

DATE

23rd July

2014

**AGREEMENT
FOR THE PROVISION OF
STREETWORKS (FPN) BUSINESS FUNCTION SERVICES**

between

LEICESTER CITY COUNCIL

and

ENZEN GLOBAL LIMITED

**LEGAL SERVICES
LEICESTER CITY COUNCIL
NEW WALK CENTRE
WELFORD PLACE
LEICESTER LE1 6ZG
REF: AS/89691**

Contract Fixed Penalty Notices

THIS AGREEMENT is dated

23rd July

2014

PARTIES

- (1) **LEICESTER CITY COUNCIL** whose administrative headquarters are at New Walk Centre, Welford Place, Leicester, LE1 6ZG (**Council**).
- (2) **ENZEN GLOBAL LIMITED** incorporated and registered in England and Wales with company number 05704180 whose registered office is at Unit No 11 Blythe Valley Innovation Centre, Central Boulevard, Solihull B90 8AJ (**Service Provider**).

BACKGROUND

- (A) The Council sought proposals for the provision of Streetworks (FPN) Business Function services.
- (B) The Council has selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Associated Company: any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Service Provider, the first such persons being set out in schedule 4.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Catastrophic Failure: any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in schedule 5.

Charges: the charges which shall become due and payable by the Council to the Service Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in schedule 3.

Commencement Date: 1st of August 2014

Contract Year: a period of 12 months, commencing on the Commencement Date or, if this agreement has been extended by the Council, an anniversary of the Commencement Date.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Default Notice: is defined in clause 5.2.

Dispute Resolution Procedure: the procedure set out in clause 12.

Environmental Information Regulations: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period of 12 months commencing on the Commencement Date and or earlier termination of this agreement.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

Payment Plan: the plan for payment of the Charges as set out in schedule 3.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Public Body: any local authority or department, office or agency of the Crown.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in schedule 1 (Specification).

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Service Provider.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of this agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of this agreement;
 - (b) schedule 2 to this agreement;
 - (c) schedule 1 to this agreement;
 - (d) the remaining schedules to this agreement.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

3.1 The Council may extend this agreement beyond the Initial Term by a further period of three years in total comprising four independent single year extensions ("Extension Period"). If the Council wishes to use one of the single year extension options, it shall give the Service Provider at least one month's written notice of such intention before the expiry of the Initial Term or Extension Period.

3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 26 shall apply.

4. CONSENTS, SERVICE PROVIDER'S WARRANTY AND DUE DILIGENCE

4.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

4.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

4.3 The Service Provider acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Council pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.3(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.5 The Service Provider:
- (a) as at the Commencement Date, warrants and represents that all information it has provided to the Council in writing concerning the provision of the Services remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of this agreement; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.
- 4.6 The Service Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Service Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.7 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

- 5.1 The Service Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Service Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Service Provider with a notice in writing setting out the details of the Service Provider's default (a Default Notice).

6. SERVICE STANDARDS

- 6.1 The Service Provider shall provide the Services, or procure that they are provided:
- (a) with reasonable skill and care and in accordance with the best practice prevailing in the Business Operations (Streetworks) industry from time to time;
 - (b) in all respects in accordance with the Council's policies set out in schedule 2; and
 - (c) in accordance with all Applicable Laws.
- 6.2 Without limiting the general obligation set out in clause 6.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):
- (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Council's requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and
 - (b) not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

7. HEALTH AND SAFETY

- 7.1 The Service Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of this agreement. The Council shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Council's Premises and that may affect the Service Provider in the performance of this agreement.

- 7.2 While on the Council's Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Council's Premises.
- 7.3 The Service Provider shall notify the Council immediately in the event of any incident occurring in the performance of this agreement on the Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 7.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council's Premises in the performance of this agreement.
- 7.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

CHARGES AND PAYMENT

8. PAYMENT

- 8.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Service Provider in accordance with the Payment Plan.
- 8.2 The Service Provider shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Council's Representative.
- 8.3 The Council shall pay the Charges which have become payable in accordance with the Payment Plan within thirty days of receipt of an undisputed invoice from the Service Provider.
- 8.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 12. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty days after resolution of the dispute between the parties.
- 8.5 Subject to clause 8.4, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment

of Commercial Debts (Interest) Act 1998 (as amended). The Service Provider shall not suspend the supply of the Services if any payment is overdue.

