the Independent Certifier, the Independent Certifier shall be entitled to be paid in full and final settlement of any valid claim which the Independent Certifier may have in consequence thereof, any fees due under clause 4 above in respect of the Certification Services carried out in accordance with this agreement prior to the date of termination.
- 6.4.2 Termination of this agreement shall be without prejudice to any accrued rights and obligations under this agreement as at the date of termination (including the right of either Counterparty to recover damages from the Independent Certifier).
- 6.4.3 If this agreement is terminated in accordance with this clause 6, the Counterparties shall use reasonable endeavours to engage an alternative independent certifier within 30 days, subject to Law and public procurement rules. If within such period the Counterparties are unable to procure the appointment of an alternative independent certifier on reasonable commercial terms, the Independent Certifier shall pay to the Counterparties any reasonable incremental loss, damage or extra costs suffered by each of them provided always that the Counterparties shall use reasonable endeavours to mitigate such amounts.
- 6.4.4 Termination of this agreement shall not affect the continuing rights and obligations of the Parties under clause 5 (Limitations on Authority), this clause 6, clause 7 (Confidential Information and Copyright), clause 8 (Professional Indemnity Insurance) or clause 16 (Dispute Resolution Procedure) or under any other clause which is expressed to survive

termination or which is required to give effect to such termination or the consequences of such termination.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

7.1 The Independent Certifier shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to either Counterparty's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of either Counterparty where the information was received during the period of this agreement. Upon termination of this agreement for whatever reasons the Independent Certifier shall deliver up to the relevant Counterparty all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant to this agreement provided that the Independent Certifier shall be entitled to retain a copy for the purposes of legitimate record keeping of the Certification Services provided.

7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Certifier in connection with the Project shall remain vested in the Independent Certifier but the Independent Certifier grants to the Counterparties and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties. The Independent Certifier shall not be liable for any use of the drawings or other documents other than for the purpose for which they were provided.

8. PROFESSIONAL INDEMNITY INSURANCE

8.1 Without prejudice to its obligations under this agreement, or otherwise at law, the Independent Certifier shall maintain professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) (Indexed) for each claim or series of claims that arise from the same cause or a single source or event in respect of any neglect, error or omission on the Independent Certifier's part in the

performance of its obligations under this agreement for the period commencing on the date of this agreement and expiring twelve (12) years after:

8.1.1 expiry of the Core Investment Period in accordance with the provisions of the Contract; or

8.1.2 the termination of this agreement,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates and terms.

8.2 The Independent Certifier shall maintain such insurance with reputable insurers carrying on business in the United Kingdom with a minimum rating of A (Standard and Poor's) and A2 (Moody's).

8.3 Any increased or additional premium required by insurers by reason of the Independent Certifier's own claims record or other acts, omissions, matters or things particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.

8.4 The Independent Certifier shall immediately inform the Counterparties if such insurance ceases to be available at commercially reasonable rates in order that the Independent Certifier and the Counterparties can discuss means of best protecting the respective positions of the Counterparties and the Independent Certifier in respect of the Project in the absence of such insurance.

8.5 The Independent Certifier shall fully co-operate with any measures reasonably required by the Counterparties including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Counterparties undertake in writing to reimburse the Independent Certifier in respect of the net cost of such insurance to the Independent Certifier above commercially reasonable rates or, if the Counterparties effect such insurance at rates at or above commercially reasonable rates, reimbursing the Counterparties in respect of what the net cost of such insurance to the Counterparties would have been at commercially reasonable rates.

8.6 The Independent Certifier shall, prior to commencing the provision of the Certification Services and no less than ten (10) days after renewal dates, produce for

inspection by the Counterparties documentary evidence that such insurance is being properly maintained.

8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this agreement for any reason whatsoever, including (without limitation) breach by either Counterparty.

8.8 Notwithstanding any other provision of this Agreement the Independent Certifier's maximum aggregate liability under or in connection with this agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed five million pounds (£5,000,000), provided that nothing in this agreement shall exclude or in any way limit the Independent Certifier's liability for fraud or death or personal injury caused by its negligence.

9. NOTICES

9.1 All notices or other communications required in connection with this agreement shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the other Parties in writing:

If to the Authority: Authority Representative

Address : Sheffield City Council
Howden House
Sheffield S1 2SH

Fax number: 01142736015 (for the attention of XXXXXXXXXX)

If to the Service Provider:

Address: Amey Hallam Highways Limited
Sherard Building
Edmund Halley Road

Oxford

OX4 4DQ

Fax number:

If to the Independent Certifier:

Address: URS Infrastructure & Environment UK Limited

Scott House

Alencon Link

Basingstoke

Hampshire

RG21 7PP

Fax number:

9.2 Service shall be deemed to have been effected as follows:

9.2.1 if personally delivered, at the time of delivery to the addressee;

9.2.2 if sent by first class pre-paid post, on the second (2nd) Business Day after it is put in the post; and

9.2.3 if sent by facsimile transmission, at the time of transmission or if the time of transmission is outside normal working hours (which shall be deemed to be 9.00am to 5.00pm Monday to Friday excluding public holidays), at 9.00am on the next Business Day.

10. ASSIGNMENT

10.1 The Independent Certifier shall not assign or transfer any of its rights or obligations under this agreement or sub-contract the whole of the Certification Services. The Independent Certifier shall be entitled to sub-contract part of the Certification Services subject to consent of the Counterparties which shall not be unreasonably withheld or delayed. For the avoidance of doubt the Independent Certifier shall

remain responsible for all the Certification Services undertaken by any sub-contractor as if the same had been undertaken by the Independent Certifier.

10.2 Neither of the Counterparties shall be entitled to assign or transfer any of their respective rights or obligations under this agreement save where such assignment or transfer is contemporaneous to the assignment or transfer of the Contract and is made to the same assignee or transferee. In the event that the Contract is novated to a third party, the term "*Contract*" shall include any replacement contract arising from such novation.

10.3 The Independent Certifier shall not be entitled to contend that any person to whom this agreement is assigned in accordance with clause 10.2 is precluded from recovering under this agreement any loss incurred by such assignee resulting from any breach of this agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this agreement.

11. CUMULATIVE RIGHTS AND ENFORCEMENT

11.1 Any rights and remedies provided for in this agreement whether in favour of the Service Provider or the Authority or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

11.2 The duties and obligations of the Independent Certifier arising under or in connection with this agreement are owed to the Counterparties jointly and severally and the Authority and the Service Provider may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.

11.3 The Counterparties covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

12. WAIVER

The failure of any Party at any one time to enforce any provision of this agreement shall in no way affect its right thereafter to require complete performance by any other Party, nor shall

the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

13. SEVERABILITY

In the event that any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this agreement and the rest of this agreement shall stand, without affecting the remaining clauses.

14. COUNTERPARTS

This agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

15. VARIATION

A variation of this agreement is valid only if it is in writing and signed by or on behalf of each party.

16. DISPUTE RESOLUTION PROCEDURE

16.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Contract.

16.2 The Service Provider, the Authority and the Independent Certifier shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 Subject to clause 16 above, this agreement shall be governed by and construed in accordance with the laws of England, and (subject as aforesaid) the Parties hereby submit to the exclusive jurisdiction of the courts of England.

17.2 No action or proceedings may be commenced against the Independent Certifier for any breach of this agreement after the expiry of twelve (12) years following the date of completion of the Certification Services or the termination of this agreement, whichever is the earlier.

18. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

IN WITNESS WHEREOF the Parties have executed and delivered this document as an agreement on the date first written above.

EXECUTED (but not delivered until the date)
hereof) as a deed by the Authority by the affixing)
of its common seal in the presence of:

[Authorised Sealing Officer]

EXECUTED (but not delivered until the date)
hereof) as a deed by the Service Provider acting)
by:

Attorney (signature)

Name (Block Capitals)

in the presence of:

Witness (signature)

Address of Witness

EXECUTED (but not delivered until the date)
hereof) as a deed by the Service Provider acting by)
two of its directors or a director and its secretary:

Director

Director/Secretary

EXECUTED (but not delivered until the date)
hereof) as a deed by the Independent Certifier)
acting by a director and witness:

Director

Witness

APPENDIX 1

PART 1

Scope of Services – Independent Certifier

The Independent Certifier shall perform all the functions and obligations attributed to the role of Independent Certifier as referred to in the relevant clauses and schedules of the Contract and the First Tier Sub-Contract (including complying with any time limits specified in such clauses) and shall familiarise itself with the Contract and the First Tier Sub-Contract (including subject to clause 2.9 of this Agreement any design documents, any Change to the Contract or First Tier Sub-Contract issued from time to time and any other relevant documentation or information referred to in the Contract or the First Tier Sub-Contract), including but not limited to the following scope of Certification Services:

1. CERTIFICATION OF REMOVAL AND INSTALLATION OF STREET LIGHTING AND TRAFFIC SIGNAL/CONTROL INFRASTRUCTURE

The role of the Independent Certifier shall be to fulfil the obligations of the Independent Certifier as is further detailed within the Contract including but not limited to the following obligations:

- 1.1 fulfilling the obligations of the Independent Certifier pursuant to clauses 29.1, 29.2, 29.3, 29.4, 29.5, 29.6 and 29.8 of the Contract;
- 1.2 undertaking the inspection of CIP Certified TSCI and Replacement CIP Certified TSCI (as applicable) to determine whether or not such CIP Certified TSCI has been Removed and such Replacement CIP Certified TSCI has been installed in such a manner that a Certificate of Compliance can be issued in respect of such CIP Certified TSCI and Replacement CIP Certified TSCI in accordance with the provisions of the Contract, and if so, issuing such Certificates of Compliance;
- 1.3 selecting and carrying out a sample check of the Certification of CIP Certified Street Lighting and Replacement CIP Certified Street Lighting as set out in clause 29.7 (*Certification of Removal*), such sample checks to be done in the proportions dictated by and to include or exclude those CIP Certified Street Lighting and Replacement CIP Certified Street Lighting (as applicable) determined in accordance with clauses 29.7 (*Certification of Removal*), and including the production of all reports set out therein within the timescales set out therein;

- 1.4 submitting health and safety risk assessments to the Service Provider and the Authority;
- 1.5 attending programming meetings (as required to coordinate his/her sample inspections for CIP Certified Street Lighting or Replacement CIP Street Lighting, or his/her inspections for CIP Certified TSCI or Replacement CIP Certified TSCI into the programme and to ensure that suitable traffic management arrangements are in place for the Independent Certifier to undertake his audit inspection duties on site);
- 1.6 where the Independent Certifier during the course of his duties becomes aware of an Urgent or Category 1 Defect on the Project Network, inform the Service Provider's OCR immediately and in any event within 0.5 hours of becoming so aware;
- 1.7 granting access to and providing all reasonable assistance to the Authority or any Authority Party nominated by the Authority as required by clause 30.1.2 of the Contract; and
- 1.8 performing the tests and checks for Street Lighting and Traffic Signal/Control Infrastructure detailed in Part 3 of Appendix 1.

2. ADDITIONAL SERVICES

Without prejudice to the generality of clause 2.2 and the ability of either party to request Additional Services, the Authority may, in the event that pursuant to clause 30.2.1 of the Contract, the Authority considers (acting reasonably) that the Service Provider is failing to procure the carrying out of Certification in accordance with the provisions of the Contract, issue instructions in place of the Service Provider for such Certification to be carried out and thereafter the provisions of paragraph 1 of this Appendix 1 shall be carried out by the Independent Certifier as if the Service Provider had issued the Inspection Notice.

3 PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Authority or the Service Provider, the Independent Certifier shall participate in the Dispute Resolution Procedure of the Contract (as such term is defined in the Contract) to the extent that issues under the Contract which have been referred to the said Dispute Resolution Procedure relate to the Independent Certifier's other obligations and tasks as set out in this Appendix 1 and this agreement.

4 GENERAL

- 4.1 The Independent Certifier will have access to and use of all Service Provider welfare facilities provided under the Contract
- 4.2 The Independent Certifier will have use of two hot desks at the Service Provider's premises either Distington House, Olive Grove or Ecclesfield Road.
- 4.3 The Service Provider will provide free guest wi-fi internet access to allow inspectors to communicate with their own company base.
- 4.4 The Service Provider will provide a computer workstation to allow the inspectors to communicate with the Service Provider's Collaborative Working Platform.
- 4.5 The Independent Certifier will have access to the Collaborative Working Platform and will be issued with the relevant software in order to review the Street Lighting and Traffic Signal data.
- 4.6 The Independent Certifier shall be allowed free and open access to the Service Provider's Street Lighting and Traffic Signal/TSCI design data
- 4.7 The Service Provider will work with the Independent Certifier to plan and programme Traffic Management and any access equipment which will be provided at the Service Provider's expense.
- 4.8 The Independent Certifier will provide vehicles to enable the Inspectors to get to each individual inspection site.
- 4.9 The Independent Certifier staff shall wear the PPE provided for in their H&S plan and with clear branding to allow them to be identified as Independent Certifier staff.
- 4.10 Independent Certifier staff shall be qualified to Engineering Recommendation G39/1 as published by the Energy Networks Association
- 4.11 The Independent Certifier shall price in accordance with the attached payment schedule. Street Lighting inspections shall be priced monthly invoiced in areas with Additional Services invoiced at the end of the month in which they occur. Street Lighting Certification shall be invoiced each month in arrears over the term of the appointment.

4.12 All rates to be current with an annual increase in April (starting in 2014) based on RPIx (Base of June 2012)

APPENDIX 1

PART 2

Certificate of Compliance

**Sheffield City Council
Highways Maintenance PFI Project
Certification Engineer or Independent Certifier
Report Number XX - Date XX**

- 1 The number of CIP Certified Street Lighting inspected during the month is:
- 2 The percentage of CIP Certified Street Lighting inspected during the month is:
- 3 The number of Certificates of Compliance issued during the period is:
- 4 The number of Certificates of Non-Compliance issued during the period is:
- 5 Snagging Items are recorded on the following inspection sheets, which accompany this Report:
- 6 Outstanding Non-Compliance issues to be address during the next period are presented on the following inspection sheest:
- 7 The following Milestones were achieved during the period:
- 8 The overall number of Replacement CIP Certified Street Lighting installed to date is:
- 9 The overall number of Replacement CIP Certified Street Lighting removed to date is:
- 10 Issue date of the last Non Compliance Certificate is:

Sheffield City Council

Highways Maintenance PFI Project

Independent Certifier's

CERTIFICATE OF NON-COMPLIANCE NUMBER

The Independent Certifier has identified the Rectification Items as listed in the attached Schedule that need to be executed before the above Apparatus will be completed. The Service Provider shall carry out the rectification works

Number	Street/ Road name	District	Reason

Date of Certificate

XXXXXXXXXX

.....
Signature of authorised person for and on behalf of the Independent Certifier

APPENDIX 1

PART 3

The Certification Engineer and Independent Certifier's Checklists for Street Lighting and Traffic Signal and Control Infrastructure Sites

Table I - Checklist – Street Lighting

Item	Description of Inspection	Tolerances	Comments
Office based checks			
General - Operatives	Check operatives carrying out installation works are suitably trained and qualified to carry out the works, including excavating, traffic management, and operating plant and equipment. Check electricians are City and Guilds qualified.	None	At least once every 3 months check training records and competency requirements for operatives employed on CIP works.
Statutory Undertakers' equipment	Check drawings from Statutory Undertakers have been obtained and have been used on site	None	Check scheme design pack
Electrical test certificate	Check that a test certificate is provided and complete for each lighting Unit	None	
Electrical test equipment	Check instruments calibrated and readings noted correctly	None	Check quality procedures, certificates of calibration
General - MIS	Check that the MIS has been updated accurately.	None	
General - NRSWA	Check that NRSWA notices have been issued and closed and that there are no outstanding inspection defaults	None	Check information provided by the Authority
Central Management System (CMS)	CMS node is registered on the central system Individual units are visible on the CMS CMS node is configured to the correct Lighting Activation Levels CMS node is configured to the correct Power Variation Requirements CMS node is configured to dim to the correct level	None	
CMS	Check that the Central Management System is operating as specified	None	Includes base station, sub-base stations and nodes
On Site Checks			
Installations and removals	Check compliance with Legislation, Method Statements, manufacturers' recommendations, codes of practice and Good Industry Practice	None	Daytime on site observations
Redundant equipment removed	Check redundant units have been removed and that appropriate reinstatement has been carried out	None	
Site clearance	Check that the site has been left Clean and tidy	None	
Lighting design	Check that the correct Lighting design category for the road / path has been selected	None	

Item	Description of Inspection	Tolerances	Comments
Location of unit	Check for compliance with design	+/- 500mm longitudinal +/- 50mm across	Installation must still comply with Output Specification
Position of unit	Check that the units have been installed in Authority-owned land or that way leaves have been obtained	None	
Lighting Unit	Check that, where vehicular access is restricted or where maintenance cannot be carried out by a purpose-built vehicle, a raising and lowering Lighting Unit has been used	None	
Lighting design - obstructions	Check obstructions that will adversely affect Lighting levels have been taken account of	None	
Lighting design - trees and other Vegetation	Check that the effect of trees and other Vegetation has been adequately accommodated in the design and positioning of the Lighting Unit	None	
Apparatus in Conservation Areas	Check that the Lighting Unit, brackets and lanterns are suitable for the particular Conservation Area	None	Apparatus in Conservation Areas
Numbering	Is unit numbered correctly and in correct place with logo?	Height +/- 25mm	Visual and tape measure
Reinstatement	Check quality final reinstatement	Visual	Does tarmac have straight edge? Have blocks or grass been cut neatly and laid level?
Lighting Unit height	Check that the height complies with the Output Specification	None	
Planting depth	Remove door and measure from the bottom of aperture to finished ground level	Manufacturer's specification +/- 25mm	Visual and tape measure
Lighting Unit alignment	Is the pole upright and plumb?	Spirit level bubble touching line	Use spirit level
Lighting Unit / bracket protective system	Is colour / finish correct and undamaged?	Minor scratches not through to galvanising	
Bracket alignment	Is the bracket installed as designed?	Visual	
Bracket outreach	Is the bracket outreach as designed?	None	
Lantern	Check that the correct lantern is installed as per the design	None	
Lantern alignment	Is lantern straight or twisted?	Visual	
Lantern bowl clean	Is the lantern bowl Clean and free from blemishes	Visual	
Internal wiring	Check the correct cable has been used, wiring is neat, insulation at terminals is maintained and that all terminations and earth bonds are tight. Check that all electrical equipment is securely attached to the backboard.	None	
Double pole isolation	Check if double pole isolation has been installed	None	

Item	Description of Inspection	Tolerances	Comments
Protection device	Check that the protection device is correctly installed and rated	None	
Private supply cables	Check that private supply cables are correctly sized, glanded and identified as to what they feed	None	
Electrical Supply	Check that there is electrical power at the secondary isolation point	None	Use a test instrument; an electrical test will be carried out to ensure there is a supply. When the Central Management System (CMS) is installed, an alarm will be triggered if there is no supply.
General - Condition	Check for any signs of damage to any item of Apparatus	None	
Feeder pillars / locations	Check for condensation, distribution board, rating of protection devices, wiring is neat, all terminations, glanding, insulation, cable sizes, cables are identified, earthing and schematic cable diagram	None	
Lighting Column Attachments			
Lighting Unit attachments	Check that existing attachments have been transferred to new Lighting Units and are undamaged	None	
Statutory Attachments	Check that statutory signs are where they need to be	None	
Sign light attached to Lighting Unit	Check that hole in Lighting Unit has been adequately sealed to prevent ingress of water	None	
Sign light wiring	Check correct cables, sleeving, wiring is neat, insulation at terminals and terminals is tight	None	
Traffic Sign	Check the correct sign diagram number and size	None	
Reporting			
General - Reporting	Provide a monthly report detailing the number of units inspected in the Month, together with the numbers that have passed or failed the inspection in the Month and a running total of the number of items Certified	None	
General - Reporting	Issue Certificates of Compliance and Non-compliance and identify Snagging Items as necessary and in accordance with the Output Specification	None	