- 8.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Service Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.
- 8.7 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for seven years from the end of the Contract Year to which the records relate.
- 8.8 Where the Service Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing this agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Service Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 8.9 The Council may retain or set off any sums owed to it by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Council.
- 8.10 The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.

STAFF

9. PERSONNEL USED TO PROVIDE THE SERVICES

- 9.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

- (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Service Provider's Personnel comply with all of the Council's policies.
- 9.2 The Council may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 9.3 The Service Provider shall replace any of the Service Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 9.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 9.5 The Service Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 9.6 The parties agree that the provisions of Schedule 6 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

10. MONITORING

- 10.1 The Council may monitor the performance of the Services by the Service Provider.
- 10.2 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 10.1 at no additional charge to the Council.

Contract Fixed Penalty Notices

11. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT

- 11.1** Any requirement for a Change shall be subject to the Change Control Procedure.
- 11.2** The Service Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Council's Representative quarterly in each Contract Year on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
 - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
- 11.3** Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 11.2 shall be addressed by the parties using the Change Control Procedure.

12. DISPUTE RESOLUTION

- 12.1** Either party may call an extraordinary meeting of the parties by service of not less than five Working Days' written notice and each party agrees to procure that its Authorised Representative shall attend all extraordinary meetings called in accordance with this clause.
- 12.2** The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted.

13. SUB-CONTRACTING AND ASSIGNMENT

- 13.1 Subject to clause 13.3, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Service Provider sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council.
- 13.2 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Council for the performance of its obligations under this agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
- 13.3 The Council shall be entitled to novate this agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

LIABILITY

14. INDEMNITIES

- 14.1 The Service Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Council or its representatives (excluding the Service Provider or any Sub-Contractor).

15. LIMITATION OF LIABILITY

- 15.1 Subject to clause 15.3 and clause 15.4, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in

connection with this agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect save such revenue as is the purpose of the Services to facilitate.

- 15.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 15.3 Any clause limiting the Service Provider's liability does not apply in relation to a breach of clause 25.
- 15.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.

16. INSURANCE

- 16.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds) in relation to any one claim or series of claims; and
 - (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover

(the Required Insurances) in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of this agreement, including death or personal injury, loss of or damage to property or any other loss.

Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.

- 16.2 The Service Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 16.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 16.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this agreement.
- 16.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of this agreement.

INFORMATION

17. FREEDOM OF INFORMATION

- 17.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 17.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
 - (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

17.3 The Council shall be responsible for determining at its absolute discretion whether any Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
- (b) is to be disclosed in response to a Request for Information.

17.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

17.5 The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Service Provider; or
- (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 17.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

17.6 The Service Provider shall ensure that all Information produced in the course of this agreement or relating to this agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

17.7 The Service Provider acknowledges that any details provided by it outlining information that it considers to be confidential or commercially sensitive are of indicative value only and that the Council may nevertheless be obliged to disclose such information in accordance with clause 17.5.

18. DATA PROTECTION

18.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of this agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with this agreement.

18.2 Notwithstanding the general obligation in clause 18.1, where the Service Provider is processing Personal Data as a Data Processor for the Council, the Service Provider

shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
- (b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 18.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

18.3 The provisions of this clause shall apply during the continuance of this agreement and indefinitely after its expiry or termination.

19. CONFIDENTIALITY

19.1 Subject to clause 19.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

19.2 Clause 19.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 17.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.1;
- (d) by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 12;
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Council to any other department, office or agency of the Government; and

- (h) by the Council relating to this agreement and in respect of which the Service Provider has given its prior written consent to disclosure.