Table 2 - Checklist Traffic Signals / Control Infrastructure

Item	Description of Inspection	Tolerances	Comments
Controller operational	Check the Traffic Signal controller is on and operating correctly as per the MCH1827 documents and TR2500	None	
Operation of all signal Lamps and regulatory signs	Check the operation of all signal Lamps and regulatory signs	None	Visual checks to be made on site
Signals stuck	Are the signals operating correctly?	None	Visual check on site as well as with engineers' maintenance handset
Detector fault monitoring lamp illuminated	Check whether the detector fault monitoring lamp is illuminated	None	
Operation of push buttons and other manual inputs	Check all push buttons and other manual inputs (eg hurry call buttons) are operating correctly	None	
Illumination of all 'wait' and other indicator Lamps	Check all 'wait' Lamps and other indicator Lamps are illuminated	None	Visual checks to be made on site
Operation of audible and tactile indicators where fitted	Check all audible and tactile indicators (where fitted) are operating correctly	None	Visual checks to be made on site
No gross misalignment of signals or above ground detectors and no obvious deterioration in optical performance of signals	Check for correct orientation and that the signal aspects are free from blemishes and are operating correctly	None	Visual checks to be made on site
Physical condition of push button units and detector housings	Check for corrosion, water ingress, and structural defects on all push button units and detector housings	Manufacturers' specification	Visual checks to be made on site
Physical condition of poles, signal heads, support brackets and backing boards (including any white edge tapes)	Check for corrosion, water ingress and structural defects on all poles, signal heads, support brackets and backing boards (including white edge tape)	Manufacturers' specification	Visual checks to be made on site
Physical condition of regulatory and variable message signs	Check for corrosion, water ingress and structural defects on all regulatory signs and variable message signs	Manufacturers' specification	Visual checks to be made on site
Obscuration of signs, signals or above ground detection by Lighting Columns, signs etc	Check that signals, signs or above ground detection are not obstructed	None	Visual checks to be made on site
Operation of red Lamp monitor circuit	Check red Lamp monitor circuit is operating correctly and that all associated fail safe measures are operating correctly	None	
Operation of all user-selected and fall back modes	Check all user-selected and fall back modes operate as specified in the MCH1827 form	Visual	Visual check on site as well as with engineers' maintenance handset
Maximum green, minimum green, intergreen and pedestrian blackout times	Check all maximum green, minimum green, intergreen and pedestrian blackout times are as per MCH1827 form (or any changes noted in the controller log book)	None	Check on site with engineers' maintenance handset

Item	Description of Inspection	Tolerances	Comments
Lamp dimming	Check that Lamp dimming circuit is operating correctly – do Traffic Signals dim after the correct period of time?	Manufacturers' specification	Visual check on site as well as with engineers' maintenance handset
Fault log contacts	Check that fault log correctly recognises and reports all faults	None	Check on site with engineers' maintenance handset
Reversion to fall back mode of operation	Do the signals revert to the correct fall back mode – as specified in the MCH1827 form	None	Visual check on site as well as with engineers' maintenance handset
Correct operation of all Urban Traffic Control System (UTC) detection	Check that detectors demand and extend the correct phases – as specified in the MCH1827 form (or any changes noted in the controller log book)	None	Visual check on site as well as with engineers' maintenance handset
Correct operation of all MOVA, speed assessment and speed discrimination detection	Check that detectors demand and extend the correct phases – as specified in the MCH1827 form (or any changes noted in the controller log book)	None	Visual check on site as well as with engineers' maintenance handset
Correct operation of all queue, extension and cancel detection	Check that detectors demand and extend the correct phases – as specified in the MCH1827 form (or any changes noted in the controller log book)	None	Visual check on site as well as with engineers' maintenance handset
Correct operation of all other detection	Check that detectors demand and extend the correct phases – as specified in the MCH1827 form (or any changes noted in the controller log book)	None	Visual check on site as well as with engineers' maintenance handset
Operation of all manual panel facilities	Do the manual panel inputs demand the correct facilities – as specified in the MCH1827 form?	None	Visual check on site
Illumination of all manual panel indicators	Check that all manual panel indicators illuminate at the correct time	None	Visual check on site
Operation of cable-less linking	Check that the cable-less linking is operating as per the MCH1827 form (or any changes noted in the controller log book)	None	Check on site with engineers' maintenance handset
Operation of local links to other Apparatus	Check any local links to other Apparatus are operating as specified in the MCH1827 form (or any changes noted in the controller log book)	None	Check on site with engineers' maintenance handset
All equipment clock times	Check all internal clock times are correct and take account of BST	None	Check on site with engineers' maintenance handset
Illumination and operation of variable message signs	Check that variable message sign is illuminated and operating as specified in the equipment specification	None	Visual check on site
Illumination of message displays, including dimming and operation of photo sensors	Check message displays are operating correctly. Check sign dims correctly – check photo sensors. Does the sign dim after the correct amount of time?	None	Visual check on site
Operation of CCTV pan/tilt/zoom mechanisms	Check that CCTV pan/tilt/zoom mechanisms operate correctly	Manufacturers' specification	Visual checks
Operation of CCTV wiper / washer mechanisms	Check that CCTV wiper/washers operate correctly	Manufacturers' specification	Visual checks

Item	Description of Inspection	Tolerances	Comments
Operation of wireless communication equipment including alignment of antennae	Check that all wireless communication equipment works correctly and that antennae is correctly aligned	Manufacturers' specification	Visual checks and also checks with engineers' maintenance handset
Operation of speed assessment or speed discrimination equipment	Check that speed assessment and speed discrimination equipment operates correctly	None	Check on site with engineer's maintenance handset
Operation of ancillary equipment eg OMU, OTU, WiFi router, GPRS router	Check that all ancillary equipment operates correctly	Manufacturers' specification	Check on site – visually and also with engineer's maintenance handset
Operation of Network Occupancy and Flow Detectors	Check that detectors register correct number of vehicles.	None	Manual count check on site.
Condition of earth connections, wiring, pole cap assemblies and mechanical support of cables	Check the correct cable has been used, wiring is neat, insulation at terminals is maintained and that all terminations and earth bonds are tight. Check that all electrical equipment is securely attached	None	
Condition of cabinet, door seals, locks and hinges	Check for condensation, check all hinges and locks for corrosion, check all door seals for water ingress	None	
Condition of cabinet base sealing	Check integrity of cabinet base seal – are there breaks, can sand be seen through it?	None	
Condition of earth connections and wiring to poles	Check the correct cable has been used, wiring is neat, insulation at terminals is maintained and that all terminations and earth bonds are tight. Check that all electrical equipment is securely attached	None	
Accessibility of equipment cabinet	Check that equipment cabinet has been installed in Authority owned land or that wayleaves have been obtained. Check that equipment cabinet is not obstructed and all doors can be easily opened	None	
Condition and effectiveness of all bonding and earthing	Check the correct cable has been used, wiring is neat, insulation at terminals is maintained and that all terminations and earth bonds are tight. Check that all electrical equipment is securely attached.	None	
Physical condition of loop and feeder slots and their sealing	Check all detector loops, feeder slots are Structurally Sound and fully sealed as per manufacturers' specifications	None	Visual check on site
Condition of road markings and studs	Check that all road markings and studs are correct (to TSRGD) and clearly visible	None	Visual check on site
Mast arm assemblies	Inspection to be in line with DMRB Volume 3, section 1, part 4	None	
General - power	Check that there is electrical power at the secondary isolation point	None	Use a test instrument
General - condition	Check for any signs of damage to any item of Apparatus	None	
General - operatives	Check operatives carrying out installation works are suitably trained and qualified to carry out the works, including excavating, traffic management, operating plant, and equipment. Check electricians are City and Guilds qualified	None	Check training records and tickets. Identify operatives from work sheets and from random site visits
General - MIS	Check that the MIS has been updated accurately	None	

Item	Description of Inspection	Tolerances	Comments
General - reporting	Provide a monthly report detailing the number of units inspected in the Month, together with the numbers that have passed or failed the inspection in the Month and a running total of the number of items Certified	None	
General - reporting	Issue Certificates of Compliance and Non-compliance and identify Snagging Items as necessary and in accordance with the Output Specification	None	
Pole / bracket protective system	Is colour / finish correct and undamaged?	Minor scratches not through to galvanising	
Numbering	Are poles numbered correctly and in correct place?	Height +/- 25mm	Visual and tape measure
Location of unit	Check for compliance with design	None	Installation must comply with Output Specification
Statutory attachments	Check that statutory signs are where they need to be	None	
Apparatus in Conservation Areas	Check that the poles and equipment cabinets are suitable for the particular Conservation Area	None	
Installations and removals	Check compliance with Legislation, Method Statements, manufacturers' recommendations, codes of practice and Good Industry Practice	None	Daytime on site observations
Statutory Undertakers' equipment	Check drawings from Statutory Undertakers have been obtained and have been used on site	None	Daytime on site observations, check scheme design pack
Redundant equipment removed	Check redundant units have been removed and that permanent reinstatement has been carried out	None	
Electrical test certificate	Check that a test certificate is provided and complete	None	
Electrical test certificate	Check instruments are calibrated and readings noted correctly	None	Check quality procedures, certificates of calibration and random daytime observations
Feeder pillars / locations	Check for condensation, distribution board, rating of protection devices, wiring is neat, all terminations, glanding, insulation, cables sizes, cables are identified, earthing and schematic cable diagram	None	
TS/CI design	Check that the correct design standards have been adhered to for the road / path selected	None	
TS/CI design - obstructions	Check obstructions that will adversely affect visibility have been taken account of	None	
TS/CI design – trees and other Vegetation	Check that the effect of trees and other Vegetation has been adequately accommodated in the design and positioning of the TS/CI equipment	None	

APPENDIX 2

Fees

Part 1 - Fee Instalments

Ref.	Description	Quantity	Unit	Cost £
1	Undertake certification for Lighting Schemes - Milestone Year 1 (PA cl 29.7)	Item	per month	
1	Undertake certification of Lighting Schemes 0 Milestone Year 2 to 5 (PA Cl.29.7)	Item	per month	
2	Undertake sample checking of Certification of Lighting Schemes (PA Cl.29.7)	Item	per month	
3	Undertake certification of Traffic Signal/Control Infrastructure sites-high Complexity (PA Cl.29.7)	Item	per site	
4	Undertake certification of Traffic Signal/Control Infrastructure sites-medium Complexity (PA Cl.29.7)	Item	per site	
5	Undertake certification of Traffic Signal/Control Infrastructure sites-low Complexity (PA Cl.29.7)	Item	per site	
6	Provision of data about sample checking to the Service Provider and Authority (PA Cl.29.7 and Para.3.1 (o) of Schedule 12) ¹	Item	per month	
7	Attendance at meetings with Authority and Service Provider ²	Item	per meeting	
8	Management of IC function - on site	Item	per month	
9	Management of IC function - off site	Item	per month	

¹ Assume not exceeding 1 man day per month

² Assume half a day in Sheffield/meeting

Part 2 - Fee Rates

Rates for Additional Services			
Ref	Description	Unit	Rate £
Inspection Team			
1	Project Manager (C Eng) - Certification	per Hour	
2	Senior Engineer (C Eng) - Certification	per Hour	
3	Certification Engineer	per Hour	
4	Certification Technician	per Hour	

APPENDIX 3

Methodology to Respond to Scope of Services

[To be inserted]

Appendix 4
Collateral Warranty

DATED

20

[BENEFICIARY] (1)

and

[INDEPENDENT CERTIFIER] (2)

and

[THE SERVICE PROVIDER] (3)

and

THE SHEFFIELD CITY COUNCIL (4)

COLLATERAL WARRANTY OF THE
INDEPENDENT CERTIFIER'S APPOINTMENT

THIS DEED dated

20[]

BETWEEN

- (1) **[BENEFICIARY]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the "**Beneficiary**");³
- (2) **[INDEPENDENT CERTIFIER]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the "**Independent Certifier**");
- (3) **[SERVICE PROVIDER]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the "**Service Provider**"); and
- (4) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S12HH (the "**Authority**");

NOW, in consideration of the payment of One Pound (receipt of which is hereby acknowledged by the Independent Certifier), **THIS DEED** witnesses as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the context otherwise requires, the terms shall have the same meaning as in the Independent Certifier's Appointment including incorporation of the Contract referred to in the Independent Certifier's Appointment.

1.2 Successors

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this deed.

1.3 Headings

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

1.4 Notices

³ The beneficiary under this agreement is intended to be the Tier 1 Sub-Contractors and the Funders.

All notices under this deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this deed or to the registered office or principal business address of any party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

1.5 References to statutes, etc

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.6 Genders and numbers

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2 ACKNOWLEDGEMENT

2.1 The Independent Certifier acknowledges that the Beneficiary has relied on and continues to rely on the Independent Certifier to carry out its obligations pursuant to the Independent Certifier's Appointment.

2.2 The Authority and the Service Provider acknowledge the obligations on the Independent Certifier pursuant to this Deed and the rights of the beneficiary to enforce such obligations.

3 DUTY OF CARE

3.1 The Independent Certifier warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Certification Services the reasonable skill, care and diligence to be expected from a competent and properly qualified Independent Certifier experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Project and in accordance with all current British Standards and Codes of Practice and in compliance with all applicable statutes and regulations as those comprised in the Project in the performance of its duties and obligations under the Independent Certifier's Appointment.

3.2 For the avoidance of doubt the Independent Certifier shall owe no obligation, duty or liability to the Beneficiary by virtue of this deed which is greater or of longer duration than it would owe to the Beneficiary under the Independent Certifier's Appointment if the Beneficiary had

been named as joint employer under the Independent Certifier's Appointment and the Independent Certifier shall be entitled in any action or proceedings by the Beneficiary under this agreement to raise equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Service Provider under the Independent Certifier's Appointment.

- 3.3 Any claim of any kind arising out of or in connection with this deed shall be brought only against the Independent Certifier. No claims in respect of this deed will be brought personally against any of the partners or employees of the Independent Certifier involved in the provision of the Certification Services.

4 PROFESSIONAL INDEMNITY INSURANCE

- 4.1 The Independent Certifier shall take out and maintain professional indemnity insurance in respect of the Independent Certifier's Appointment with reputable insurers carrying on business in the United Kingdom [who are acceptable to the Beneficiary (such acceptance not to be unreasonably withheld or delayed)]⁴ with a limit of indemnity of not less than [five million pounds (£5,000,000) (Indexed)] for any occurrence or series of occurrences arising out of any one event for any one claim or series of claims arising out of any one event from the date of the Independent Certifier's Appointment until the date which is 12 years from the date of the completion of the Independent Certifier's duties under the Independent Certifier's Appointment, provided that such insurance is available at reasonable commercial rates.
- 4.2 Any increased or additional premium required by insurers by reason of the Independent Certifier's own claims record or other acts or omissions particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.
- 4.3 The Independent Certifier shall provide to the Beneficiary at its reasonable request, written confirmation by an independent company of insurance brokers that it has the professional indemnity insurance in force for the ensuing 12 months.
- 4.4 The Independent Certifier shall immediately inform the Beneficiary if the professional indemnity insurance ceases to be available at commercially reasonable rates in order that the

⁴ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

Independent Certifier and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance.

5 TERMINATION OF THE INDEPENDENT CERTIFIER'S APPOINTMENT

- 5.1 In the event that the Independent Certifier wishes to exercise or seek to exercise its rights pursuant to clause 6.3 of the Independent Certifier's Appointment to terminate the Independent Certifier's Appointment, the Independent Certifier shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Certifier's Appointment at the same time as the notice is served on the Counterparties.
- 5.2 In the event that the Counterparties wish to exercise or seek to exercise their rights pursuant to clause 6.1 or 6.2 of the Independent Certifier's Appointment to terminate the Independent Certifier's Appointment, the Counterparties shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Certifier's Appointment at the same time as the notice is served on the Independent Certifier.

6 ASSIGNMENT

- 6.1 [The benefit of this deed may be assigned by the Beneficiary to any other funder who takes over the Beneficiary's funding of the whole or part of the Project without the consent of the Independent Certifier.]⁵
- 6.2 The benefit of this Deed may [also] be assigned by the Beneficiary to any other person having an interest in or providing funding in respect of the Services provided that:
- 6.2.1 the number of assignments under this clause is limited to two only;
- 6.2.2 the Independent Certifier shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and
- 6.2.3 the Independent Certifier shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.

⁵ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

- 6.3 The Independent Certifier will not contend that any assignee is precluded from recovering any loss from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original Beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that that original Beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7 INDEPENDENT ENQUIRY CLAUSE

The liability of the Independent Certifier under this deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Certification Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Certifier might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

8 NON WAIVER

The Service Provider, the Authority and the Independent Certifier agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Independent Certifier's Appointment in any respect which may have a material effect on the benefit of this Deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

9 DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Deed shall be referred to a dispute resolution process comparable with that set out in clause 16 of the Independent Certifier's Appointment.

10 JURISDICTION AND LAW

This Deed shall be governed by and construed in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England.

11 WARRANTY IN RESPECT OF CERTIFICATES

The Independent Certifier warrants and undertakes that it has and will continue to act fairly, reasonably and impartially as between all interested parties in the issuing of any certificates.

12 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

13 COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this deed.

EXECUTED AS A DEED by the **INDEPENDENT CERTIFIER** in the presence of:

Director

Witness

EXECUTED AS A DEED by the **BENEFICIARY** in the presence of:

Alternative A

Authorised Signatory

Authorised Signatory

Alternative B

Director

Director/Company Secretary

EXECUTED AS A DEED by the **SERVICE PROVIDER** in the presence of:

Director

Director/Company Secretary

EXECUTED (but not delivered until the date hereof)

as a deed by the Authority by the affixing of its common seal

in the presence of:

2. Form of Independent Surveyor's Appointment



DATED

2012

(1) THE SHEFFIELD CITY COUNCIL

- and -

(2) AMEY HALLAM HIGHWAYS LIMITED

- and -

(3) URS INFRASTRUCTURE & ENVIRONMENT UK LIMITED

**APPOINTMENT OF
INDEPENDENT SURVEYOR**

relating to

the rehabilitation, maintenance and operation
of the Project Network pursuant to the
Government's Private Finance Initiative

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	APPOINTMENT.....	3
3.	DURATION.....	7
4.	FEES	7
5.	LIMITATIONS ON AUTHORITY	9
6.	TERMINATION.....	9
7.	CONFIDENTIAL INFORMATION AND COPYRIGHT	12
8.	PROFESSIONAL INDEMNITY INSURANCE.....	13
9.	NOTICES	14
10.	ASSIGNMENT	16
11.	CUMULATIVE RIGHTS AND ENFORCEMENT	16
12.	WAIVER.....	17
13.	SEVERABILITY	17
14.	COUNTERPARTS.....	17
15.	VARIATION.....	17
16.	DISPUTE RESOLUTION PROCEDURE.....	17
17.	GOVERNING LAW AND JURISDICTION	18
18.	THIRD PARTY RIGHTS	18

BETWEEN

- (1) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S1 2HH ("Authority");
- (2) **AMEY HALLAM HIGHWAYS LIMITED** (company registration number 08121168) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("Service Provider");
- (3) **URS INFRASTRUCTURE & ENVIRONMENT UK LIMITED** (company registration number 00880328) whose registered office is at Scott House, Alencon Link, Basingstoke, Hampshire, RG21 7PP ("**Independent Surveyor**").