19.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

20. AUDIT

20.1 During the Term and for a period of seven years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in schedule 3 (Charges and payment);
- (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
- (c) to review the Service Provider's compliance with the DPA, the FOIA, in accordance with clause 18 (Data Protection) and clause 17 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created;
- (e) to review any books of account kept by the Service Provider in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Council's accounts; or
- (g) to carry out an examination pursuant to sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources.

20.2 Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause 20 more than twice in any calendar year.

20.3 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

20.4 Subject to the Council's obligations of confidentiality, the Service Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Service Provider's Personnel.

20.5 The Council shall endeavour to (but is not obliged to) provide at least 15 days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

20.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

20.7 If an audit identifies that:

- (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any Charges, the Service Provider shall pay to the Council the amount overpaid within 20 Working Days. The Council may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Service Provider in relation to invoicing within 20 Working Days.

21. INTELLECTUAL PROPERTY

21.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

- 21.2 The Service Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

TERMINATION

22. TERMINATION FOR BREACH

22.1 The Council may terminate this agreement with immediate effect by the service of written notice on the Service Provider in the following circumstances:

- (a) if the Service Provider is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause 22.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so;
- (b) if a consistent failure has occurred;
- (c) if a Catastrophic Failure has occurred;
- (d) if a resolution is passed or an order is made for the winding up of the Service Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Service Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Service Provider's property or equipment;
- (e) if the Service Provider ceases or threatens to cease to carry on business in the United Kingdom; or
- (f) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Council reasonably objects.

22.2 The Council may terminate this agreement in accordance with the provisions of clause 24 and clause 25.

22.3 If this agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

23. TERMINATION ON NOTICE

23.1 The Council may terminate this agreement at any time by giving six months' written notice to the Service Provider.

24. FORCE MAJEURE

- 24.1 Subject to the remaining provisions of this clause 24, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 24.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 24.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 24.4 The Service Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
- 24.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 24.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 24.7 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Service Provider if a Force Majeure Event occurs

that affects all or a substantial part of the Services and which continues for more than ten Working Days.

25. PREVENTION OF BRIBERY

25.1 The Service Provider:

- (a) shall not, and shall procure that any Service Provider Party and all Service Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

25.2 The Service Provider shall:

- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- (b) within ten Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Service Provider) compliance with this clause 25 by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

25.3 The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Service Provider Party or Service Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.

25.4 If any breach of clause 25.1 is suspected or known, the Service Provider must notify the Council immediately.

25.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause 25.1, the Service Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for seven years following the expiry or termination of this Agreement.

25.6 The Council may terminate this Agreement by written notice with immediate effect if the Service Provider, Service Provider Party or Service Provider Personnel (in all cases whether or not acting with the Service Provider's knowledge) breaches clause 25.1. In determining whether to exercise the right of termination under this clause 25.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Service Provider or a senior officer of the Service Provider or by an employee, Sub-Contractor or supplier not acting independently of the Service Provider. The expression "not acting independently of" (when used in relation to the Service Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Council; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Service Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Service Provider ought reasonably to have had knowledge.

25.7 Any notice of termination under clause 25.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate.

25.8 Despite clause 20 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 25; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive

25.9 Any termination under clause 25.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

26. CONSEQUENCES OF TERMINATION

26.1 On termination of this agreement (or where reasonably so required by the Council before such termination) the Service Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the

Council forthwith and the Service Provider's Authorised Representative shall certify full compliance with this clause.

- 26.2 The provisions of clause 14 (Indemnities), clause 16 (Insurance), clause 17 (Freedom of Information), clause 18 (Data Protection), clause 20 (Audit), clause 22 (Termination for Breach) and this clause 25.1 (Consequences of termination) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

27. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Service Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Service Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

28. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

29. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

30. PARTNERSHIP OR AGENCY

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

31. THIRD PARTY RIGHTS

- 31.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

32. PUBLICITY

The Service Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council.

33. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail, email or facsimile transmission provided that email and facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed emails and facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

34. ENTIRE AGREEMENT

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

35. GOVERNING LAW AND JURISDICTION

- 35.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 35.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

Schedule 1 Specification

1. INTRODUCTION

Leicester City Council (LCC) transitioned from NRSWA to the Traffic Management Act (TMA) Legislation scenario, with effect April 2008. The TMA Legislation presents its own share of challenges to the Stakeholder Fraternity (Highway Authorities and Promoters, alike).

From a LCC perspective, the responsibility of effective management of the Highway Network with least disruption forms the core responsibility. The continuous improvement in managing & regularising the overall Streetworks Business Function & associated Operational aspects, on an enduring basis, is key for an Authority to demonstrate better Network Management and practically make effective & realise the desired objective from compliance to TMA Legislation.

Performance Indicators & tangible measurement methods are necessary to demonstrate how LCC is fulfilling its obligations across all aspects of the Traffic Management Act (e.g. Network Management Duty, Improved Performance and Compliance, Parity etc). But more importantly they are also needed to assist proactive coordination, to provide regulation and uniformity, and to further mitigate the impact of the changes.

2. OBJECTIVES OF THE INITIATIVE

The proposed innovative approach is to deliver this Performance Monitoring Service using a matured and cost-effective methodology; it is proposed that this exercise be undertaken for a period of 12 Months.

The Objective of the Performance Monitoring Service can be broadly outlined as below:

- ✓ Monitor, Improve & Sustain Promoter Noticing Performance on an enduring basis, thus complying with the Co-ordination & Network Management Duty.
- ✓ Necessary Streetworks Data Analysis and capture to produce Management Information Dashboards and Metrics for Stakeholder consultations.
- ✓ Deliver an audited Streetworks Operations Model with clear demonstration of 'Parity' across all Works (incl. Council works) undertaken by Promoters.

Contract - Fixed Penalty Notices

- ✓ Consistently Monitor and Manage Promoter Performance to fulfil Inspection Targets and minimise un-identified S74 Work Overruns on the Network.
- ✓ Deliver periodic & standardised Performance data that helps Leicester City Council to co-ordinate on an operational basis; it will also help in facilitating Co-ordination Meetings & taking informed decisions in discussion with Promoters.
- ✓ Delivery of the initiative through a proposed self-sustaining model via the introduction of initiatives like Fixed Penalty Notices and/or better monitoring of S74 work overruns. The above initiatives have been proposed considering the provision of remote access to LCC Streetworks Register to the Successful Supplier, so as to undertake delivery of the initiatives from the Successful Supplier's office.

3. SCOPE & APPROACH

This Section outlines the Scope and Approach of the Proposed Model.

Service Scope - The scope of the Successful Supplier's Performance Support service is outlined as below:

- ✓ FPN Policy Formulation
 - FPN Policy Definition.
 - Financially Auditable Processes – FPN Management.
- ✓ Promoter Performance Metrics (Formulate, Measure, Advise Action) FPN Policy Definition.
 - Real Time Data Support towards evaluation of Road Space requests.
 - Active Notice Monitoring; Support LCC team in proactive co-ordination.
 - Promoter Trend Definition, Analysis & Recommendations for LCC team.
 - Guaranteed improvement in Performance levels.
- ✓ Implement Best Practice Co-ordination tools for LCC team
 - Performance Management Dashboards.
- ✓ Streetworks Compliance Administration & Management Support
 - FPN & S74 Compliance Monitoring Support (incl. support to LCC team towards income management).
 - Income levels to ensure this model is self-sustaining (in line with JAG recommendation to direct any FPN Income towards betterment of HA Network).