RECITALS

- A The Authority and the Service Provider have entered into an agreement for the rehabilitation, maintenance and operation of the Project Network pursuant to the Government's private finance initiative ("**Contract**") under the terms of which they have jointly agreed to appoint an independent surveyor.
- B The Independent Surveyor is an independent adviser willing to provide services to the Authority and the Service Provider.
- C The Authority and the Service Provider jointly engage the Independent Surveyor to perform the duties and obligations which are ascribed to the Independent Surveyor in the Contract upon the terms of this agreement (and which are set out in Appendix 1) upon the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms shall have the meanings given to them below:

"**Additional Fees**" means the fees to be paid to the Independent Surveyor in respect of any Additional Services in accordance with clause 2.2;

“Additional Services” means any services which the Counterparties request from the Independent Surveyor in addition to the Surveying Services pursuant to clause 2.2;

“Core Investment Period” means the period commencing on the Service Commencement Date and ending on the Planned CIP Completion Date or as such period is extended in accordance with the terms of the Contract

"Counterparty" means each of the Authority and the Service Provider, and

"Counterparties" means both of them;

"Fees" means the fees for the Surveying Services provided;

"Final Date for Payment" has the meaning given to it in clause 4.3;

“Insolvency Event” means the occurrence of any one or more of the following events:

- (a) a court makes an order that the Independent Surveyor or its Holding Company be wound up or a resolution for a voluntary winding-up of the Independent Surveyor or its Holding Company is passed;
- (b) any receiver or manager in respect of the Independent Surveyor or its Holding Company is appointed or possession is taken by or on behalf of any creditor of any property of the Independent Surveyor or its Holding Company that is the subject of a charge;
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Independent Surveyor or its Holding Company;
- (d) an administration order is made or an administrator is appointed in respect of the Independent Surveyor or its Holding Company;

"Joint Notice" means a notice in writing issued jointly by the Counterparties;

"Party" means any party to this agreement;

"Planned CIP Completion Date" shall be the end of the fifth (5th) Milestone Year, being 31st December 2017; and

"Surveying Services" means the services set out in Appendix 1 to this agreement.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Contract have the same meanings in this agreement as in the Contract.
- 1.3 The headings in this agreement do not affect its interpretation.
- 1.4 Unless the context otherwise requires, all references to clauses and Appendices are references to clauses of and Appendices to this agreement.

2. APPOINTMENT

- 2.1 The Counterparties jointly engage the Independent Surveyor and the Independent Surveyor agrees to perform the Surveying Services and any Additional Services commissioned pursuant to clause 2.2 upon the terms and conditions set out below.
- 2.2 If the Counterparties require any Additional Services:
 - 2.2.1 the Counterparties shall issue a Joint Notice to the Independent Surveyor specifying:
 - 2.2.1.1 the services required;
 - 2.2.1.2 which of the Counterparties will pay the Fees associated with the relevant services (or, if both are to pay, the proportion of the Fees for which they will each be responsible); and
 - 2.2.1.3 the proposed timing of payment of the Fees associated with the relevant services;
 - 2.2.2 within a reasonable time after issue of the Joint Notice the Independent Surveyor shall provide the Counterparties with a written quote of the cost of the relevant services, which cost shall:
 - 2.2.2.1 wherever possible be based on the rates contained in part 2 of Appendix 2; and
 - 2.2.2.2 take into account any reduction in work or other expense which may occur as a result of the required variation to the Surveying Services,

together with any other information reasonably required by either Counterparty (such as a method statement setting out how the Independent Surveyor intends to carry out the relevant services); and

2.2.3 if the Counterparties are satisfied with the Independent Surveyor's proposals they shall issue a further Joint Notice instructing the Independent Surveyor to undertake the Additional Services and the Independent Surveyor shall undertake the Additional Services at the time agreed by the Parties or, in the absence of agreement, as soon as reasonably practicable.

2.3 The Independent Surveyor shall provide the Surveying Services independently, fairly and impartially to and as between each of the Counterparties. Whilst the Independent Surveyor may take account of any representations made by the Counterparties the Independent Surveyor shall not be bound to comply with any representations made by either of them in connection with any matter on which the Independent Surveyor is required to exercise his professional judgement.

2.4 The Independent Surveyor shall provide the Surveying Services:

2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held itself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project;

2.4.2 in accordance with Good Industry Practice, all Legislation and Highways Standards; and

2.4.3 in accordance with the methodology set out in Appendix 3.

For the purposes of this clause 2.4 "**Good Industry Practice**" shall mean using standards, practices, methods and procedures (as practised in the United Kingdom) and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or other person (as the case may be) engaged in a similar type of undertaking as under this agreement under the same or similar circumstances.

2.5 Subject to clause 2.6, all instructions to the Independent Surveyor may only be given by the Service Provider Representative (or its alternate appointed pursuant to clause 33 of the Contract (Representative)), provided that the Service Provider shall ensure

that such instructions by the Service Provider Representative are not in contradiction to any of the terms of the Contract or any other instruction given by the Authority Representative pursuant to clause 30 of the Contract.

- 2.6 Where the Service Provider is in breach of any of its obligations pursuant to clause 27 of the Contract, the Authority Representative may, after giving written notice pursuant to clause 30 of the Contract of such breach, give instructions, acting alone, to the Independent Surveyor, provided that the Authority shall ensure that such instructions by the Authority Representative are not in contradiction to any of the terms of the Contract or any other instruction given under this agreement or under the Contract by the Service Provider Representative.
- 2.7 The Independent Surveyor shall comply with all reasonable instructions given to it by the Counterparties except and to the extent that the Independent Surveyor reasonably considers that any such instructions vary or might vary the Surveying Services or its authority or responsibilities under this agreement or prejudices or might prejudice the exercise by the Independent Surveyor of its professional judgment in accordance with clauses 2.3 and 2.4 above. The Independent Surveyor shall promptly confirm in writing to each of the Counterparties whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.8 The Counterparties agree to co-operate with and provide reasonable assistance to the Independent Surveyor to familiarise the Independent Surveyor with all necessary aspects of the Project to enable the Independent Surveyor to carry out its obligations under this agreement.
- 2.9 The Independent Surveyor shall be deemed to have full knowledge of the provisions of the Contract, and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of either of the Counterparties which are set out in the Contract. The Service Provider shall deliver to the Independent Surveyor a true and accurate copy of the Contract as soon as practicable following:
- 2.9.1 the date of this agreement; and
- 2.9.2 any variation to the Contract which is likely to affect the performance of the Surveying Services by the Independent Surveyor.

- 2.10 The Independent Surveyor shall promptly and efficiently perform the Surveying Services as soon as reasonably practicable but consistent with the standards specified in clauses 2.3 and 2.4 above.
- 2.11 Subject to clause 2.12, the Independent Surveyor shall use the following directors or employees in connection with the performance of the Surveying Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Surveyor of the Surveying Services
- 2.11.1 [REDACTED]
- Such persons shall have full authority to act on behalf of the Independent Surveyor for all purposes in connection with this agreement.
- 2.12 None of the persons mentioned in clause 2.11 shall be removed or replaced unless he/she ceases to work as a director or employee of the Independent Surveyor or he/she is unable to work because of death or ill-health or by agreement of the Counterparties. The Independent Surveyor shall notify (giving a minimum of ten (10) Business Days' notice) the Counterparties of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing of the Counterparties such approval not to be unreasonably delayed.
- 2.13 The Parties agree that, notwithstanding the terms and effect of any provision of the Limitation Act 1980 (including any amendment or re-enactment of the same), the Independent Surveyor shall only be liable under this agreement in respect of claims whether for any breach of this agreement or in tort, negligence, for breach of statutory duty or otherwise which are notified to the Independent Surveyor before the expiration of the period of 12 years from the date of completion of all of the Surveying Services under the terms of this agreement.
- 2.14 The Independent Surveyor shall within 14 days of request execute deeds of warranty in favour of each of Amey LG Limited and [REDACTED] in the form set out in Appendix 4 or in such similar or varied terms thereto as the parties may agree and deliver the same duly executed to the Service Provider.

3. DURATION

3.1A It shall be a condition precedent to this document coming into effect that the Service Provider has provided a true copy of the Contract.

3.1 Subject to 3.1A, the Surveying Services shall commence on the date of this agreement and cease on the earlier of:

3.1.1 termination of this agreement in accordance with clause 6; or

3.1.2 the end of the Core Investment Period

provided that the parties may agree to extend this agreement for further periods of up to 5 years to cover the provision of the Certification Services until the expiry of the Contract.

3.2 This agreement governs all of the Surveying Services provided by the Independent Surveyor in relation to the Project whether before or after the date hereof.

4. FEES

4.1 The Service Provider shall pay the Fees to the Independent Surveyor in respect of the Surveying Services. The Independent Surveyor shall issue invoices to the Service Provider for the Fees in accordance with part 1 of Appendix 2.

4.2 The Independent Surveyor shall be entitled to be paid Additional Fees in respect of any Additional Services it provides. The Independent Surveyor shall issue an invoice to the Counterparty responsible for payment on the date agreed by the Parties at the time the Additional Services were commissioned pursuant to clause 2.2 or, if both Counterparties are responsible for payment, the Independent Surveyor shall issue an invoice to each of them on the relevant date, in the proportions agreed pursuant to clause 2.2. Where both Counterparties are responsible for payment of Additional Services, their obligations to pay shall be several and not joint.

4.3 The date on which an invoice is received by the Service Provider or the Authority (as appropriate) shall constitute the due date. The final date for payment by the Service Provider or the Authority (as appropriate) shall be thirty (30) days after receipt of the Independent Surveyor's invoice ("**Final Date for Payment**").

- 4.4 Not later than five (5) Business Days after the due date ascertained in accordance with clause 4.3, the Service Provider or the Authority (as appropriate) may give written notice to the Independent Surveyor stating the amount which it proposes to pay and the basis on which the amount is calculated.
- 4.5 Where the Service Provider or the Authority (as appropriate) intends to withhold payment of any amount stated in the invoice, it shall give written notice to the Independent Surveyor not later than five (5) Business Days before the Final Date for Payment. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.6 If either Counterparty fails to pay the Independent Surveyor any sum payable under this agreement by the Final Date for Payment, the relevant Counterparty shall pay the Independent Surveyor simple interest on that sum from the Final Date for Payment until the actual date of payment at the Default Interest Rate and such rate is agreed as a fair and reasonable rate for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.7 If either Counterparty fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to clause 4.5, the Independent Surveyor may suspend performance of any or all of the Surveying Services. This right is subject to the Independent Surveyor first giving both Counterparties not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Service Provider (and/or the Authority (if appropriate)) pays the amount properly due.
- 4.8 Neither Counterparty shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Surveyor without the prior approval of the other (such approval not to be unreasonably withheld or delayed).
- 4.9 As soon as the Independent Surveyor becomes aware of the same and before acting on the same the Independent Surveyor shall inform the Authority and the Service Provider of any instructions which either Counterparty has given him which will or could reasonably be expected to increase the fees payable to the Independent

Surveyor under the terms of this agreement. The Independent Surveyor shall if requested by either the Service Provider or the Authority provide both Counterparties with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in part 2 of Appendix 2.

5. LIMITATIONS ON AUTHORITY

The Independent Surveyor shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this agreement.

6. TERMINATION

6.1 Automatic termination

This agreement will terminate immediately upon receipt by the Independent Surveyor of a Joint Notice confirming that the Contract has terminated.

6.2 Counterparties' right to terminate

6.2.1 The Counterparties may by Joint Notice immediately terminate this agreement if the Independent Surveyor:

6.2.1.1 is in breach of any of the terms of this agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Surveyor within twenty one (21) days of receipt by the Independent Surveyor of a Joint Notice specifying the breach and requiring its remedy;

6.2.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Surveying Services and/or its other duties under this agreement;

6.2.1.3 fails to comply with clauses 2.11 and 2.12;

6.2.1.4 fails or refuses after written warning to provide the Surveying Services and/or its other duties under this agreement reasonably and as properly required of him; or

6.2.1.5 is subject to any Insolvency Event.

6.2.2 The Counterparties may terminate this agreement at any time by issuing a Joint Notice to the Independent Surveyor giving at least six (6) months notice to the Independent Surveyor that such termination will take effect.

6.3 Independent Surveyor's right to terminate

6.3.1 Subject to clause 6.3.2 the Independent Surveyor may terminate this agreement:

6.3.1.1 if any amount in excess of £20,000 is due and payable to the Independent Surveyor by either of the Counterparties, and thirty (30) days has passed since the Final Date for Payment of such amount; or

6.3.1.2 either Counterparty is otherwise in material breach of its obligations.

6.3.2 The Independent Surveyor shall neither exercise nor seek to exercise any right to terminate its engagement without giving the Counterparties not less than twenty (20) Business Days' written notice of its intention to do so specifying the grounds for the proposed termination and identifying who is in breach of this agreement ("**Step-in Notice**").

6.3.3 The Independent Surveyor's right to terminate its engagement under this agreement or to discontinue the performance of the Surveying Services shall cease if a Counterparty who is not in breach of this agreement gives notice to the Independent Surveyor within 20 Business Days of receiving a Step-in Notice under clause 6.3.2 requiring the Independent Surveyor to continue the performance of the Surveying Services, provided that a Counterparty giving such notice must agree to assume all the obligations of the defaulting Counterparty and undertake to discharge all payments which are or may subsequently become due to the Independent Surveyor from the defaulting Counterparty under this agreement.

6.3.4 If a Counterparty issues a notice in accordance with clause 6.3.3 this agreement shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Surveyor had not arisen and on the basis that all references in this agreement to the defaulting

Counterparty thereafter shall be read and construed as references to the Counterparty which issued the notice.

- 6.3.5 Where a Counterparty has given notice in compliance with clause 6.3.3 and has given an undertaking of the type described in that clause the defaulting Counterparty shall reimburse and indemnify that Counterparty against each and every liability which that Counterparty may have to the Independent Surveyor by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Counterparty as a consequence thereof.

6.4 Consequences of Termination

- 6.4.1 Following any termination of this agreement, but subject to any set-off or deductions which the Counterparties may be entitled properly to make as a result of any breach of this agreement by the Independent Surveyor, the Independent Surveyor shall be entitled to be paid in full and final settlement of any valid claim which the Independent Surveyor may have in consequence thereof, any fees due under clause 4 above in respect of the Surveying Services carried out in accordance with this agreement prior to the date of termination.
- 6.4.2 Termination of this agreement shall be without prejudice to any accrued rights and obligations under this agreement as at the date of termination (including the right of either Counterparty to recover damages from the Independent Surveyor).
- 6.4.3 If this agreement is terminated in accordance with this clause 6, the Counterparties shall use reasonable endeavours to engage an alternative independent Surveyor within 30 days, subject to Law and public procurement rules. If within such period the Counterparties are unable to procure the appointment of an alternative independent surveyor on reasonable commercial terms, the Independent Surveyor shall pay to the Counterparties any reasonable incremental loss, damage or extra costs suffered by each of them provided always that the Counterparties shall use reasonable endeavours to mitigate such amounts.

6.4.4 Termination of this agreement shall not affect the continuing rights and obligations of the Parties under clause 5 (Limitations on Authority), this clause 6, clause 7 (Confidential Information and Copyright), clause 8 (Professional Indemnity Insurance) or clause 16 (Dispute Resolution Procedure) or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

- 7.1 The Independent Surveyor shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to either Counterparty's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of either Counterparty where the information was received during the period of this agreement. Upon termination of this agreement for whatever reasons the Independent Surveyor shall deliver up to the relevant Counterparty all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant to this agreement provided that the Independent Surveyor shall be entitled to retain a copy for the purposes of legitimate record keeping of the Surveying Services provided.
- 7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Surveyor in connection with the Project shall remain vested in the Independent Surveyor but the Independent Surveyor grants to the Counterparties and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties. The Independent Surveyor shall not be liable for any use of the drawings or other documents other than for the purpose for which they were provided.

8. PROFESSIONAL INDEMNITY INSURANCE

- 8.1 Without prejudice to its obligations under this agreement, or otherwise at law, the Independent Surveyor shall maintain professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) (Indexed) for each claim or series of claims that arise from the same cause or a single source or event in respect of any neglect, error or omission on the Independent Surveyor's part in the performance of its obligations under this agreement for the period commencing on the date of this agreement and expiring twelve (12) years after:
- 8.1.1 expiry of the Core Investment Period in accordance with the provisions of the Contract; or
 - 8.1.2 the termination of this agreement,
- whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates and terms.
- 8.2 The Independent Surveyor shall maintain such insurance with reputable insurers carrying on business in the United Kingdom with a minimum rating of A (Standard and Poor's) and A2 (Moody's).
- 8.3 Any increased or additional premium required by insurers by reason of the Independent Surveyor's own claims record or other acts, omissions, matters or things particular to the Independent Surveyor shall be deemed to be within commercially reasonable rates.
- 8.4 The Independent Surveyor shall immediately inform the Counterparties if such insurance ceases to be available at commercially reasonable rates in order that the Independent Surveyor and the Counterparties can discuss means of best protecting the respective positions of the Counterparties and the Independent Surveyor in respect of the Project in the absence of such insurance.
- 8.5 The Independent Surveyor shall fully co-operate with any measures reasonably required by the Counterparties including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Counterparties undertake in writing to reimburse the Independent Surveyor in respect of the net cost of such insurance to the Independent Surveyor above commercially reasonable rates or, if the

Counterparties effect such insurance at rates at or above commercially reasonable rates, reimbursing the Counterparties in respect of what the net cost of such insurance to the Counterparties would have been at commercially reasonable rates.

- 8.6 The Independent Surveyor shall, prior to commencing the provision of the Surveying Services and no less than ten (10) days after renewal dates, produce for inspection by the Counterparties documentary evidence that such insurance is being properly maintained.
- 8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this agreement for any reason whatsoever, including (without limitation) breach by either Counterparty.
- 8.8 Notwithstanding any other provision of this Agreement the Independent Surveyor's maximum aggregate liability under or in connection with this agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed five million pounds (£5,000,000), provided that nothing in this agreement shall exclude or in any way limit the Independent Surveyor's liability for fraud or death or personal injury caused by its negligence.

9. NOTICES

- 9.1 All notices or other communications required in connection with this agreement shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the other Parties in writing:

If to the Authority: Authority Representative

Address : Sheffield City Council
Howden House
Sheffield S1 2SH

Fax number: 01142736015 (for the attention of [REDACTED])

If to the Service Provider:

Address: Amey Hallam Highways Limited
Sherard Building
Edmund Halley Road
Oxford
OX4 4DQ

Fax number:

If to the Independent Surveyor:

Address: URS Infrastructure & Environment UK Limited
Scott House
Alencon Link
Basingstoke
Hampshire
RG21 7PP

Fax number:

9.2 Service shall be deemed to have been effected as follows:

9.2.1 if personally delivered, at the time of delivery to the addressee;

9.2.2 if sent by first class pre-paid post, on the second (2nd) Business Day after it is put in the post; and

9.2.3 if sent by facsimile transmission, at the time of transmission or if the time of transmission is outside normal working hours (which shall be deemed to be 9.00am to 5.00pm Monday to Friday excluding public holidays), at 9.00am on the next Business Day.

10. ASSIGNMENT

- 10.1 The Independent Surveyor shall not assign or transfer any of its rights or obligations under this agreement or sub-contract the whole of the Surveying Services. The Independent Surveyor shall be entitled to sub-contract part of the Surveying Services subject to consent of the Counterparties which shall not be unreasonably withheld or delayed. For the avoidance of doubt the Independent Surveyor shall remain responsible for all the Surveying Services undertaken by any sub-contractor as if the same had been undertaken by the Independent Surveyor.
- 10.2 Neither of the Counterparties shall be entitled to assign or transfer any of their respective rights or obligations under this agreement save where such assignment or transfer is contemporaneous to the assignment or transfer of the Contract and is made to the same assignee or transferee. In the event that the Contract is novated to a third party, the term "*Contract*" shall include any replacement contract arising from such novation.
- 10.3 The Independent Surveyor shall not be entitled to contend that any person to whom this agreement is assigned in accordance with clause 10.2 is precluded from recovering under this agreement any loss incurred by such assignee resulting from any breach of this agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this agreement.

11. CUMULATIVE RIGHTS AND ENFORCEMENT

- 11.1 Any rights and remedies provided for in this agreement whether in favour of the Service Provider or the Authority or the Independent Surveyor are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 11.2 The duties and obligations of the Independent Surveyor arising under or in connection with this agreement are owed to the Counterparties jointly and severally and the Authority and the Service Provider may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.
- 11.3 The Counterparties covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this agreement which would

or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

12. WAIVER

The failure of any Party at any one time to enforce any provision of this agreement shall in no way affect its right thereafter to require complete performance by any other Party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

13. SEVERABILITY

In the event that any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this agreement and the rest of this agreement shall stand, without affecting the remaining clauses.

14. COUNTERPARTS

This agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

15. VARIATION

A variation of this agreement is valid only if it is in writing and signed by or on behalf of each party.

16. DISPUTE RESOLUTION PROCEDURE

16.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Contract.

16.2 The Service Provider, the Authority and the Independent Surveyor shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 Subject to clause 16 above, this agreement shall be governed by and construed in accordance with the laws of England, and (subject as aforesaid) the Parties hereby submit to the exclusive jurisdiction of the courts of England.