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Schedule 2 Council Policies

1.1 PUBLIC INTEREST DISCLOSURE (WHISLTBLOWING)

The Service Provider shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Service Provider) and shall establish and where necessary update from time to time a procedure for the Service Provider's Personnel encouraging those personnel to report to the Service Provider any incidents of malpractice within the Service Provider or Council. In this context "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

1.2 EQUALITIES

(a) The Service Provider shall adopt and operate a policy to comply with its statutory obligations including but not limited to the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975, the Disability Discrimination Act 1995 (as amended), the Human Rights Act 1998, the Data Protection Act 1998, the Employment Equality (Sexual Orientation) Regulations 2003, the Equality Act 2006 and the Employment Equality (Age) Regulations 2006 and accordingly will not treat one group of people less favourably than the other because of their colour race religion nationality gender sexuality or any disability in relation to:

- (i) its decision to recruit train or promote Staff; or
- (ii) its performance of the Services, particularly in relation to its dealings with members of the public

and the Service Provider shall ensure that its Staff also comply with its statutory obligations, in the same terms as above, particularly in relation to their dealings with members of the public when engaged in the performance of the Services.

- (b) In the event of any finding of unlawful discrimination being made against the Service Provider in the last three years by any court or tribunal or of an adverse finding in any form of investigation by anybody charged with carrying out such investigation over the same period the Service Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.
- (c) The Service Provider shall on request provide the Council with details of any steps taken under paragraph 1.2(b)
- (d) The Service Provider shall set out its policy on discrimination

- (i) In instructions for those concerned with the recruitment training and promotion
 - (ii) In documents available to employees recognised Trade Unions or other representative groups of employees
 - (iii) In recruitment advertisements or other literature
- (e) The Service Provider shall on request provide the Council with examples of the instructions and document recruitment advertisements or other literature
 - (f) The Service Provider shall observe as far as possible all relevant codes of practice
 - (g) The Service Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's compliance with these paragraphs 1.2(a) to 1.2(f) as far as relevant
 - (h) The Service Provider shall at all times maintain a system of audit monitoring and actions in respect of its employment practices, services and customer care generally with a view to eliminating any disadvantage or discrimination on the basis of, and to promote equality of opportunity on the grounds of race (including ethnic origin, nationality, national origin or colour) gender, marital status, gender reassignment or disability, the promotion of good race relations between people of different racial groups the need to take steps to take account of disabled persons disabilities, the promotion of positive attitudes towards disabled persons and the need to encourage participation by disabled persons in public life. Further, the Service Provider shall co-operate with the Council in providing statistics and other information as the Council may from time to time reasonably require in connection with its duties as a public authority in connection with gender, race and disability.

1.3 BEST VALUE

In undertaking the Services, the Service Provider shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Services and generally to provide best value outcomes to the Council as are set out in the Specification AND FURTHER the Service Provider shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance of the Services required under this agreement and this paragraph in particular.

1.4 ENVIRONMENT

- (a) The Service Provider shall comply with its statutory obligations under Environmental Legislation and for the purposes of this agreement "Environmental Legislation" means the Environmental Protection Act 1990, the Water Resources Act 1991, the Clean Air Act 1993, the Environment Act 1995 and any regulations, directions or guidance having statutory effect pursuant to the same, or any EU directive having effect which makes provision for the control of pollution, the control of hazardous substances land use control and wild life and countryside protection.
- (b) In the event of any finding by any court or tribunal or other judicial or quasi judicial body being made against the Service Provider in respect of any breach of environmental legislation the Service Provider shall take appropriate steps to abate such a breach and prevent its repetition.
- (c) The Service Provider shall upon request provide the Council with details of any steps taken under paragraph 1.4(b) above.
- (d) The Service Provider shall within 3 months of the date of this agreement adopt a policy to the satisfaction of the Council to comply with the Council's Environment Purchasing Guide (<http://www.leicester.gov.uk/your-Councils--services/ep/the-environment/environmental-documents>) and shall thereafter maintain such a policy taking account as far as is reasonably practical of any amendment to that policy from time to time made by the Council and any revisions or amendments to any national guidelines or any nationally recognised procedures or lists which relate to the minimising of environmental emergency.
- (e) The Service Provider shall observe as far as possible the policy from time to time enforced by virtue of paragraph 1.4(d) above.
- (f) The Service Provider shall provide such information as the Council may reasonably request for the purposes of assessing the Service Provider's compliance with paragraphs 1.4(d) and 1.4(e) above as far as is relevant including examples of documents advertisements or other literature.
- (g) The Service Provider shall:
 - (i) institute and maintain an environmental management system in accordance with the procedures targets and other specifications mentioned in, and shall provide and perform the Services in all respects in accordance with, the Environmental Statement (where the words "Environmental Statement" mean the environmental method statement and any other information or representations supplied with incorporated into or presented within the Service Provider's response to the Council's invitation to the Service Provider to negotiate for this agreement.