17.2 No action or proceedings may be commenced against the Independent Surveyor for any breach of this agreement after the expiry of twelve (12) years following the date of completion of the Surveying Services or the termination of this agreement, whichever is the earlier.

18. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

IN WITNESS WHEREOF the Parties have executed and delivered this document as an agreement on the date first written above.

EXECUTED (but not delivered until the date)
hereof) as a deed by the Authority by the affixing)
of its common seal in the presence of:

[Authorised Sealing Officer]

EXECUTED (but not delivered until the date)
hereof) as a deed by the Service Provider acting by)
two of its directors or a director and its secretary:

Director

Director/Secretary

EXECUTED (but not delivered until the date)
hereof) as a deed by the Independent Surveyor)
acting by a director or a director and witness:

Director

Witness

APPENDIX 1

PART 1

Scope of Services – Independent Surveyor

The Independent Surveyor shall perform all the functions and obligations attributed to the role of Independent Surveyor as referred to in the relevant clauses and schedules of the Contract and the First Tier Sub-Contract (including complying with any time limits specified in such clauses) and shall familiarise itself with the Contract and the First Tier Sub-Contract (including subject to clause 2.9 of this Agreement any design documents, any Change to the Contract or First Tier Sub-Contract issued from time to time and any other relevant documentation or information referred to in the Contract or the First Tier Sub-Contract), including but not limited to the following scope of Surveying Services:

1. SURVEYS OF CARRIAGEWAYS AND FOOTWAYS

The role of the Independent Surveyor shall be to fulfil the obligations of the Independent Surveyor as is further detailed within the Contract, including but not limited to the following obligations:

- 1.1 fulfilling the obligations of the Independent Surveyor pursuant to clauses 26.2.1.2, 27.1, 27.2, 27.3, 27.4, 27.5, 27.8 and 27.9.1 of the Contract
- 1.2 selecting and carrying out a sample check of the CVI Surveys, Milestone Rectification Works CVI Surveys, Patching Surveys, Milestone Rectification Works Patching Surveys, Footway Surveys and Milestone Rectification Works Footway Surveys as set out in clauses 27.10 (*CVI Surveys*), 27.14 (*Patching Surveys*) and 27.15 (*Footway Surveys*) of the Contract, such sample checks to be done in the proportions dictated by and to include or exclude those RSLs or FSLs (as applicable) determined in accordance with clauses 27.10 (*CVI Surveys*), 27.14 (*Patching Surveys*) and 27.15 (*Footway Surveys*) of the Contract, and including the production of all reports set out therein within the timescales set out therein;
- 1.3 checking the integrity of the data generated by the machine surveys, providing the information generated by the surveys in 1.1 above in accordance with clause 27.16.1.1 (Production of Data) and process the data through an accredited UKPMS system in accordance with clause 27.16.2 of the Contract; and
- 1.4 calculate and submit to the Authority the Carriageway Condition Indices and Footway Condition Indices achieved by the Service Provider in accordance with clause 27.17.1 (*Calculation of the Index*) of the Contract having regard to the provisions of clause 26.2.1.2 of

the Contract and the use of such Data in the assessment of whether a Milestone relating to the achievement of Condition Indices in respect of Carriageways or Footways has been completed;

- 1.5 contribution to the production of the Survey Programmes produced by the Service Provider as required by the Service Provider;
- 1.6 contributing to the production of any documents or written statement required pursuant to clause 79.2.1 (*Carriageways and Footways*) or 79.2.2.3 of the Contract in relation to handback of the Carriageways and Footways pursuant to that Clause where required by the Service Provider;
- 1.7 participating in the Service Provider's training event pre-commencement of any surveys. Such training event shall include but not be limited to:
 - 1.7.1 a sample CVI survey (in accordance with the UKPMS Visual Survey Manual Chapter 5);
 - 1.7.2 a sample Patching Survey in accordance with the Authority's bespoke Sheffield City Council and a Sheffield Enhanced FNS survey (in accordance with the UKPMS Visual Survey Chapter 9);
- 1.8 comparing the results of the surveys set out in paragraph 1.2 with the results of the Service Provider's Inspectors surveys carried out using the same methodology. The results shall be compared by an experienced UKPMS Inspector and where necessary the Service Provider shall train or procure the training of the appropriate individual for the Independent Surveyor to ensure consistency;
- 1.9 calculating the Carriageway Condition Indices and Footway Condition Indices using the methodology described in clause 27.17.1 using the data held in the Collaborative Working Platform on a Monthly basis. In this regard the Independent Surveyor shall report the resultant Indices to the Service Provider within ten (10) Business Days of the last day of each Month;
- 1.10 submitting health and safety risk assessments to the Service Provider and the Authority;
- 1.11 attending programming meetings as required to coordinate his/her sample surveys into the programme (and to ensure that suitable traffic management arrangements are in place for the Independent Surveyor to undertake his audit inspection duties on site);

- 1.12 where the Independent Surveyor during the course of his duties becomes aware of an Urgent or Category 1 Defect on the Project Network, inform the Service Provider's OCR immediately and in any event within 0.5 hours of becoming so aware;
- 1.13 validating all machine surveys undertaken by the Independent Machine Surveyor in accordance with the requirements of Schedule 41 and confirm that the results are within expected parameters, or otherwise, within ten (10) business days of him/her being informed by the Service Provider that the data is available to him/her on the Collaborative Working Platform; and
- 1.14 granting access to and providing all reasonable assistance to the Authority or any Authority Party nominated by the Authority as required by clauses 30.1.2 and 30.1.3 of the Contract;

so as to ensure no breach by the Service Provider of any obligation under the Contract that relates to the performance of the Independent Surveyor.

2. ADDITIONAL SERVICES

Without prejudice to the generality of clause 2.2 and the ability of either party to request Additional Services, the Authority may, in the event that pursuant to clause 30.2.1 of the Contract, the Authority considers (acting reasonably) that the Service Provider is failing to procure the carrying out of Surveys in accordance with the provisions of the Contract, issue instructions in place of the Service Provider for such Surveys to be carried out and thereafter the provisions of paragraph 1 of this Appendix 1 shall be carried out by the Independent Surveyor as if the Service Provider had issued an instruction to carry out such Surveys.

3. PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Authority or the Service Provider, the Independent Surveyor shall participate in the Dispute Resolution Procedure of the Contract (as such term is defined in the Contract) to the extent that issues under the Contract which have been referred to the said Dispute Resolution Procedure relate to the Independent Surveyor's other obligations and tasks as set out in this Appendix 1 and this agreement.

4. GENERAL

4.1 The Independent Surveyor shall price in accordance with the attached payment schedule, with items identified as monthly paid each month in arrears over the term of

the appointment and the additional services invoiced at the end of the calendar month in which they occur.

- 4.2 All rates to be current with an annual increase in April (starting in 2014) based on RPIx (Base of June 2012)
- 4.3 The Independent Surveyor will have access to and use of all Service Provider welfare facilities provided under the Contract
- 4.4 The Independent Surveyor will have use of two hot desks at in a location to be agreed with the Service Provider at the Service Provider's premises at either Distington House, Olive Grove or Ecclesfield Road.
- 4.5 At the agreed hot desk location:
 - i) the Service Provider will provide free guest wi-fi internet access to allow inspectors to communicate with their own company base
 - ii) the Service Provider will provide a computer workstation to allow the inspectors to communicate with the Service Provider's Collaborative Working Platform.
- 4.6 The Independent Surveyor will have access to the Collaborative Working Platform and will be issued with the relevant software in order to use the Confirm UKPMS, Sheffield Performance Model to calculate the Carriageway and Footway Condition Indices and review data submitted by the Independent Machine Surveyor
- 4.7 The Service Provider will work with the Independent Surveyor to plan and programme Traffic Management and any access equipment which will be provided at the Service Provider's expense.
- 4.8 The Independent Surveyor will provide vehicles to enable the Auditors and Inspectors to get to each individual inspection site. The Independent Surveyor shall ensure that all of its vehicles used by the Highway Inspectors are conspicuously coloured, branded and equipped with:
 - i) Two (2) beacons or light bars
 - ii) Chevrons at the rear of the vehicle compliant with Chapter 8 of the Traffic Signs Manual

- iii) Highway Maintenance sign (plate 7404 Traffic Signs Regulations and General Directions (TSRGD))
- iv) Suitable warning sign indicating survey or inspection operations (plate 7001.1 TSRGD).

4.9 The Independent Surveyor staff shall wear the PPE provided for in their H&S plan and with clear branding to allow them to be identified as Independent Surveyor staff.

APPENDIX 2

Fees

Part 1 - Fee Instalments

Appendix 2 - Part 1				
Ref.	Description	Quantity	Unit	Cost £
1	Undertake sample CVI Surveys (PA CI 27.10) ¹	Item	per lane Km	
2	Undertake sample Patching Surveys (PA CI 27.14) ²	Item	per lane Km	
3	Undertake sample Footway Surveys (PA CI 27.15) ³	Item	per Footway Km	
4	Validate and provide raw Data (PA CI 27.16) ⁴	Item	per Month	
5	Process Data generated by Surveys and Calculation of Carriageway and Footway Condition Indices (PA CI 27.17) to include auditing the data produced by the Independent Machine Surveyor ⁵	Item		
6	Audit the certification of the Independent Machine Surveyor ⁶	Item		
7	Attendance at meetings with Authority and Service Provider ⁷	Item	per meeting	
8	Management of IS Function - on site	Item	per month	
9	Management of IS Function - off site	Item	per month	

Appendix 2 - Part 2				
Rates for Additional Services				

¹ Minimum survey 4 lane Km/day

² Minimum survey 5 lane Km/day

³ Minimum survey 5 lane Km/day

⁴ based on weekly validation of data

⁵ Annual event

⁶ Assume five spot checks per annum. Auditor to check whilst carrying out CVI, Patching or Footway survey. Machine will be driven to reasonable location as requested by the auditor.

⁷ Assume half a day in Sheffield/meeting

Ref.	Description	Unit	Rate £
Inspection Team			
1	Project Director	per Hour	
2	Project Manager	per Hour	
3	Survey Engineer/Senior Auditor	per Hour	
4	Survey Technician/Auditor	per Hour	
5	Carriageway and Footway Surveyor	per Hour	
6	Assistant Carriageway and Footway Surveyor	per Hour	

Part 2 - Fee Rates

Rates for Additional Services			
Ref.	Description	Unit	Rate £
Inspection Team			
1	Project Manager (C Eng) - Surveys	per Hour	[Redacted]
2	Senior Engineer (C Eng) - Surveys	per Hour	[Redacted]
3	Survey Engineer	per Hour	[Redacted]
4	Survey Technician	per Hour	[Redacted]
5	Carriageway and Footway Surveyor	per Hour	[Redacted]
6	Assistant Carriageway and Footway Surveyor	per Hour	[Redacted]

APPENDIX 3

Methodology to Respond to Scope of Services

[To be inserted]

Appendix 4
Collateral Warranty

DATED

20

[BENEFICIARY] (1)

and

[INDEPENDENT SURVEYOR] (2)

and

[THE SERVICE PROVIDER] (3)

and

THE SHEFFIELD CITY COUNCIL (4)

COLLATERAL WARRANTY OF THE
INDEPENDENT SURVEYOR'S APPOINTMENT

THIS DEED dated

20[]

BETWEEN

- (1) **[BENEFICIARY]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the "**Beneficiary**");⁸
- (2) **[INDEPENDENT SURVEYOR]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the "**Independent Surveyor**");
- (3) **[SERVICE PROVIDER]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the "**Service Provider**"); and
- (4) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S12HH (the "**Authority**");

NOW, in consideration of the payment of One Pound (receipt of which is hereby acknowledged by the Independent Surveyor), **THIS DEED** witnesses as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the context otherwise requires, the terms shall have the same meaning as in the Independent Surveyor's Appointment including incorporation of the Contract referred to in the Independent Surveyor's Appointment.

1.2 Successors

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this deed.

1.3 Headings

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

⁸ The beneficiary under this agreement is intended to be the Tier 1 Sub-Contractors and the Funders.

1.4 Notices

All notices under this deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this deed or to the registered office or principal business address of any party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

1.5 References to statutes, etc

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.6 Genders and numbers

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2 ACKNOWLEDGEMENT

2.1 The Independent Surveyor acknowledges that the Beneficiary has relied on and continues to rely on the Independent Surveyor to carry out its obligations pursuant to the Independent Surveyor's Appointment.

2.2 The Authority and the Service Provider acknowledge the obligations on the Independent Surveyor pursuant to this Deed and the rights of the beneficiary to enforce such obligations.

3 DUTY OF CARE

3.1 The Independent Surveyor warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Surveying Services the reasonable skill, care and diligence to be expected from a competent and properly qualified Independent Surveyor experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Project and in accordance with all current British Standards and Codes of Practice and in compliance with all applicable statutes and regulations as those comprised in the Project in the performance of its duties and obligations under the Independent Surveyor's Appointment.

3.2 For the avoidance of doubt the Independent Surveyor shall owe no obligation, duty or liability to the Beneficiary by virtue of this deed which is greater or of longer duration than it would

owe to the Beneficiary under the Independent Surveyor's Appointment if the Beneficiary had been named as joint employer under the Independent Surveyor's Appointment and the Independent Surveyor shall be entitled in any action or proceedings by the Beneficiary under this agreement to raise equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Service Provider under the Independent Surveyor's Appointment.

- 3.3 Any claim of any kind arising out of or in connection with this deed shall be brought only against the Independent Surveyor. No claims in respect of this deed will be brought personally against any of the partners or employees of the Independent Surveyor involved in the provision of the Surveying Services.

4 PROFESSIONAL INDEMNITY INSURANCE

- 4.1 The Independent Surveyor shall take out and maintain professional indemnity insurance in respect of the Independent Surveyor's Appointment with reputable insurers carrying on business in the United Kingdom [who are acceptable to the Beneficiary (such acceptance not to be unreasonably withheld or delayed)]⁹ with a limit of indemnity of not less than five million pounds (£5,000,000) (Indexed)] for any occurrence or series of occurrences arising out of any one event for any one claim or series of claims arising out of any one event from the date of the Independent Surveyor's Appointment until the date which is 12 years from the date of the completion of the Independent Surveyor's duties under the Independent Surveyor's Appointment, provided that such insurance is available at reasonable commercial rates.
- 4.2 Any increased or additional premium required by insurers by reason of the Independent Surveyor's own claims record or other acts or omissions particular to the Independent Surveyor shall be deemed to be within commercially reasonable rates.
- 4.3 The Independent Surveyor shall provide to the Beneficiary at its reasonable request, written confirmation by an independent company of insurance brokers that it has the professional indemnity insurance in force for the ensuing 12 months.

⁹ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

4.4 The Independent Surveyor shall immediately inform the Beneficiary if the professional indemnity insurance ceases to be available at commercially reasonable rates in order that the Independent Surveyor and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance.

5 TERMINATION OF THE INDEPENDENT SURVEYOR'S APPOINTMENT

5.1 In the event that the Independent Surveyor wishes to exercise or seek to exercise its rights pursuant to clause 6.3 of the Independent Surveyor's Appointment to terminate the Independent Surveyor's Appointment, the Independent Surveyor shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Surveyor's Appointment at the same time as the notice is served on the Counterparties.

5.2 In the event that the Counterparties wish to exercise or seek to exercise their rights pursuant to clause 6.1 or 6.2 of the Independent Surveyor's Appointment to terminate the Independent Surveyor's Appointment, the Counterparties shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Surveyor's Appointment at the same time as the notice is served on the Independent Surveyor.

6 ASSIGNMENT

6.1 [The benefit of this deed may be assigned by the Beneficiary to any other funder who takes over the Beneficiary's funding of the whole or part of the Works without the consent of the Independent Surveyor.]¹⁰

6.2 The benefit of this Deed may [also] be assigned by the Beneficiary to any other person having an interest in or providing funding in respect of the Services provided that:

4.2.1 the number of assignments under this clause is limited to two only;

4.2.2 the Independent Surveyor shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and

¹⁰ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

4.2.3 the Independent Surveyor shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.

6.3 The Independent Surveyor will not contend that any assignee is precluded from recovering any loss from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original Beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that that original Beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7 INDEPENDENT ENQUIRY CLAUSE

The liability of the Independent Surveyor under this deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Surveying Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Surveyor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

8 NON WAIVER

The Service Provider, the Authority and the Independent Surveyor agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Independent Surveyor's Appointment in any respect which may have a material effect on the benefit of this Deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

9 DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Deed shall be referred to a dispute resolution process comparable with that set out in clause 16 of the Independent Surveyor's Appointment.

10 JURISDICTION AND LAW

This Deed shall be governed by and construed in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England.

11 WARRANTY IN RESPECT OF CERTIFICATES

The Independent Surveyor warrants and undertakes that it has and will continue to act fairly, reasonably and impartially as between all interested parties in the issuing of any certificates.

12 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

13 COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this deed.

EXECUTED AS A DEED by the **INDEPENDENT SURVEYOR** in the presence of:

Director

Witness

EXECUTED AS A DEED by the **BENEFICIARY** in the presence of:

Alternative A

Authorised Signatory

Authorised Signatory

Alternative B

Director

Director/Company Secretary

EXECUTED AS A DEED by the **SERVICE PROVIDER** in the presence of:

Director

Director/Company Secretary

EXECUTED (but not delivered until the date hereof)

as a deed by the Authority by the affixing of its common seal

in the presence of:

3. Form of Independent Machine Surveyor's Appointment



DATED

2012

(1) THE SHEFFIELD CITY COUNCIL

- and -

(2) AMEY HALLAM HIGHWAYS LIMITED

- and -

(3)



**APPOINTMENT OF
INDEPENDENT MACHINE
SURVEYOR**

relating to

the rehabilitation, maintenance and operation
of the Project Network pursuant to the
Government's Private Finance Initiative

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	APPOINTMENT.....	3
3.	DURATION.....	7
4.	FEES	7
5.	LIMITATIONS ON AUTHORITY	9
6.	TERMINATION.....	9
7.	CONFIDENTIAL INFORMATION AND COPYRIGHT	12
8.	PROFESSIONAL INDEMNITY INSURANCE	13
9.	NOTICES.....	14
10.	ASSIGNMENT	16
11.	CUMULATIVE RIGHTS AND ENFORCEMENT	16
12.	WAIVER.....	17
13.	SEVERABILITY	17
14.	COUNTERPARTS.....	17
15.	VARIATION.....	17
16.	DISPUTE RESOLUTION PROCEDURE.....	17
17.	GOVERNING LAW AND JURISDICTION	18
18.	THIRD PARTY RIGHTS	18

THIS DEED is made on

2012

BETWEEN

- (1) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S1 2HH ("Authority");
- (2) **AMEY HALLAM HIGHWAYS LIMITED** (company registration number 08121168) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("Service Provider");
- (3) [REDACTED] (company registration number [REDACTED] whose registered office is at [REDACTED] [REDACTED] ("Independent Machine Surveyor").

RECITALS

- A The Authority and the Service Provider have entered into an agreement for the rehabilitation, maintenance and operation of the Project Network pursuant to the Government's private finance initiative ("**Contract**") under the terms of which they have jointly agreed to appoint an independent Machine Surveyor.
- B The Independent Machine Surveyor is an independent adviser willing to provide services to the Authority and the Service Provider.
- C The Authority and the Service Provider jointly engage the Independent Machine Surveyor to perform the duties and obligations which are ascribed to the Independent Machine Surveyor in the Contract upon the terms of this agreement (and which are set out in Appendix 1) upon the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, the following terms shall have the meanings given to them below:

"**Additional Fees**" means the fees to be paid to the Independent Machine Surveyor in respect of any Additional Services in accordance with clause 2.2;

“Additional Services” means any services which the Counterparties request from the Independent Machine Surveyor in addition to the Surveying Services pursuant to clause 2.2;

“Core Investment Period” means the period commencing on the Service Commencement Date and ending on the Planned CIP Completion Date or as such period is extended in accordance with the terms of the Contract

"Counterparty" means each of the Authority and the Service Provider, and **"Counterparties"** means both of them;

"Fees" means the fees for the Surveying Services provided;

"Final Date for Payment" has the meaning given to it in clause 4.3;

“Insolvency Event” means the occurrence of any one or more of the following events:

- (a) a court makes an order that the Independent Machine Surveyor or its Holding Company be wound up or a resolution for a voluntary winding-up of the Independent Machine Surveyor or its Holding Company is passed;
- (b) any receiver or manager in respect of the Independent Machine Surveyor or its Holding Company is appointed or possession is taken by or on behalf of any creditor of any property of the Independent Machine Surveyor or its Holding Company that is the subject of a charge;
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Independent Machine Surveyor or its Holding Company;
- (d) an administration order is made or an administrator is appointed in respect of the Independent Machine Surveyor or its Holding Company;

"Joint Notice" means a notice in writing issued jointly by the Counterparties;

"Party" means any party to this agreement;

"Planned CIP Completion Date" shall be the end of the fifth (5th) Milestone Year, being 31st December 2017; and

"Surveying Services" means the services set out in Appendix 1 to this agreement.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Contract have the same meanings in this agreement as in the Contract.
- 1.3 The headings in this agreement do not affect its interpretation.
- 1.4 Unless the context otherwise requires, all references to clauses and Appendices are references to clauses of and Appendices to this agreement.