Schedule 3 Charges and payment

1 Charges

- 1.1** The Council shall (subject to the Service Provider performing its obligations under this agreement) pay to the Service Provider charges ██████████ of the income from all Fixed Penalty Notices issued by the Council, where applicable ██████████ from all Section 74 Charges for unreasonably prolonged occupation of the Highway that are identified by the Service Provider from the analysis of Traffic Management Notices only, and thereafter issued by the Council.
- 1.2** The Charges shall become due to the Service Provider at the end of each calendar month in respect of income received that month from Fixed Penalty Notices or Section 74 Overrun Notices which have previously been issued, provided the Service Provider shall have provided the Services to date in respect of this Agreement in accordance with the terms and conditions of this agreement.
- 1.3** The Service Provider shall not be entitled to receive any sum under this agreement other than the Charges and, for the avoidance of doubt, disbursements shall not be charged to the Council.

- (ii) operate such environmental management system as referred to in paragraph 1.4(g)(i) above during the operational phase that complies with Leicester City Council's EMAS environmental objectives and targets (a copy of which is available from the Council on request) and shall furnish such detailed information as the Council may reasonably require in regard thereto and without prejudice to the generality of the foregoing shall accurately [REDACTED] and submit to the Council, at such times as the Council shall reasonably direct (but so that the Service Provider shall not be required to submit more than one return in any one period of 12 months), performance returns in the form to be directed by the Council (acting reasonably). The Service Provider shall also permit the Council (acting reasonably) to inspect the system referred to in this paragraph for compliance with the requirements of this paragraph.
- (h) The Service Provider shall provide the Services so that all vehicles used in provision of the Services will comply with the Council's best practice requirements under its policies from time to time in force such as to EMAS. Where higher standards are not set under such policy the minimum standard will be for all vehicles used in the provision of the Services to meet the current Euro Standards (Euro V in the year 2008) and if the vehicle has a diesel engine it must run on a biofuel mix of at least 5%.

Schedule 4 Contract management

2. AUTHORISED REPRESENTATIVES

2.1 The Council's initial Authorised Representative:

Name: Ed Kocik

Post: Team Leader (Traffic Operations)

Email: Ed.kocik@leicester.gov.uk

Address: Leicester City Council
Traffic Management
York House 3rd Floor
91 Granby Street
Leicester LE1 6FB

Tel: 0116 223 2180

Fax: 0116 255 7997

2.2 The Service Provider's initial Authorised Representative:

Name: Shantanu Mukherjee

Post: Service Delivery Lead

Email: Shantanu.Mukherjee@enzen.com

Address: First Floor Rhodium Building
Central Boulevard
Blythe Valley Park
Solihull
B90 8AS

Tel: 0121 3149744 (Office)
07817 394818 (Mobile)

Fax: N/A

Schedule 5 Change control

1. GENERAL PRINCIPLES

- 1.1** Where the Council or the Service Provider sees a need to change this agreement, the Council may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this schedule 5.
- 1.2** Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Service Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change
- 1.3** Any discussions which may take place between the Council and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4** Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this schedule 5, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

- 2.1** Discussion between the Council and the Service Provider concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this agreement by the Council; or
 - (c) a recommendation to change this agreement by the Service Provider.
- 2.2** Where a written request for an amendment is received from the Council, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Council within three weeks of the date of the request.
- 2.3** A recommendation to amend this agreement by the Service Provider shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Council and by the Service Provider shall constitute an amendment to this agreement.