2. APPOINTMENT

- 2.1 The Counterparties jointly engage the Independent Machine Surveyor and the Independent Machine Surveyor agrees to perform the Surveying Services and any Additional Services commissioned pursuant to clause 2.2 upon the terms and conditions set out below.
- 2.2 If the Counterparties require any Additional Services:
 - 2.2.1 the Counterparties shall issue a Joint Notice to the Independent Machine Surveyor specifying:
 - 2.2.1.1 the services required;
 - 2.2.1.2 which of the Counterparties will pay the Fees associated with the relevant services (or, if both are to pay, the proportion of the Fees for which they will each be responsible); and
 - 2.2.1.3 the proposed timing of payment of the Fees associated with the relevant services;
 - 2.2.2 within a reasonable time after issue of the Joint Notice the Independent Machine Surveyor shall provide the Counterparties with a written quote of the cost of the relevant services, which cost shall:
 - 2.2.2.1 wherever possible be based on the rates contained in Appendix 2; and

- 2.2.2.2 take into account any reduction in work or other expense which may occur as a result of the required variation to the Surveying Services, together with any other information reasonably required by either Counterparty (such as a method statement setting out how the Independent Machine Surveyor intends to carry out the relevant services); and
- 2.2.3 if the Counterparties are satisfied with the Independent Machine Surveyor's proposals they shall issue a further Joint Notice instructing the Independent Machine Surveyor to undertake the Additional Services and the Independent Machine Surveyor shall undertake the Additional Services at the time agreed by the Parties or, in the absence of agreement, as soon as reasonably practicable.
- 2.3 The Independent Machine Surveyor shall provide the Surveying Services independently, fairly and impartially to and as between each of the Counterparties. Whilst the Independent Machine Surveyor may take account of any representations made by the Counterparties the Independent Machine Surveyor shall not be bound to comply with any representations made by either of them in connection with any matter on which the Independent Machine Surveyor is required to exercise his professional judgement.
- 2.4 The Independent Machine Surveyor shall provide the Surveying Services:
- 2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held himself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project;
- 2.4.2 in accordance with Good Industry Practice, all Legislation and Highways Standards; and
- 2.4.3 in accordance with the methodology set out in Appendix 3.

For the purposes of this clause 2.4 **"Good Industry Practice"** shall mean using standards, practices, methods and procedures (as practised in the United Kingdom) and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or

other person (as the case may be) engaged in a similar type of undertaking as under this agreement under the same or similar circumstances.

- 2.5 Subject to clause 2.6, all instructions to the Independent Machine Surveyor may only be given by the Service Provider Representative (or its alternate appointed pursuant to clause 33 of the Contract (Representative)), provided that the Service Provider shall ensure that such instructions by the Service Provider Representative are not in contradiction to any of the terms of the Contract or any other instruction given by the Authority Representative pursuant to clause 30 of the Contract.
- 2.6 Where the Service Provider is in breach of any of its obligations pursuant to clause 27 of the Contract, the Authority Representative may, after giving written notice pursuant to clause 30 of the Contract of such breach, give instructions, acting alone, to the Independent Machine Surveyor, provided that the Authority shall ensure that such instructions by the Authority Representative are not in contradiction to any of the terms of the Contract or any other instruction given under this agreement or under the Contract by the Service Provider Representative.
- 2.7 The Independent Machine Surveyor shall comply with all reasonable instructions given to it by the Counterparties except and to the extent that the Independent Machine Surveyor reasonably considers that any such instructions vary or might vary the Surveying Services or its authority or responsibilities under this agreement or prejudices or might prejudice the exercise by the Independent Machine Surveyor of its professional judgment in accordance with clauses 2.3 and 2.4 above. The Independent Machine Surveyor shall promptly confirm in writing to each of the Counterparties whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.8 The Counterparties agree to co-operate with and provide reasonable assistance to the Independent Machine Surveyor to familiarise the Independent Machine Surveyor with all necessary aspects of the Project to enable the Independent Machine Surveyor to carry out its obligations under this agreement.
- 2.9 The Independent Machine Surveyor shall be deemed to have full knowledge of the provisions of the Contract, and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of either of the Counterparties which are set out in the Contract. The Service

Provider shall deliver to the Independent Machine Surveyor a true and accurate copy of the Contract as soon as practicable following:

2.9.1 the date of this agreement; and

2.9.2 any variation to the Contract which is likely to affect the performance of the Surveying Services by the Independent Machine Surveyor.

2.10 The Independent Machine Surveyor shall promptly and efficiently perform the Surveying Services as soon as reasonably practicable but consistent with the standards specified in clauses 2.3 and 2.4 above.

2.11 Subject to clause 2.12, the Independent Machine Surveyor shall use the following directors or employees in connection with the performance of the Surveying Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Machine Surveyor of the Surveying Services:

2.11.1 [REDACTED]

Such persons shall have full authority to act on behalf of the Independent Machine Surveyor for all purposes in connection with this agreement.

2.12 None of the persons mentioned in clause 2.11 shall be removed or replaced unless he/she ceases to work as a director or employee of the Independent Machine Surveyor or he/she is unable to work because of death or ill-health or by agreement of the Counterparties. The Independent Machine Surveyor shall notify (giving a minimum of ten (10) Business Days' notice) the Counterparties of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing of the Counterparties such approval not to be unreasonably delayed.

2.13 The Parties agree that, notwithstanding the terms and effect of any provision of the Limitation Act 1980 (including any amendment or re-enactment of the same), the Independent Machine Surveyor shall only be liable under this agreement in respect of claims whether for any breach of this agreement or in tort, negligence, for breach of statutory duty or otherwise which are notified to the Independent Machine Surveyor before the expiration of the period of 12 years from the date of completion of all of the Surveying Services under the terms of this agreement.

2.14 The Independent Machine Surveyor shall within 14 days of request execute deeds of warranty in favour of each of Amey LG Limited and [REDACTED] in the form set out in Appendix 4 or in such similar or varied terms thereto as the parties may agree and deliver the same duly executed to the Service Provider.

3. DURATION

3.1A It shall be a condition precedent to this document coming into effect that the Service Provider has provided a true copy of the Contract.

3.1 Subject to 3.1A the Surveying Services shall commence on the date of this agreement and cease on the earlier of:

3.1.1 termination of this agreement in accordance with clause 6; or

3.1.2 the end of the Core Investment Period

provided that the parties may agree to extend this agreement for further periods of up to 5 years to cover the provision of the Surveying Services until the expiry of the Contract.

3.2 This agreement governs all of the Surveying Services provided by the Independent Machine Surveyor in relation to the Project whether before or after the date hereof.

4. FEES

4.1 The Service Provider shall pay the Fees to the Independent Machine Surveyor in respect of the Surveying Services. The Independent Machine Surveyor shall issue invoices to the Service Provider for the Fees in accordance with part 1 of Appendix 2.

4.2 The Independent Machine Surveyor shall be entitled to be paid Additional Fees in respect of any Additional Services it provides. The Independent Machine Surveyor shall issue an invoice to the Counterparty responsible for payment on the date agreed by the Parties at the time the Additional Services were commissioned pursuant to clause 2.2 or, if both Counterparties are responsible for payment, the Independent Machine Surveyor shall issue an invoice to each of them on the relevant date, in the proportions agreed pursuant to clause 2.2. Where both Counterparties are responsible for payment of Additional Services, their obligations to pay shall be several and not joint.

- 4.3 The date on which an invoice is received by the Service Provider or the Authority (as appropriate) shall constitute the due date. The final date for payment by the Service Provider or the Authority (as appropriate) shall be thirty (30) days after receipt of the Independent Machine Surveyor's invoice ("**Final Date for Payment**").
- 4.4 Not later than five (5) Business Days after the due date ascertained in accordance with clause 4.3, the Service Provider or the Authority (as appropriate) may give written notice to the Independent Machine Surveyor stating the amount which it proposes to pay and the basis on which the amount is calculated.
- 4.5 Where the Service Provider or the Authority (as appropriate) intends to withhold payment of any amount stated in the invoice, it shall give written notice to the Independent Machine Surveyor not later than five (5) Business Days before the Final Date for Payment. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.6 If either Counterparty fails to pay the Independent Machine Surveyor any sum payable under this agreement by the Final Date for Payment, the relevant Counterparty shall pay the Independent Machine Surveyor simple interest on that sum from the Final Date for Payment until the actual date of payment at the Default Interest Rate and such rate is agreed as a fair and reasonable rate for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.7 If either Counterparty fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to clause 4.5, the Independent Machine Surveyor may suspend performance of any or all of the Surveying Services. This right is subject to the Independent Machine Surveyor first giving both Counterparties not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Service Provider (and/or the Authority (if appropriate)) pays the amount properly due.
- 4.8 Neither Counterparty shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Machine Surveyor without the prior approval of the other (such approval not to be unreasonably withheld or delayed).

4.9 As soon as the Independent Machine Surveyor becomes aware of the same and before acting on the same the Independent Machine Surveyor shall inform the Authority and the Service Provider of any instructions which either Counterparty has given him which will or could reasonably be expected to increase the fees payable to the Independent Machine Surveyor under the terms of this agreement. The Independent Machine Surveyor shall if requested by either the Service Provider or the Authority provide both Counterparties with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in part 2 of Appendix 2.

5. LIMITATIONS ON AUTHORITY

The Independent Machine Surveyor shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this agreement.

6. TERMINATION

6.1 Automatic termination

This agreement will terminate immediately upon receipt by the Independent Machine Surveyor of a Joint Notice confirming that the Contract has terminated.

6.2 Counterparties' right to terminate

6.2.1 The Counterparties may by Joint Notice immediately terminate this agreement if the Independent Machine Surveyor:

6.2.1.1 is in breach of any of the terms of this agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Machine Surveyor within twenty one (21) days of receipt by the Independent Machine Surveyor of a Joint Notice specifying the breach and requiring its remedy;

6.2.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Surveying Services and/or its other duties under this agreement;

6.2.1.3 fails to comply with clauses 2.11 and 2.12;

6.2.1.4 fails or refuses after written warning to provide the Surveying Services and/or its other duties under this agreement reasonably and as properly required of him; or

6.2.1.5 is subject to any Insolvency Event.

6.2.2 The Counterparties may terminate this agreement at any time by issuing a Joint Notice to the Independent Machine Surveyor giving at least six (6) months notice to the Independent Machine Surveyor that such termination will take effect.

6.3 Independent Machine Surveyor's right to terminate

6.3.1 Subject to clause 6.3.2 the Independent Machine Surveyor may terminate this agreement:

6.3.1.1 if any amount in excess of £20,000 is due and payable to the Independent Machine Surveyor by either of the Counterparties, and thirty (30) days has passed since the Final Date for Payment of such amount; or

6.3.1.2 either Counterparty is otherwise in material breach of its obligations.

6.3.2 The Independent Machine Surveyor shall neither exercise nor seek to exercise any right to terminate its engagement without giving the Counterparties not less than twenty (20) Business Days' written notice of its intention to do so specifying the grounds for the proposed termination and identifying who is in breach of this agreement ("**Step-in Notice**").

6.3.3 The Independent Machine Surveyor's right to terminate its engagement under this agreement or to discontinue the performance of the Surveying Services shall cease if a Counterparty who is not in breach of this agreement gives notice to the Independent Machine Surveyor within 20 Business Days of receiving a Step-in Notice under clause 6.3.2 requiring the Independent Machine Surveyor to continue the performance of the Surveying Services, provided that a Counterparty giving such notice must agree to assume all the obligations of the defaulting Counterparty and undertake to discharge all payments which are or may subsequently become due to the Independent Machine Surveyor from the defaulting Counterparty under this agreement.

- 6.3.4 If a Counterparty issues a notice in accordance with clause 6.3.3 this agreement shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Machine Surveyor had not arisen and on the basis that all references in this agreement to the defaulting Counterparty thereafter shall be read and construed as references to the Counterparty which issued the notice.
- 6.3.5 Where a Counterparty has given notice in compliance with clause 6.3.3 and has given an undertaking of the type described in that clause the defaulting Counterparty shall reimburse and indemnify that Counterparty against each and every liability which that Counterparty may have to the Independent Machine Surveyor by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Counterparty as a consequence thereof.

6.4 Consequences of Termination

- 6.4.1 Following any termination of this agreement, but subject to any set-off or deductions which the Counterparties may be entitled properly to make as a result of any breach of this agreement by the Independent Machine Surveyor, the Independent Machine Surveyor shall be entitled to be paid in full and final settlement of any valid claim which the Independent Machine Surveyor may have in consequence thereof, any fees due under clause 4 above in respect of the Surveying Services carried out in accordance with this agreement prior to the date of termination.
- 6.4.2 Termination of this agreement shall be without prejudice to any accrued rights and obligations under this agreement as at the date of termination (including the right of either Counterparty to recover damages from the Independent Machine Surveyor).
- 6.4.3 If this agreement is terminated in accordance with this clause 6, the Counterparties shall use reasonable endeavours to engage an alternative independent Machine Surveyor within 30 days, subject to Law and public procurement rules. If within such period the Counterparties are unable to procure the appointment of an alternative independent Machine Surveyor on

reasonable commercial terms, the Independent Machine Surveyor shall pay to the Counterparties any reasonable incremental loss, damage or extra costs suffered by each of them provided always that the Counterparties shall use reasonable endeavours to mitigate such amounts.

6.4.4 Termination of this agreement shall not affect the continuing rights and obligations of the Parties under clause 5 (Limitations on Authority), this clause 6, clause 7 (Confidential Information and Copyright), clause 8 (Professional Indemnity Insurance) or clause 16 (Dispute Resolution Procedure) or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

7.1 The Independent Machine Surveyor shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to either Counterparty's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of either Counterparty where the information was received during the period of this agreement. Upon termination of this agreement for whatever reasons the Independent Machine Surveyor shall deliver up to the relevant Counterparty all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant to this agreement provided that the Independent Machine Surveyor shall be entitled to retain a copy for the purposes of legitimate record keeping of the Surveying Services provided.

7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Machine Surveyor in connection with the Project shall remain vested in the Independent Machine Surveyor but the Independent Machine Surveyor grants to the Counterparties and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third

parties. The Independent Machine Surveyor shall not be liable for any use of the drawings or other documents other than for the purpose for which they were provided.

8. PROFESSIONAL INDEMNITY INSURANCE

8.1 Without prejudice to its obligations under this agreement, or otherwise at law, the Independent Machine Surveyor shall maintain professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) (Indexed) for each claim or series of claims that arise from the same cause or a single source or event in respect of any neglect, error or omission on the Independent Machine Surveyor's part in the performance of its obligations under this agreement for the period commencing on the date of this agreement and expiring twelve (12) years after:

8.1.1 expiry of the Core Investment Period in accordance with the provisions of the Contract; or

8.1.2 the termination of this agreement,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates and terms.

8.2 The Independent Machine Surveyor shall maintain such insurance with reputable insurers carrying on business in the United Kingdom with a minimum rating of A (Standard and Poor's) and A2 (Moody's).

8.3 Any increased or additional premium required by insurers by reason of the Independent Machine Surveyor's own claims record or other acts, omissions, matters or things particular to the Independent Machine Surveyor shall be deemed to be within commercially reasonable rates.

8.4 The Independent Machine Surveyor shall immediately inform the Counterparties if such insurance ceases to be available at commercially reasonable rates in order that the Independent Machine Surveyor and the Counterparties can discuss means of best protecting the respective positions of the Counterparties and the Independent Machine Surveyor in respect of the Project in the absence of such insurance.

- 8.5 The Independent Machine Surveyor shall fully co-operate with any measures reasonably required by the Counterparties including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Counterparties undertake in writing to reimburse the Independent Machine Surveyor in respect of the net cost of such insurance to the Independent Machine Surveyor above commercially reasonable rates or, if the Counterparties effect such insurance at rates at or above commercially reasonable rates, reimbursing the Counterparties in respect of what the net cost of such insurance to the Counterparties would have been at commercially reasonable rates.
- 8.6 The Independent Machine Surveyor shall, prior to commencing the provision of the Surveying Services and no less than ten (10) days after renewal dates, produce for inspection by the Counterparties documentary evidence that such insurance is being properly maintained.
- 8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this agreement for any reason whatsoever, including (without limitation) breach by either Counterparty.
- 8.8 Notwithstanding any other provision of this Agreement the Independent Machine Surveyor's maximum aggregate liability under or in connection with this agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed five million pounds (£5,000,000), provided that nothing in this agreement shall exclude or in any way limit the Independent Machine Surveyor's liability for fraud or death or personal injury caused by its negligence.

9. NOTICES

- 9.1 All notices or other communications required in connection with this agreement shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the other Parties in writing:

If to the Authority: Authority Representative

Address : Sheffield City Council
Howden House
Sheffield S1 2SH

Fax number: 01142736015 (for the attention of [REDACTED])
[REDACTED]

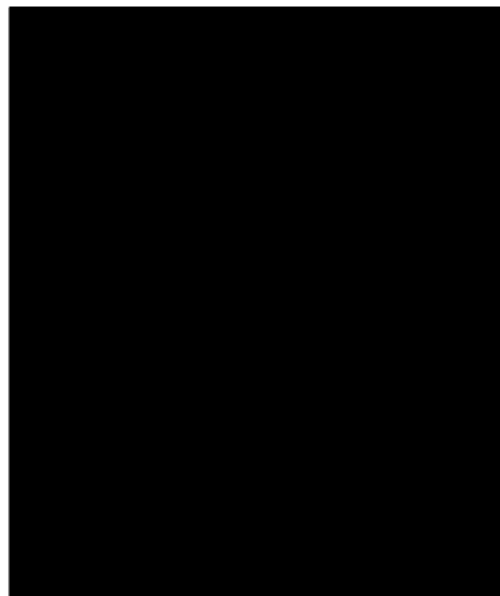
If to the Service Provider:

Address: Amey Hallam Highways Limited
Sherard Building
Edmund Halley Road
Oxford
OX4 4DQ

Fax number:

If to the Independent Machine Surveyor:

Address:



Fax number:

9.2 Service shall be deemed to have been effected as follows:

9.2.1 if personally delivered, at the time of delivery to the addressee;

- 9.2.2 if sent by first class pre-paid post, on the second (2nd) Business Day after it is put in the post; and
- 9.2.3 if sent by facsimile transmission, at the time of transmission or if the time of transmission is outside normal working hours (which shall be deemed to be 9.00am to 5.00pm Monday to Friday excluding public holidays), at 9.00am on the next Business Day.

10. ASSIGNMENT

- 10.1 The Independent Machine Surveyor shall not assign or transfer any of its rights or obligations under this agreement or sub-contract the whole of the Surveying Services. The Independent Machine Surveyor shall be entitled to sub-contract part of the Surveying Services subject to consent of the Counterparties which shall not be unreasonably withheld or delayed. For the avoidance of doubt the Independent Machine Surveyor shall remain responsible for all the Surveying Services undertaken by any sub-contractor as if the same had been undertaken by the Independent Machine Surveyor.
- 10.2 Neither of the Counterparties shall be entitled to assign or transfer any of their respective rights or obligations under this agreement save where such assignment or transfer is contemporaneous to the assignment or transfer of the Contract and is made to the same assignee or transferee. In the event that the Contract is novated to a third party, the term "*Contract*" shall include any replacement contract arising from such novation.
- 10.3 The Independent Machine Surveyor shall not be entitled to contend that any person to whom this agreement is assigned in accordance with clause 10.2 is precluded from recovering under this agreement any loss incurred by such assignee resulting from any breach of this agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this agreement.