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

EXECUTED as a DEED)
by **LEICESTER CITY COUNCIL**)
by affixing its Common Seal)
the day and year first before written:)



92526

[Signature]
.....
Authorised Officer

EXECUTED as a DEED)
for and on behalf of)
ENZEN GLOBAL LIMITED)
the day and year first before written)
by:)

[Signature]
.....Director

[Signature]
.....Director/Secretary

Schedule 6 Contract Documents

Tender Responses via Delta

ITT Schedule 3 - Tender Response Document with PQQ Enzen Final	01/05/14	16:19
Section C - Pricing Schedule Final	01/05/14	16:19
Data Protection - Access Control	01/05/14	16:20
Data Protection - Information Security	01/05/14	16:20
Data Protection - Physical Security	01/05/14	16:20
Signed Certificates	01/05/14	16:21
Insurance Copy Documents	01/05/14	16:21
LCC Covering Letter	01/05/14	16:22
Table of Contents LCC	01/05/14	16:29

TRUSTED THIRD PARTY ACCESS AGREEMENT

This document sets out the minimum requirements that must be complied with and maintained by the Third Party in order to access the Council's network, systems, applications, servers and information.

This agreement must be signed by an appropriate person in the Third Party Organisation before any access can be granted by the Council.

Before allowing any access to the Council's systems and information checks should be undertaken by the Council to ensure that the Third Party is one that we should be allowing access to and that the ICT Technical Team are satisfied with the method of access being requested.

The Third party requesting access, agree to comply with the following terms:-

Name of Organisation requiring access:
Enzen Global Limited

Server/System/Application/ Information to which access is required:

EToN (Electronic Transfer of Notices) System and ad-hoc databases and tools used by LCC to manage Streetworks Operations.

1. We confirm on behalf of the company/ organisation that we will endeavour to uphold the confidentiality, integrity, availability and accountability of LCC's computer network, applications, systems, servers and information.
2. We will ensure that we comply with all relevant legal, contractual and statutory regulations e.g. Data Protection Act, Freedom of Information Act, Computer Misuse Act, Regulation of Investigatory Powers Act, Criminal Evidence Act etc.
3. An accurate record will be maintained on who within our organisation has access to LCC's computer network, applications, systems, servers and information and we will ensure that relevant personnel have received IT security training and are aware of LCC's IT security requirements as stated within the LCC Information Security Policy.
4. We understand that any LCC owned IT equipment and data is kept secure e.g. Secure ID tokens etc.
5. We will ensure that usernames and passwords are not shared and all individuals requiring access will have their own unique username and password.
6. We understand that formal authorisation from LCC must be obtained before any access is granted.
7. A list of all users will be provided to LCC and changes in personnel will be communicated to LCC promptly. A regular review will be undertaken by our organisation on access lists to ensure that only users with a legitimate business need have access.
8. We will ensure that no software is installed or changes made to LCC's computer network, applications, systems, servers and information without formal approval

9. Where a connection is required to the LCC network, we will ensure that equipment used by the organisation e.g. laptops, USBs are checked for malicious code (using up to date anti-virus software) and where necessary additional checks may be requested by LCC where there is a cause for concern.
10. We will ensure that where data is exchanged by the means of a physical drive/ other mobile devices that 256 bit AES encryption is afforded as standard.
11. We will ensure that all access to LCC applications, systems, servers, information and the network is solely for the purpose of providing support. We will ensure that no attempt is made by our staff to access any other systems, applications, servers or information for which access has not been granted.
12. We agree to Leicester City Council to undertake an audit at our premises to determine compliance with this agreement
13. LCC will be informed (via the agreed nominated officers) immediately if we become aware of any security breach or any significant changes to our organisation
14. We understand that failure to comply with any of the terms above could result in revocation of access to the Councils computer network, applications, systems, servers and information.

Signed



Position

Director

Date

30th April 2014