11. CUMULATIVE RIGHTS AND ENFORCEMENT

- 11.1 Any rights and remedies provided for in this agreement whether in favour of the Service Provider or the Authority or the Independent Machine Surveyor are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

11.2 The duties and obligations of the Independent Machine Surveyor arising under or in connection with this agreement are owed to the Counterparties jointly and severally and the Authority and the Service Provider may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.

11.3 The Counterparties covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

12. WAIVER

The failure of any Party at any one time to enforce any provision of this agreement shall in no way affect its right thereafter to require complete performance by any other Party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

13. SEVERABILITY

In the event that any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this agreement and the rest of this agreement shall stand, without affecting the remaining clauses.

14. COUNTERPARTS

This agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

15. VARIATION

A variation of this agreement is valid only if it is in writing and signed by or on behalf of each party.

16. DISPUTE RESOLUTION PROCEDURE

16.1 All disputes shall be resolved in accordance with terms equivalent (*mutatis mutandis*) to the Dispute Resolution Procedure as set out in the Contract.

16.2 The Service Provider, the Authority and the Independent Machine Surveyor shall cooperate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 Subject to clause 16 above, this agreement shall be governed by and construed in accordance with the laws of England, and (subject as aforesaid) the Parties hereby submit to the exclusive jurisdiction of the courts of England.

17.2 No action or proceedings may be commenced against the Independent Machine Surveyor for any breach of this agreement after the expiry of twelve (12) years following the date of completion of the Surveying Services or the termination of this agreement, whichever is the earlier.

18. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

IN WITNESS WHEREOF the Parties have executed and delivered this document as an agreement on the date first written above.

EXECUTED (but not delivered until the date)
hereof) as a deed by the Authority by the affixing)
of its common seal in the presence of:

[Authorised Sealing Officer]

EXECUTED (but not delivered until the date)
hereof) as a deed by the Service Provider acting by)
two of its directors or a director and its secretary:

Director

Director/Secretary

EXECUTED (but not delivered until the date)
hereof) as a deed by the Independent Machine)
Surveyor acting as a director and witness:

Director

Witness

APPENDIX 1

Scope of Services – Independent Machine Surveyor

The Independent Machine Surveyor shall perform all the functions and obligations attributed to the role of Independent Machine Surveyor as referred to in the relevant clauses and schedules of the Contract and the First Tier Sub-Contract (including complying with any time limits specified in such clauses) and shall familiarise itself with the Contract and the First Tier Sub-Contract (including subject to clause 2.9 of this Agreement any design documents, any Change to the Contract or First Tier Sub-Contract issued from time to time and any other relevant documentation or information referred to in the Contract or the First Tier Sub-Contract), including but not limited to the following scope of Surveying Services:

1. SURVEYS OF CARRIAGEWAYS AND FOOTWAYS

The role of the Independent Machine Surveyor shall be to fulfil the obligations of the Independent Machine Surveyor as is further detailed within the Contract, including but not limited to the following obligations:

- 1.1 fulfilling the obligations of the Independent Machine Surveyor pursuant to clauses 27.1, 27.2, 27.3, 27.4, 27.5, 27.8 and 27.9 of the Contract;
- 1.2 carrying out the SCANNER Surveys and Milestone Rectification Works SCANNER surveys (as the case may be), as set out in clause 27.11 (*SCANNER Surveys*) of the Contract;
- 1.3 carrying out the SCRIM Surveys, as set out in clause 27.12 (*SCRIM Surveys*) of the Contract;
- 1.4 carrying out the Deflectograph Surveys, as set out in clause 27.13 (*Deflectograph Surveys*) of the Contract;
- 1.5 providing the raw data generated by the SCANNER Surveys, Milestone Rectification Works SCANNER surveys, SCRIM Surveys and Deflectograph Surveys carried out to the Service Provider;
- 1.6 submitting health and safety risk assessments to the Service Provider and the Authority;
- 1.7 attending programming meetings (as required to coordinate his/her surveys into the programme and to ensure that suitable traffic management arrangements are in place for the Independent Machine Surveyor to undertake his survey duties on site);

1.8 supplying (i) SCANNER Survey Data (in the format required 27.11.6), (ii) SCRIM Survey Data (in the format required in Clause 27.12.6) for all surveys undertaken in a calendar month within fifteen (15) Business Days of the start of the next calendar month; and

1.9 where the Independent Machine Surveyor during the course of his duties becomes aware of an Urgent or Category 1 Defect on the Project Network, inform the Service Provider's OCR immediately and in any event within 0.5 hours of becoming so aware.

2. ADDITIONAL SERVICES

Without prejudice to the generality of clause 2.2 and the ability of either party to request Additional Services, the Authority may, in the event that pursuant to clause 30.2.1 of the Contract, the Authority considers (acting reasonably) that the Service Provider is failing to procure the carrying out of Surveys in accordance with the provisions of the Contract, issue instructions in place of the Service Provider for such Surveys to be carried out and thereafter the provisions of paragraph 1 of this Appendix 1 shall be carried out by the Independent Machine Surveyor as if the Service Provider had issued an instruction to carry out such Surveys

3. PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Authority or the Service Provider, the Independent Machine Surveyor shall participate in the Dispute Resolution Procedure of the Contract (as such term is defined in the Contract) to the extent that issues under the Contract which have been referred to the said Dispute Resolution Procedure relate to the Independent Machine Surveyor's other obligations and tasks as set out in this Appendix 1 and this agreement.

4. GENERAL

4.1 All rates stated in this Agreement are current with an annual increase in April (starting in 2014) based on RPIx (Base of June 2012).

4.2 The Independent Machine Surveyor will have access to and use of all Service Provider welfare facilities provided under the Contract.

4.3 The Independent Machine Surveyor will have use Olive Grove Depot for the storage of testing equipment throughout the duration of the surveys in Sheffield

- 4.4 Traffic Management for machine surveys will be provided by the Independent Machine Surveyor. Amey will work with the Independent Machine Surveyor to plan and programme Traffic Management and any additional equipment which will be provided at the Service Provider's expense.
- 4.5 All survey vehicles used by the Independent Machine Surveyor shall be equipped with:
- i) two (2) beacons or light bars
 - ii) Chevrons at the rear of the vehicle compliant with Chapter 8 of the Traffic Signs Manual
 - iii) Highway Maintenance sign (plate 7404 Traffic Signs Regulations and General Directions (TSRGD))
 - iv) Suitable warning sign indicating survey or inspection operations (plate 7001.1 TSRGD).
- 4.6 The Independent Machine Surveyor staff shall wear the PPE provided for in their H&S plan and with clear branding to allow them to be identified as IMS staff.
- 4.7 The Independent Machine Surveyor shall provide all necessary annual calibration and correlation certificates for each survey machine which will need to be approved by the Independent Surveyor prior to survey commencement.

APPENDIX 2

Fees

Part 1 - Fee Instalments

Ref.	Description	Quantity	Unit	Cost \$
1	Undertake SCANNER surveys (PA Cl 27.11) ¹	Item	per lane Km	
2	Undertake SCRIM surveys (PA Cl 27.12) ²	Item	per lane Km	
3	Undertake Deflectograph surveys (PA Cl 27.13) ³	Item	per lane Km	
4	Provide traffic management for Deflectograph - Warning Signs Only	Item	per lane Km	
5	Provide traffic management for Deflectograph - Mobile Stop/Go Signs - Single carriageway roads	Item	per lane Km	
6	Provide mobile traffic management for Deflectograph - Dual carriageway roads	Item	per lane Km	

¹ Assume 500 lane Km per annum

² Assume 700 lane Km per annum

³ Assume 200 lane Km per annum

APPENDIX 3

Methodology to Respond to Scope of Services

[To be inserted]

Appendix 4
Collateral Warranty

DATED

20

[BENEFICIARY] (1)

and

[INDEPENDENT MACHINE SURVEYOR] (2)

and

[THE SERVICE PROVIDER] (3)

and

THE SHEFFIELD CITY COUNCIL (4)

COLLATERAL WARRANTY OF THE
INDEPENDENT MACHINE SURVEYOR'S APPOINTMENT

THIS DEED dated

20[]

BETWEEN

- (1) **[BENEFICIARY]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the “**Beneficiary**”);⁴
- (2) **[INDEPENDENT MACHINE SURVEYOR]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the “**Independent Machine Surveyor**”);
- (3) **[SERVICE PROVIDER]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the “**Service Provider**”); and
- (4) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S12HH (the “**Authority**”);

NOW, in consideration of the payment of One Pound (receipt of which is hereby acknowledged by the Independent Machine Surveyor), **THIS DEED** witnesses as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the context otherwise requires, the terms shall have the same meaning as in the Independent Machine Surveyor’s Appointment including incorporation of the Contract referred to in the Independent Machine Surveyor’s Appointment.

1.2 Successors

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this deed.

1.3 Headings

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

⁴ The beneficiary under this agreement is intended to be the Tier 1 Sub-Contractors and the Funders.

1.4 Notices

All notices under this deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this deed or to the registered office or principal business address of any party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

1.5 References to statutes, etc

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.6 Genders and numbers

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2 ACKNOWLEDGEMENT

2.1 The Independent Machine Surveyor acknowledges that the Beneficiary has relied on and continues to rely on the Independent Machine Surveyor to carry out its obligations pursuant to the Independent Machine Surveyor's Appointment.

2.2 The Authority and the Service Provider acknowledge the obligations on the Independent Machine Surveyor pursuant to this Deed and the rights of the beneficiary to enforce such obligations.

3 DUTY OF CARE

3.1 The Independent Machine Surveyor warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Surveying Services the reasonable skill, care and diligence to be expected from a competent and properly qualified Independent Machine Surveyor experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Project and in accordance with all current British Standards and Codes of Practice and in compliance with all applicable statutes and regulations as those comprised in the Project in the performance of its duties and obligations under the Independent Machine Surveyor's Appointment.

- 3.2 For the avoidance of doubt the Independent Machine Surveyor shall owe no obligation, duty or liability to the Beneficiary by virtue of this deed which is greater or of longer duration than it would owe to the Beneficiary under the Independent Machine Surveyor's Appointment if the Beneficiary had been named as joint employer under the Independent Machine Surveyor's Appointment and the Independent Machine Surveyor shall be entitled in any action or proceedings by the Beneficiary under this agreement to raise equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Service Provider under the Independent Machine Surveyor's Appointment.
- 3.3 Any claim of any kind arising out of or in connection with this deed shall be brought only against the Independent Machine Surveyor. No claims in respect of this deed will be brought personally against any of the partners or employees of the Independent Machine Surveyor involved in the provision of the Surveying Services.

4 PROFESSIONAL INDEMNITY INSURANCE

- 4.1 The Independent Machine Surveyor shall take out and maintain professional indemnity insurance in respect of the Independent Machine Surveyor's Appointment with reputable insurers carrying on business in the United Kingdom [who are acceptable to the Beneficiary (such acceptance not to be unreasonably withheld or delayed)]⁵ with a limit of indemnity of not less than [five million pounds (£5,000,000) (Indexed)] for any occurrence or series of occurrences arising out of any one event for any one claim or series of claims arising out of any one event from the date of the Independent Machine Surveyor's Appointment until the date which is 12 years from the date of the completion of the Independent Machine Surveyor's duties under the Independent Machine Surveyor's Appointment, provided that such insurance is available at reasonable commercial rates.
- 4.2 Any increased or additional premium required by insurers by reason of the Independent Machine Surveyor's own claims record or other acts or omissions particular to the Independent Machine Surveyor shall be deemed to be within commercially reasonable rates.

⁵ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

4.3 The Independent Machine Surveyor shall provide to the Beneficiary at its reasonable request, written confirmation by an independent company of insurance brokers that it has the professional indemnity insurance in force for the ensuing 12 months.

4.4 The Independent Machine Surveyor shall immediately inform the Beneficiary if the professional indemnity insurance ceases to be available at commercially reasonable rates in order that the Independent Machine Surveyor and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance.

5 TERMINATION OF THE INDEPENDENT MACHINE SURVEYOR'S APPOINTMENT

5.1 In the event that the Independent Machine Surveyor wishes to exercise or seek to exercise its rights pursuant to clause 6.3 of the Independent Machine Surveyor's Appointment to terminate the Independent Machine Surveyor's Appointment, the Independent Machine Surveyor shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Machine Surveyor's Appointment at the same time as the notice is served on the Counterparties.

5.2 In the event that the Counterparties wish to exercise or seek to exercise their rights pursuant to clause 6.1 or 6.2 of the Independent Machine Surveyor's Appointment to terminate the Independent Machine Surveyor's Appointment, the Counterparties shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Machine Surveyor's Appointment at the same time as the notice is served on the Independent Machine Surveyor.

6 ASSIGNMENT

6.1 [The benefit of this deed may be assigned by the Beneficiary to any other funder who takes over the Beneficiary's funding of the whole or part of the Works without the consent of the Independent Machine Surveyor.]⁶

6.2 The benefit of this Deed may [also] be assigned by the Beneficiary to any other person having an interest in or providing funding in respect of the Services provided that:

⁶ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

- 4.2.1 the number of assignments under this clause is limited to two only;
 - 4.2.2 the Independent Machine Surveyor shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and
 - 4.2.3 the Independent Machine Surveyor shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.
- 6.3 The Independent Machine Surveyor will not contend that any assignee is precluded from recovering any loss from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original Beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that that original Beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7 INDEPENDENT ENQUIRY CLAUSE

The liability of the Independent Machine Surveyor under this deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Surveying Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Machine Surveyor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

8 NON WAIVER

The Service Provider, the Authority and the Independent Machine Surveyor agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Independent Machine Surveyor's Appointment in any respect which may have a material effect on the benefit of this Deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

9 DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Deed shall be referred to a dispute resolution process comparable with that set out in clause 16 of the Independent Machine Surveyor's Appointment.

10 JURISDICTION AND LAW

This Deed shall be governed by and construed in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England.

11 WARRANTY IN RESPECT OF CERTIFICATES

The Independent Machine Surveyor warrants and undertakes that it has and will continue to act fairly, reasonably and impartially as between all interested parties in the issuing of any certificates.

12 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

13 COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this deed.

EXECUTED AS A DEED by the **INDEPENDENT MACHINE SURVEYOR** in the presence of:

Director

Witness

EXECUTED AS A DEED by the **BENEFICIARY** in the presence of:

Alternative A

Authorised Signatory

Authorised Signatory

Alternative B

Director

Director/Company Secretary

EXECUTED AS A DEED by the **SERVICE PROVIDER** in the presence of:

Director

Director/Company Secretary

EXECUTED (but not delivered until the date hereof)

as a deed by the Authority by the affixing of its common seal

in the presence of:

4. Form of Independent Bridge Inspector's Appointment



DATED

2012

(1) THE SHEFFIELD CITY COUNCIL

- and -

(2) AMEY HALLAM HIGHWAYS LIMITED

- and -

(3) URS INFRASTRUCTURE & ENVIRONMENT UK LIMITED

**APPOINTMENT OF
INDEPENDENT BRIDGE
INSPECTOR**

relating to

the rehabilitation, maintenance and operation
of the Project Network pursuant to the
Government's Private Finance Initiative

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	APPOINTMENT.....	3
3.	DURATION	7
4.	FEEES	7
5.	LIMITATIONS ON AUTHORITY	9
6.	TERMINATION.....	9
7.	CONFIDENTIAL INFORMATION AND COPYRIGHT	12
8.	PROFESSIONAL INDEMNITY INSURANCE	13
9.	NOTICES.....	15
10.	ASSIGNMENT	16
11.	CUMULATIVE RIGHTS AND ENFORCEMENT	17
12.	WAIVER.....	17
13.	SEVERABILITY	17
14.	COUNTERPARTS.....	17
15.	VARIATION.....	18
16.	DISPUTE RESOLUTION PROCEDURE.....	18
17.	GOVERNING LAW AND JURISDICTION	18
18.	THIRD PARTY RIGHTS	18

BETWEEN

- (1) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S1 2HH ("Authority");
- (2) **AMEY HALLAM HIGHWAYS LIMITED** (company registration number 08121168) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("Service Provider");
- (3) **URS INFRASTRUCTURE & ENVIRONMENT UK LIMITED** (company registration number 00880328) whose registered office is at Scott House, Alencon Link, Basingstoke, Hampshire, RG21 7PP ("Independent Bridge Inspector").

RECITALS

- A The Authority and the Service Provider have entered into an agreement for the rehabilitation, maintenance and operation of the Project Network pursuant to the Government's private finance initiative ("**Contract**") under the terms of which they have jointly agreed to appoint an independent certifier.
- B The Independent Bridge Inspector is an independent adviser willing to provide services to the Authority and the Service Provider.
- C The Authority and the Service Provider jointly engage the Independent Bridge Inspector to perform the duties and obligations which are ascribed to the Independent Bridge Inspector in the Contract upon the terms of this agreement (and which are set out in Appendix 1) upon the terms and conditions set out below.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, the following terms shall have the meanings given to them below:

"**Additional Fees**" means the fees to be paid to the Independent Bridge Inspector in respect of any Additional Services in accordance with clause 2.2;

“Additional Services” means any services which the Counterparties request from the Independent Bridge Inspector in addition to the Bridge Inspection Services pursuant to clause 2.2;

"Bridge Inspection Services" means the services set out in Appendix 1 to this agreement;

“Core Investment Period” means the period commencing on the Service Commencement Date and ending on the Planned CIP Completion Date or as such period is extended in accordance with the terms of the Contract

"Counterparty" means each of the Authority and the Service Provider, and **"Counterparties"** means both of them;

"Fees" means the fees for the Bridge Inspection Services provided;

"Final Date for Payment" has the meaning given to it in clause 4.3;

“Insolvency Event” means the occurrence of any one or more of the following events:

- (a) a court makes an order that the Independent Bridge Inspector or its Holding Company be wound up or a resolution for a voluntary winding-up of the Independent Bridge Inspector or its Holding Company is passed;
- (b) any receiver or manager in respect of the Independent Bridge Inspector or its Holding Company is appointed or possession is taken by or on behalf of any creditor of any property of the Independent Bridge Inspector or its Holding Company that is the subject of a charge;
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Independent Bridge Inspector or its Holding Company;
- (d) an administration order is made or an administrator is appointed in respect of the Independent Bridge Inspector or its Holding Company;

"Joint Notice" means a notice in writing issued jointly by the Counterparties;

"Party" means any party to this agreement; and

"Planned CIP Completion Date" shall be the end of the fifth (5th) Milestone Year, being 31st December 2017.

- 1.2 Unless the context otherwise requires, words and expressions defined in the Contract have the same meanings in this agreement as in the Contract.
- 1.3 The headings in this agreement do not affect its interpretation.
- 1.4 Unless the context otherwise requires, all references to clauses and Appendices are references to clauses of and Appendices to this agreement.

2. APPOINTMENT

- 2.1 The Counterparties jointly engage the Independent Bridge Inspector and the Independent Bridge Inspector agrees to perform the Bridge Inspection Services and any Additional Services commissioned pursuant to clause 2.2 upon the terms and conditions set out below.
- 2.2 If the Counterparties require any Additional Services:
 - 2.2.1 the Counterparties shall issue a Joint Notice to the Independent Bridge Inspector specifying:
 - 2.2.1.1 the services required;
 - 2.2.1.2 which of the Counterparties will pay the Fees associated with the relevant services (or, if both are to pay, the proportion of the Fees for which they will each be responsible); and
 - 2.2.1.3 the proposed timing of payment of the Fees associated with the relevant services;
 - 2.2.2 within a reasonable time after issue of the Joint Notice the Independent Bridge Inspector shall provide the Counterparties with a written quote of the cost of the relevant services, which cost shall:
 - 2.2.2.1 wherever possible be based on the rates contained in part 2 of Appendix 2; and

2.2.2.2 take into account any reduction in work or other expense which may occur as a result of the required variation to the Bridge Inspection Services,

together with any other information reasonably required by either Counterparty (such as a method statement setting out how the Independent Bridge Inspector intends to carry out the relevant services); and

2.2.3 if the Counterparties are satisfied with the Independent Bridge Inspector's proposals they shall issue a further Joint Notice instructing the Independent Bridge Inspector to undertake the Additional Services and the Independent Bridge Inspector shall undertake the Additional Services at the time agreed by the Parties or, in the absence of agreement, as soon as reasonably practicable.

2.3 The Independent Bridge Inspector shall provide the Bridge Inspection Services independently, fairly and impartially to and as between each of the Counterparties. Whilst the Independent Bridge Inspector may take account of any representations made by the Counterparties the Independent Bridge Inspector shall not be bound to comply with any representations made by either of them in connection with any matter on which the Independent Bridge Inspector is required to exercise his professional judgement.

2.4 The Independent Bridge Inspector shall provide the Bridge Inspection Services:

2.4.1 with the reasonable care, skill and diligence to be expected of a properly qualified and competent professional adviser who has held himself out as competent and experienced in rendering such services for projects of a similar size, nature, scope and complexity to the Project;

2.4.2 in accordance with Good Industry Practice, all Legislation and Highways Standards; and

2.4.3 in accordance with the methodology set out in Appendix 3.

For the purposes of this clause 2.4 "**Good Industry Practice**" shall mean using standards, practices, methods and procedures (as practised in the United Kingdom) and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or

other person (as the case may be) engaged in a similar type of undertaking as under this agreement under the same or similar circumstances.

- 2.5 Subject to clause 2.6, all instructions to the Independent Bridge Inspector may only be given by the Service Provider Representative (for its alternate appointed pursuant to clause 33 of the Contract (*Representative*)), provided that the Service Provider shall ensure that such instructions by the Service Provider Representative are not in contradiction to any of the terms of the Contract or any other instruction given by the Authority Representative pursuant to clause 30 of the Contract.
- 2.6 Where the Service Provider is in breach of any of its obligations pursuant to clause 27 of the Contract, the Authority Representative may, after giving written notice pursuant to clause 30 of the Contract of such breach, give instructions, acting alone, to the Independent Bridge Inspector, provided that the Authority shall ensure that such instructions by the Authority Representative are not in contradiction to any of the terms of the Contract or any other instruction given under this agreement or under the Contract by the Service Provider Representative.
- 2.7 The Independent Bridge Inspector shall comply with all reasonable instructions given to it by the Counterparties except and to the extent that the Independent Bridge Inspector reasonably considers that any such instructions vary or might vary the Bridge Inspection Services or its authority or responsibilities under this agreement or prejudices or might prejudice the exercise by the Independent Bridge Inspector of its professional judgment in accordance with clauses 2.3 and 2.4 above. The Independent Bridge Inspector shall promptly confirm in writing to each of the Counterparties whether or not it shall comply with any such instruction setting out the grounds upon which the decision is made.
- 2.8 The Counterparties agree to co-operate with and provide reasonable assistance to the Independent Bridge Inspector to familiarise the Independent Bridge Inspector with all necessary aspects of the Project to enable the Independent Bridge Inspector to carry out its obligations under this agreement.
- 2.9 The Independent Bridge Inspector shall be deemed to have full knowledge of the provisions of the Contract, and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of either of the Counterparties which are set out in the Contract. The Service

Provider shall deliver to the Independent Bridge Inspector a true and accurate copy of the Contract as soon as practicable following:

2.9.1 the date of this agreement; and

2.9.2 any variation to the Contract which is likely to affect the performance of the Bridge Inspection Services by the Independent Bridge Inspector.

2.10 The Independent Bridge Inspector shall promptly and efficiently perform the Bridge Inspection Services as soon as reasonably practicable but consistent with the standards specified in clauses 2.3 and 2.4 above.

2.11 Subject to clause 2.12, the Independent Bridge Inspector shall use the following directors or employees in connection with the performance of the Bridge Inspection Services and such persons' services shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Bridge Inspector of the Bridge Inspection Services

2.11.1 

Such persons shall have full authority to act on behalf of the Independent Bridge Inspector for all purposes in connection with this agreement.

2.12 None of the persons mentioned in clause 2.11 shall be removed or replaced unless he/she ceases to work as a director or employee of the Independent Bridge Inspector or he/she is unable to work because of death or ill-health or by agreement of the Counterparties. The Independent Bridge Inspector shall notify (giving a minimum of ten (10) Business Days' notice) the Counterparties of any such circumstances and shall be responsible for finding a replacement whose appointment shall be subject to approval in writing of the Counterparties such approval not to be unreasonably delayed.

2.13 The Parties agree that, notwithstanding the terms and effect of any provision of the Limitation Act 1980 (including any amendment or re-enactment of the same), the Independent Bridge Inspector shall only be liable under this agreement in respect of claims whether for any breach of this agreement or in tort, negligence, for breach of statutory duty or otherwise which are notified to the Independent Bridge Inspector before the expiration of the period of 12 years from the date of completion of all of the Bridge Inspection Services under the terms of this agreement.

2.14 The Independent Bridge inspector shall within 14 days of request execute deeds of warranty in favour of each of Amey LG Limited and [REDACTED] in the form set out in Appendix 4 or in such similar or varied terms thereto as the parties may agree and deliver the same duly executed to the Service Provider.

3. DURATION

3.1A It shall be a condition precedent to this document coming into effect that the Service Provider has provided a true copy of the Contract.

3.1 Subject to 3.1A the Bridge Inspection Services shall commence on the date of this agreement and cease on the earlier of:

3.1.1 termination of this agreement in accordance with clause 6; or

3.1.2 the end of the Core Investment Period

provided that the parties may agree to extend this agreement for further periods of up to 5 years to cover the provision of the Bridge Inspection Services until the expiry of the Contract.

3.2 This agreement governs all of the Bridge Inspection Services provided by the Independent Bridge Inspector in relation to the Project whether before or after the date hereof.

4. FEES

4.1 The Service Provider shall pay the Fees to the Independent Bridge Inspector in respect of the Bridge Inspection Services. The Independent Bridge Inspector shall issue invoices to the Service Provider for the Fees in accordance with part 1 of Appendix 2.

4.2 The Independent Bridge Inspector shall be entitled to be paid Additional Fees in respect of any Additional Services it provides. The Independent Bridge Inspector shall issue an invoice to the Counterparty responsible for payment on the date agreed by the Parties at the time the Additional Services were commissioned pursuant to clause 2.2 or, if both Counterparties are responsible for payment, the Independent Bridge Inspector shall issue an invoice to each of them on the relevant date, in the proportions agreed pursuant to clause 2.2. Where both Counterparties are responsible

for payment of Additional Services, their obligations to pay shall be several and not joint.

- 4.3 The date on which an invoice is received by the Service Provider or the Authority (as appropriate) shall constitute the due date. The final date for payment by the Service Provider or the Authority (as appropriate) shall be thirty (30) days after receipt of the Independent Bridge Inspector's invoice ("**Final Date for Payment**").
- 4.4 Not later than five (5) Business Days after the due date ascertained in accordance with clause 4.3, the Service Provider or the Authority (as appropriate) may give written notice to the Independent Bridge Inspector stating the amount which it proposes to pay and the basis on which the amount is calculated.
- 4.5 Where the Service Provider or the Authority (as appropriate) intends to withhold payment of any amount stated in the invoice, it shall give written notice to the Independent Bridge Inspector not later than five (5) Business Days before the Final Date for Payment. The notice shall state the amount to be withheld and the ground or grounds for withholding the payment and if there is more than one ground, the notice shall identify the amount attributable to each ground.
- 4.6 If either Counterparty fails to pay the Independent Bridge Inspector any sum payable under this agreement by the Final Date for Payment, the relevant Counterparty shall pay the Independent Bridge Inspector simple interest on that sum from the Final Date for Payment until the actual date of payment at the Default Interest Rate and such rate is agreed as a fair and reasonable rate for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.7 If either Counterparty fails to pay the amounts properly due pursuant to these provisions and no notice to withhold the payment has been given pursuant to clause 4.5, the Independent Bridge Inspector may suspend performance of any or all of the Bridge Inspection Services. This right is subject to the Independent Bridge Inspector first giving both Counterparties not less than seven (7) Business Days' notice in writing of such intention stating the grounds for suspension. The right to suspend performance shall cease when the Service Provider (and/or the Authority (if appropriate)) pays the amount properly due.
- 4.8 Neither Counterparty shall issue instructions or do anything which does or is reasonably likely materially to increase the fees payable to the Independent Bridge

Inspector without the prior approval of the other (such approval not to be unreasonably withheld or delayed).

4.9 As soon as the Independent Bridge Inspector becomes aware of the same and before acting on the same the Independent Bridge Inspector shall inform the Authority and the Service Provider of any instructions which either Counterparty has given him which will or could reasonably be expected to increase the fees payable to the Independent Bridge Inspector under the terms of this agreement. The Independent Bridge Inspector shall if requested by either the Service Provider or the Authority provide both Counterparties with as detailed an estimate as is reasonably practicable of the increase to the fees payable to it if it carries out such instructions. The estimate of increased fees shall be based upon the rates contained in part 2 of Appendix 2.

5. LIMITATIONS ON AUTHORITY

The Independent Bridge Inspector shall not express an opinion on and shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this agreement.

6. TERMINATION

6.1 Automatic termination

This agreement will terminate immediately upon receipt by the Independent Bridge Inspector of a Joint Notice confirming that the Contract has terminated.

6.2 Counterparties' right to terminate

6.2.1 The Counterparties may by Joint Notice immediately terminate this agreement if the Independent Bridge Inspector:

6.2.1.1 is in breach of any of the terms of this agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Bridge Inspector within twenty one (21) days of receipt by the Independent Bridge Inspector of a Joint Notice specifying the breach and requiring its remedy;

6.2.1.2 is incompetent, guilty of gross misconduct and/or any material failure, negligence or delay in the provision of the Bridge Inspection Services and/or its other duties under this agreement;

6.2.1.3 fails to comply with clauses 2.11 and 2.12;

6.2.1.4 fails or refuses after written warning to provide the Bridge Inspection Services and/or its other duties under this agreement reasonably and as properly required of him; or

6.2.1.5 is subject to any Insolvency Event.

6.2.2 The Counterparties may terminate this agreement at any time by issuing a Joint Notice to the Independent Bridge Inspector giving at least six (6) months' notice to the Independent Bridge Inspector that such termination will take effect.

6.3 Independent Bridge Inspector's right to terminate

6.3.1 Subject to clause 6.3.2 the Independent Bridge Inspector may terminate this agreement:

6.3.1.1 if any amount in excess of £20,000 is due and payable to the Independent Bridge Inspector by either of the Counterparties, and thirty (30) days has passed since the Final Date for Payment of such amount; or

6.3.1.2 either Counterparty is otherwise in material breach of its obligations.

6.3.2 The Independent Bridge Inspector shall neither exercise nor seek to exercise any right to terminate its engagement without giving the Counterparties not less than twenty (20) Business Days' written notice of its intention to do so specifying the grounds for the proposed termination and identifying who is in breach of this agreement ("**Step-in Notice**").

6.3.3 The Independent Bridge Inspector's right to terminate its engagement under this agreement or to discontinue the performance of the Bridge Inspection Services shall cease if a Counterparty who is not in breach of this agreement gives notice to the Independent Bridge Inspector within 20 Business Days of

receiving a Step-in Notice under clause 6.3.2 requiring the Independent Bridge Inspector to continue the performance of the Bridge Inspection Services, provided that a Counterparty giving such notice must agree to assume all the obligations of the defaulting Counterparty and undertake to discharge all payments which are or may subsequently become due to the Independent Bridge Inspector from the defaulting Counterparty under this agreement.

- 6.3.4 If a Counterparty issues a notice in accordance with clause 6.3.3 this agreement shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Bridge Inspector had not arisen and on the basis that all references in this agreement to the defaulting Counterparty thereafter shall be read and construed as references to the Counterparty which issued the notice.
- 6.3.5 Where a Counterparty has given notice in compliance with clause 6.3.3 and has given an undertaking of the type described in that clause the defaulting Counterparty shall reimburse and indemnify that Counterparty against each and every liability which that Counterparty may have to the Independent Bridge Inspector by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Counterparty as a consequence thereof.

6.4 Consequences of Termination

- 6.4.1 Following any termination of this agreement, but subject to any set-off or deductions which the Counterparties may be entitled properly to make as a result of any breach of this agreement by the Independent Bridge Inspector, the Independent Bridge Inspector shall be entitled to be paid in full and final settlement of any valid claim which the Independent Bridge Inspector may have in consequence thereof, any fees due under clause 4 above in respect of the Bridge Inspection Services carried out in accordance with this agreement prior to the date of termination.
- 6.4.2 Termination of this agreement shall be without prejudice to any accrued rights and obligations under this agreement as at the date of termination

(including the right of either Counterparty to recover damages from the Independent Bridge Inspector).

6.4.3 If this agreement is terminated in accordance with this clause 6, the Counterparties shall use reasonable endeavours to engage an alternative independent certifier within 30 days, subject to Law and public procurement rules. If within such period the Counterparties are unable to procure the appointment of an alternative independent certifier on reasonable commercial terms, the Independent Bridge Inspector shall pay to the Counterparties any reasonable incremental loss, damage or extra costs suffered by each of them provided always that the Counterparties shall use reasonable endeavours to mitigate such amounts.

6.4.4 Termination of this agreement shall not affect the continuing rights and obligations of the Parties under clause 5 (Limitations on Authority), this clause 6, clause 7 (Confidential Information and Copyright), clause 8 (Professional Indemnity Insurance) or clause 16 (Dispute Resolution Procedure) or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

7. CONFIDENTIAL INFORMATION AND COPYRIGHT

7.1 The Independent Bridge Inspector shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any unpublished information relating to either Counterparty's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of either Counterparty where the information was received during the period of this agreement. Upon termination of this agreement for whatever reasons the Independent Bridge Inspector shall deliver up to the relevant Counterparty all working papers, computer disks and tapes or other material and copies provided to or prepared by him pursuant to this agreement provided that the Independent Bridge Inspector shall be entitled to retain a copy for the purposes of legitimate record keeping of the Bridge Inspection Services provided.

7.2 The copyright in all reports, calculations and other similar documents provided by the Independent Bridge Inspector in connection with the Project shall remain vested in the Independent Bridge Inspector but the Independent Bridge Inspector grants to the Counterparties and their nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Project including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Project. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties. The Independent Bridge Inspector shall not be liable for any use of the drawings or other documents other than for the purpose for which they were provided.

8. PROFESSIONAL INDEMNITY INSURANCE

8.1 Without prejudice to its obligations under this agreement, or otherwise at law, the Independent Bridge Inspector shall maintain professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) (Indexed) for each claim or series of claims that arise from the same cause or a single source or event in respect of any neglect, error or omission on the Independent Bridge Inspector's part in the performance of its obligations under this agreement for the period commencing on the date of this agreement and expiring twelve (12) years after:

8.1.1 expiry of the Core Investment Period in accordance with the provisions of the Contract; or

8.1.2 the termination of this agreement,

whichever is the earlier, provided that such insurance is available in the market place at commercially reasonable rates and terms.

8.2 The Independent Bridge Inspector shall maintain such insurance with reputable insurers carrying on business in the United Kingdom with a minimum rating of A (Standard and Poor's) and A2 (Moody's).

8.3 Any increased or additional premium required by insurers by reason of the Independent Bridge Inspector's own claims record or other acts, omissions, matters or

things particular to the Independent Bridge Inspector shall be deemed to be within commercially reasonable rates.

- 8.4 The Independent Bridge Inspector shall immediately inform the Counterparties if such insurance ceases to be available at commercially reasonable rates in order that the Independent Bridge Inspector and the Counterparties can discuss means of best protecting the respective positions of the Counterparties and the Independent Bridge Inspector in respect of the Project in the absence of such insurance.
- 8.5 The Independent Bridge Inspector shall fully co-operate with any measures reasonably required by the Counterparties including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Counterparties undertake in writing to reimburse the Independent Bridge Inspector in respect of the net cost of such insurance to the Independent Bridge Inspector above commercially reasonable rates or, if the Counterparties effect such insurance at rates at or above commercially reasonable rates, reimbursing the Counterparties in respect of what the net cost of such insurance to the Counterparties would have been at commercially reasonable rates.
- 8.6 The Independent Bridge Inspector shall, prior to commencing the provision of the Bridge Inspection Services and no less than ten (10) days after renewal dates, produce for inspection by the Counterparties documentary evidence that such insurance is being properly maintained.
- 8.7 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this agreement for any reason whatsoever, including (without limitation) breach by either Counterparty.
- 8.8 Notwithstanding any other provision of this Agreement the Independent Bridge Inspector's maximum aggregate liability under or in connection with this agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed five million pounds (£5,000,000), provided that nothing in this agreement shall exclude or in any way limit the Independent Bridge Inspector's liability for fraud or death or personal injury caused by its negligence.

9. NOTICES

9.1 All notices or other communications required in connection with this agreement shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the other Parties in writing:

If to the Authority: Authority Representative

Address : Sheffield City Council

Howden House

Sheffield S1 2SH

Fax number: 01142736015 (for the attention of [REDACTED])

If to the Service Provider:

Address: Amey Hallam Highways Limited

Sherard Building

Edmund Halley Road

Oxford

OX4 4DQ

Fax number:

If to the Independent Bridge Inspector:

Address: URS Infrastructure & Environment UK Limited

Scott House

Alencon Link

Basingstoke

Hampshire

Fax number:

9.2 Service shall be deemed to have been effected as follows:

9.2.1 if personally delivered, at the time of delivery to the addressee;

9.2.2 if sent by first class pre-paid post, on the second (2nd) Business Day after it is put in the post; and

9.2.3 if sent by facsimile transmission, at the time of transmission or if the time of transmission is outside normal working hours (which shall be deemed to be 9.00am to 5.00pm Monday to Friday excluding public holidays), at 9.00am on the next Business Day.

10. ASSIGNMENT

10.1 The Independent Bridge Inspector shall not assign or transfer any of its rights or obligations under this agreement or sub-contract the whole of the Bridge Inspection Services. The Independent Bridge Inspector shall be entitled to sub-contract part of the Bridge Inspection Services subject to consent of the Counterparties which shall not be unreasonably withheld or delayed. For the avoidance of doubt the Independent Bridge Inspector shall remain responsible for all the Bridge Inspection Services undertaken by any sub-contractor as if the same had been undertaken by the Independent Bridge Inspector.

10.2 Neither of the Counterparties shall be entitled to assign or transfer any of their respective rights or obligations under this agreement save where such assignment or transfer is contemporaneous to the assignment or transfer of the Contract and is made to the same assignee or transferee. In the event that the Contract is novated to a third party, the term "*Contract*" shall include any replacement contract arising from such novation.

10.3 The Independent Bridge Inspector shall not be entitled to contend that any person to whom this agreement is assigned in accordance with clause 10.2 is precluded from recovering under this agreement any loss incurred by such assignee resulting from any breach of this agreement (whenever happening) by reason that such person is an assignee and not a named promisee under this agreement.

11. CUMULATIVE RIGHTS AND ENFORCEMENT

- 11.1 Any rights and remedies provided for in this agreement whether in favour of the Service Provider or the Authority or the Independent Bridge Inspector are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 11.2 The duties and obligations of the Independent Bridge Inspector arising under or in connection with this agreement are owed to the Counterparties jointly and severally and the Authority and the Service Provider may accordingly enforce the provisions hereof and pursue their respective rights hereunder in their own name, whether separately or with each other.
- 11.3 The Counterparties covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

12. WAIVER

The failure of any Party at any one time to enforce any provision of this agreement shall in no way affect its right thereafter to require complete performance by any other Party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

13. SEVERABILITY

In the event that any term, condition or provision contained in this agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this agreement and the rest of this agreement shall stand, without affecting the remaining clauses.

14. COUNTERPARTS

This agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

15. VARIATION

A variation of this agreement is valid only if it is in writing and signed by or on behalf of each party.

16. DISPUTE RESOLUTION PROCEDURE

16.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure as set out in the Contract.

16.2 The Service Provider, the Authority and the Independent Bridge Inspector shall cooperate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 Subject to clause 16 above, this agreement shall be governed by and construed in accordance with the laws of England, and (subject as aforesaid) the Parties hereby submit to the exclusive jurisdiction of the courts of England.

17.2 No action or proceedings may be commenced against the Independent Bridge Inspector for any breach of this agreement after the expiry of twelve (12) years following the date of completion of the Bridge Inspection Services or the termination of this agreement, whichever is the earlier.

18. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Party) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

IN WITNESS WHEREOF the Parties have executed and delivered this document as an agreement on the date first written above.

EXECUTED (but not delivered until the date)
hereof) as a deed by the Authority by the affixing)
of its common seal in the presence of:

[Authorised Sealing Officer]

EXECUTED (but not delivered until the date)
hereof) as a deed by the Service Provider acting)
by:

Attorney (signature)

Name (Block Capitals)

in the presence of:

Witness (signature)

Address of Witness

EXECUTED (but not delivered until the date)
hereof) as a deed by the Independent Bridge)
Inspector acting by a director and a witness:

Director

Witness

APPENDIX 1

PART 1

Scope of Services – Independent Bridge Inspector

The Independent Bridge Inspector shall perform all the functions and obligations attributed to the role of Independent Bridge Inspector as referred to in the relevant clauses and schedules of the Contract and the First Tier Sub-Contract (including complying with any time limits specified in such clauses) and shall familiarise itself with the Contract and the First Tier Sub-Contract (including subject to clause 2.9 of this Agreement any design documents, any Change to the Contract or First Tier Sub-Contract issued from time to time and any other relevant documentation or information referred to in the Contract or the First Tier Sub-Contract), including but not limited to the following scope of Bridge Inspection Services:

1. INSPECTION OF STRUCTURES

The role of the Independent Bridge Inspector shall be to fulfil the obligations of the Independent Bridge Inspector as is further detailed within the Contract, including but not limited to the following obligations,:

- 1.1 fulfilling the obligations of the Independent Bridge Inspector pursuant to clauses 27.2, 27.9.1, 27.9.1.1 and 27.9.1.2 of the Contract;
- 1.2 fulfilling all of the obligations of the Independent Bridge Inspector pursuant to clause 27.6 of the Contract;
- 1.3 selecting and carrying out a sample check of the General Inspections, Milestone Rectification Works General Inspections, Principal Inspections and Milestone Rectification Works Principal Inspections as set out in clauses 27.18 (*General Inspections*) and 27.19 (*Principal Inspections*), and the Structural Reviews and Structural Assessments as set out in clause 27.23 (*Assessment of Structures*) of the Contract, such sample checks to be done in the proportions dictated by and to include or exclude those Structures and Third Party Structures (as applicable) determined in accordance with clauses 27.18 (*General Inspections*), 27.19 (*Principal Inspections*) and clause 27.23 (*Assessment of Structures*) of the Contract, and including the production of all reports set out therein within the timescales set out therein; and

- 1.4 attending the Special Inspections with the Service Provider pursuant to 27.20 (*Special Inspections*), and
- 1.5 carrying out the activities as set out in the clause 27.22 (*Pre and Post Inspection Process for Structures*);
- 1.6 validating, auditing and producing the raw data generated by the Structure Inspections and all other activities carried out to the Service Provider and the Authority in accordance with clause 27.16.1.2 of the Contract having regard to the provisions of clause 26.2.1.2 of the Contract and the use of such Data in the assessment of whether a Milestone relating to the achievement of certain Condition Indices in respect of Structures has been completed;
- 1.7 calculating and submitting the Bridge Condition Indices and Retaining Wall Condition Indices achieved by the Service Provider as evidenced by the raw data produced pursuant to paragraph 1.4 above in accordance with clause 27.17.2;
- 1.8 In addition to 1.6 and 1.7 above, when requested by the Service Provider, the Independent Bridge Inspector shall update such validating, auditing and calculating of Bridge Condition Indices and Retaining Wall Condition Indices as required by Services Sub-Contractor's General Inspection Programme, Milestone Rectification Works General Inspections, Principal Inspection Programmes, and Milestone Rectification Works Principal Inspections Programmes. When requested to do so by the Services Sub-Contractor, the Independent Bridge Inspector shall attend such Special Inspection and Milestone Rectification Works Special Inspections required by the Special Inspection Strategy (as may be amended by any Milestone Rectification Works Special Inspections).
- 1.9 contributing to the production of the Inspection Programmes produced by the Service Provider as required by the Service Provider;
- 1.10 contributing to the production of any documents or written statement required pursuant to clause 79.2.2 (*Structures*) of the Contract in relation to handback of the Structures pursuant to that Clause where required by the Service Provider;
- 1.11 carrying out the activities as set out in clause 27.24 (*Qualitative Review of Structure Inspection Reports*);

- 1.12 participating in Service Provider's training event pre commencement of any surveys. Such training event shall include but not be limited to a sample General Inspection for Bridges and Retaining Walls (Type 1 and 2). The results of these surveys shall be compared with the results of the Service Provider's Inspectors surveys carried out using the same methodology. The results shall be compared by an experienced Bridge Inspector and where necessary training shall be given by or procured by the Service Provider to inspectors to ensure consistency;
- 1.13 calculating the Bridge Condition Indices and Retaining Wall Condition Indices in respect of Structures (Type 1) using the methodology described in clause 27.17.2 using the data held in the Collaborative Working Platform as of 31 October of each Contract Year. He/she shall report the resultant Indices to the Service Provider within ten (10) Business Days of 31 October in each Contract Year;
- 1.14 reviewing and commenting upon the draft Special Inspection Strategy, Risk Assessment Strategy and Structural Review and Assessment Strategy prepared by the Service Provider pursuant to clauses 27.20, 27.21 and 27.23 no later than five (5) months prior to the commencement of each Contract Year following the first Contract Year;
- 1.15 where the Independent Bridge Inspector during the course of his duties, becomes aware of an Urgent or Category 1 Defect on the Project Network he/she shall inform the Service Provider's OCR immediately and in any event within 0.5 hours of becoming so aware;
- 1.16 submitting health and safety risk assessments to the Service Provider and the Authority;
- 1.17 attending programming meetings as required to coordinate his/her sample surveys into the programme and to ensure that suitable traffic management arrangements are in place for the Independent Bridge Inspector to undertake his/her audit inspection duties on site;
- 1.18 attending meetings as required with the Service Provider and/or the Authority to discuss progress and/or results of his/her sample surveys and providing data and reports as required; and

- 1.19 granting access to and providing all reasonable assistance to the Authority or any Authority Party nominated by the Authority as required by clauses 30.1.2 and 30.1.3 of the Contract;

so as to ensure no breach by the Service Provider of any obligation under the Contract that relates to the performance of the Independent Bridge Inspector.

2. ADDITIONAL SERVICES

Without prejudice to the generality of clause 2.2 and the ability of either party to request Additional Services, the Authority may, in the event that pursuant to clause 30.2.1 of the Contract, the Authority considers (acting reasonably) that the Service Provider is failing to procure the carrying out of the Structure Inspections or Structural Assessments in accordance with the provision of the Contract, issue instructions in place of the Service Provider for such Structure Inspections and/or Structural Assessments to be carried out and thereafter the provisions of paragraph 1 of this Appendix 1 shall be carried out by the Independent Bridge Inspector as if the Service Provider had issued an instruction to carry out such Structure Inspection or Structural Assessment.

3. PARTICIPATION IN DISPUTE RESOLUTION

As and when required by the Authority or the Service Provider, the Independent Bridge Inspector shall participate in the Dispute Resolution Procedure of the Contract (as such term is defined in the Contract) to the extent that issues under the Contract which have been referred to the said Dispute Resolution Procedure relate to the Independent Bridge Inspector's other obligations and tasks as set out in this Appendix 1 and this agreement.

4. STRUCTURE INVENTORY

The Structure and Retaining Wall Inventory (*Schedule 20*) for which services will be required is shown in Appendix 5.

5. GENERAL

- 5.1 The Independent Bridge Inspector will have access to and use of all Service Provider welfare facilities provided under the Contract

- 5.2 The Independent Bridge Inspector will have use of two hot desks at the Service Provider's premises Distington House, Olive Grove or Station Road, Ecclesfield.
- 5.3 The Independent Bridge Inspector will have access to the Collaborative Working Platform and will be issued with the relevant software in order to calculate the Bridge Condition Indices and BSCI's, and the Retaining Wall Condition Indices and RWSCI's.
- 5.4 The Service Provider will provide free guest wi-fi internet access to allow inspectors to communicate with their own company base.
- 5.5 The Service Provider will provide a computer workstation to allow the inspectors to communicate with the Service Provider's Collaborative Working Platform.
- 5.6 The Service Provider will work with the Independent Bridge Inspector to plan and programme Traffic Management and any access equipment which will be provided at the Service Provider's expense.
- 5.7 The Independent Bridge Inspector will provide vehicles to enable the Inspectors to get to each individual bridge inspection site.
- 5.8 The Independent Bridge Inspector shall wear full PPE in accordance with their company H&S policy.
- 5.9 The Independent Bridge Inspector entitlement to payment shall be in accordance with the attached payment schedule. Items identified as 'monthly' will be paid each month in arrears over the term of the appointment. Additional Services shall be invoiced at the end of the calendar month in which they occur.
- 5.10 All rates to be current with an annual increase in April (starting in 2014) based on RPIx (Base of June 2012)

APPENDIX 1

PART 2

Principal Inspection Reports and Structural Assessment Reports

APPENDIX 2

Fees

Part 1 - Fee Instalments

Ref.	Description	Quantity	Unit	Cost £
1	Undertake sample inspections of General Inspection Programme (PA CI 27.18)	Item	per month	
2	Undertake sample inspections of Principal Inspection Programme (PA CI 27.19)	Item	per month	
3	Provide attendance at Special Inspections in Special Inspection Programme (PA CI 27.20)	Item	per Hour	
4	Production of Data (PA CI 27.16) ¹	Item	per year	
5	Calculation of Condition Indices (BCI & BSCI) (PA CI 27.17) ²	Item	per year	
6	Undertake sample Structural Reviews (PA CI 27.23) <i>* Target cost to be agreed for each Structural Review</i>	Item	per Hour*	
7	Undertake sample Structural Assessments (PA CI 27.23) to include all Inspections for Assessment <i>* Target cost to be agreed for each Structural Assessment</i>	Item	per Hour*	
8	Undertake Qualitative Review of Structure Inspection Reports (PA CI 27.24)	Item	per month	
9	Undertake Pre-and Post Inspection duties (PA CI 22)	Item	per month	Included
10	Contribute to annual update of Risk Assessment, Special Inspection and Structural Review and Assessment Strategies. ³	Item	per year	
11	Attendance at meetings with Authority and Service Provider ⁴	Item	per meeting	
12	Management of IBI Function - on site	Item	per month	Included
13	Management of IBI Function - off site	Item	per month	

¹ Annual event

² Annual event

³ Annual event

⁴ Assume half a day in Sheffield/meeting

Part 2 - Fee Rates

Rates for Additional Services			
Ref	Description	Unit	Rate
Inspection Team			
1	Project Manager (C Eng) - Inspections	per Hour	
2	Senior Engineer (C Eng) - Inspections	per Hour	
3	Inspection Engineer	per Hour	
4	Inspection Technician	per Hour	
5	Structures Inspector	per Hour	
6	Assistant Structures Inspector	per Hour	
Assessment and Review Team			
7	Project Manager (C Eng) - Based off-site in Consultants own offices	per Hour	
8	Design/Assessment Manager (C Eng) - Based off-site in Consultants own offices	per Hour	
9	Senior Engineer (C Eng) - Based off-site in Consultants own offices	per Hour	
10	Engineer - Based off-site in Consultants own offices	per Hour	
11	Technician - Based off-site in Consultants own offices	per Hour	

APPENDIX 3

Methodology to Respond to Scope of Services

[To be inserted]

Appendix 4
Collateral Warranty

DATED

20

[BENEFICIARY] (1)

and

[INDEPENDENT BRIDGE INSPECTOR] (2)

and

[THE SERVICE PROVIDER] (3)

and

THE SHEFFIELD CITY COUNCIL (4)

COLLATERAL WARRANTY OF THE
INDEPENDENT BRIDGE INSPECTOR'S APPOINTMENT

BETWEEN

- (1) **[BENEFICIARY]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the “**Beneficiary**”);⁵
- (2) **[INDEPENDENT BRIDGE INSPECTOR]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the “**Independent Bridge Inspector**”);
- (3) **[SERVICE PROVIDER]** (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] (the “**Service Provider**”); and
- (4) **THE SHEFFIELD CITY COUNCIL** of TOWN HALL, SHEFFIELD, S12HH (the “**Authority**”);

NOW, in consideration of the payment of One Pound (receipt of which is hereby acknowledged by the Independent Bridge Inspector), **THIS DEED** witnesses as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the context otherwise requires, the terms shall have the same meaning as in the Independent Bridge Inspector’s Appointment including incorporation of the Contract referred to in the Independent Bridge Inspector’s Appointment.

1.2 Successors

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this deed.

1.3 Headings

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

⁵ The beneficiary under this agreement is intended to be the Tier 1 Sub-Contractors and the Funders.

1.4 Notices

All notices under this deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this deed or to the registered office or principal business address of any party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

1.5 References to statutes, etc

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.6 Genders and numbers

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2 ACKNOWLEDGEMENT

2.1 The Independent Bridge Inspector acknowledges that the Beneficiary has relied on and continues to rely on the Independent Bridge Inspector to carry out its obligations pursuant to the Independent Bridge Inspector's Appointment.

2.2 The Authority and the Service Provider acknowledge the obligations on the Independent Bridge Inspector pursuant to this Deed and the rights of the beneficiary to enforce such obligations.

3 DUTY OF CARE

3.1 The Independent Bridge Inspector warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Bridge Inspection Services the reasonable skill, care and diligence to be expected from a competent and properly qualified Independent Bridge Inspector experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Project and in accordance with all current British Standards and Codes of Practice and in compliance with all applicable statutes and regulations as those comprised in the Project in the performance of its duties and obligations under the Independent Bridge Inspector's Appointment.

- 3.2 For the avoidance of doubt the Independent Bridge Inspector shall owe no obligation, duty or liability to the Beneficiary by virtue of this deed which is greater or of longer duration than it would owe to the Beneficiary under the Independent Bridge Inspector's Appointment if the Beneficiary had been named as joint employer under the Independent Bridge Inspector's Appointment and the Independent Bridge Inspector shall be entitled in any action or proceedings by the Beneficiary under this agreement to raise equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Service Provider under the Independent Bridge Inspector's Appointment.
- 3.3 Any claim of any kind arising out of or in connection with this deed shall be brought only against the Independent Bridge Inspector. No claims in respect of this deed will be brought personally against any of the partners or employees of the Independent Bridge Inspector involved in the provision of the Bridge Inspection Services.

4 PROFESSIONAL INDEMNITY INSURANCE

- 4.1 The Independent Bridge Inspector shall take out and maintain professional indemnity insurance in respect of the Independent Bridge Inspector's Appointment with reputable insurers carrying on business in the United Kingdom [who are acceptable to the Beneficiary (such acceptance not to be unreasonably withheld or delayed)]⁶ with a limit of indemnity of not less than [five millions pounds (£5,000,000) (Indexed)] for any occurrence or series of occurrences arising out of any one event for any one claim or series of claims arising out of any one event from the date of the Independent Bridge Inspector's Appointment until the date which is 12 years from the date of the completion of the Independent Bridge Inspector's duties under the Independent Bridge Inspector's Appointment, provided that such insurance is available at reasonable commercial rates.
- 4.2 Any increased or additional premium required by insurers by reason of the Independent Bridge Inspector's own claims record or other acts or omissions particular to the Independent Bridge Inspector shall be deemed to be within commercially reasonable rates.

⁶ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

4.3 The Independent Bridge Inspector shall provide to the Beneficiary at its reasonable request, written confirmation by an independent company of insurance brokers that it has the professional indemnity insurance in force for the ensuing 12 months.

4.4 The Independent Bridge Inspector shall immediately inform the Beneficiary if the professional indemnity insurance ceases to be available at commercially reasonable rates in order that the Independent Bridge Inspector and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance.

5 TERMINATION OF THE INDEPENDENT BRIDGE INSPECTOR'S APPOINTMENT

5.1 In the event that the Independent Bridge Inspector wishes to exercise or seek to exercise its rights pursuant to clause 6.3 of the Independent Bridge Inspector's Appointment to terminate the Independent Bridge Inspector's Appointment, the Independent Bridge Inspector shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Bridge Inspector's Appointment at the same time as the notice is served on the Counterparties.

5.2 In the event that the Counterparties wish to exercise or seek to exercise their rights pursuant to clause 6.1 or 6.2 of the Independent Bridge Inspector's Appointment to terminate the Independent Bridge Inspector's Appointment, the Counterparties shall provide the Beneficiary with a copy of the notice referred to in clause 6.3.2 of the Independent Bridge Inspector's Appointment at the same time as the notice is served on the Independent Bridge Inspector.

6 ASSIGNMENT

6.1 [The benefit of this deed may be assigned by the Beneficiary to any other funder who takes over the Beneficiary's funding of the whole or part of the Works without the consent of the Independent Bridge Inspector.]⁷

6.2 The benefit of this Deed may [also] be assigned by the Beneficiary to any other person having an interest in or providing funding in respect of the Services provided that:

⁷ The Authority would expect the words in square brackets only to apply where the Beneficiary is the Security Trustee.

- 4.2.1 the number of assignments under this clause is limited to two only;
- 4.2.2 the Independent Bridge Inspector shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and
- 4.2.3 the Independent Bridge Inspector shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.
- 6.3 The Independent Bridge Inspector will not contend that any assignee is precluded from recovering any loss from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original Beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that that original Beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7 INDEPENDENT ENQUIRY CLAUSE

The liability of the Independent Bridge Inspector under this deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Bridge Inspection Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Bridge Inspector might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

8 NON WAIVER

The Service Provider, the Authority and the Independent Bridge Inspector agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Independent Bridge Inspector's Appointment in any respect which may have a material effect on the benefit of this Deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

9 DISPUTE RESOLUTION

Any dispute arising out of or in connection with this Deed shall be referred to a dispute resolution process comparable with that set out in clause 16 of the Independent Bridge Inspector's Appointment.

10 JURISDICTION AND LAW

This Deed shall be governed by and construed in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the courts of England.

11 WARRANTY IN RESPECT OF CERTIFICATES

The Independent Bridge Inspector warrants and undertakes that it has and will continue to act fairly, reasonably and impartially as between all interested parties in the issuing of any certificates.

12 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

13 COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this deed.

EXECUTED AS A DEED by the **INDEPENDENT BRIDGE INSPECTOR** in the presence of:

Director

Witness

EXECUTED AS A DEED by the **BENEFICIARY** in the presence of:

Alternative A

Authorised Signatory

Authorised Signatory

Alternative B

Director

Director/Company Secretary

EXECUTED AS A DEED by the **SERVICE PROVIDER** in the presence of:

Director

Director/Company Secretary

EXECUTED (but not delivered until the date hereof)

as a deed by the Authority by the affixing of its common seal

in the presence of:

APPENDIX 5

Structure and Retaining Wall Inventory (*Schedule 20*)

Project Network Information – Summary

Sheffield City Council (SCC) is responsible for maintaining the structures listed in Schedule 20 of the Project Agreement (*Project Network Information*). The Structure and Retaining Wall Inventory spreadsheets showing those structures falling within the scope of the duties of the Independent Bridge Inspector is contained in this Appendix 5.

Inspections

Structures and Retaining Walls are categorised as Type 1, Type 2, Type 3 and Third Party. Type 1 require Principal Inspections and General Inspections. The remainder require only General Inspections.

Strength Assessments

241 Authority structures have been assessed in terms of the 40 tonne requirement. 172 were found to be adequate. 69 were found to be inadequate of which 23 have now been strengthened. The remaining 46 structures are being managed by the Authority in accordance with guidance contained in the Highways Agency DMRB and the Management of Highway Structures - A Code of Practice. Two of these structures are currently subject to weight limits. A further 8 Structures (Type1) require an initial assessment to BD21 by the Service Provider in the first year of the Project.