

DATED

31 July 2012

(1) THE SHEFFIELD CITY COUNCIL

- and -

(2) AMEY HALLAM HIGHWAYS LIMITED

CONTRACT

relating to the rehabilitation,
maintenance, management and operation
of the highway assets in the Area
pursuant to the Government's Private
Finance Initiative

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BETWEEN

- (1) **THE SHEFFIELD CITY COUNCIL** of Town Hall, Sheffield, S1 2HH ("**Authority**"); and
- (2) **AMEY HALLAM HIGHWAYS LIMITED** (Company No. 08121168) whose registered office is at the Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("**Service Provider**").

BACKGROUND

- (A) In accordance with the Government's Private Finance Initiative and pursuant to a notice published in the Official Journal of the European Union on 14 April 2009, the Authority invited expressions of interest pursuant to the competitive dialogue procedure under the Public Contracts Regulations 2006 from appropriately qualified undertakings for works and services relating to the rehabilitation, maintenance, management and operation of the Project Network.
- (B) By virtue of section 1(2) of the Highways Act the Authority is the highways authority for the Project Network and by virtue of section 121A of the Road Traffic Regulation Act 1984 the Authority is the traffic authority for the Project Network, and as such has the traffic management duties contained in the Traffic Management Act. Also, by virtue of sections 17-19 of the Public Health Act 1925 and section 64-65 of the Town Police Clauses Act 1847 the Authority is the street naming and numbering authority for the Project Network.
- (C) The 2009 Order enables a Highways Authority to authorise another person or that person's employees to exercise certain functions in relation to the management, maintenance, improvement or other dealings with highways in respect of which it is the relevant authority.
- (D) The Authority is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure services are functions to which the general duty set out at section 3(1) of the Local Government Act 1999 applies.
- (E) The Service Provider has submitted proposals to the Authority setting out how it will meet the Authority's requirements relating to the rehabilitation, maintenance, management and operation of the Project Network.

- (F) The Authority has selected the Service Provider for the rehabilitation, maintenance, management and operation of the Project Network pursuant to this Contract.
- (G) By the Local Government Act 1972 section 111, the Authority has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions, including the entering into of this Contract.
- (H) The Parties intend this Contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

IT IS AGREED

PART A - INTRODUCTORY

1. INTERPRETATION, CONSTRUCTION AND PRIORITY OF DOCUMENTS

1.1 This Contract comprises:

1.1.1 the Main Body;

1.1.2 the Schedules;

1.1.3 the Annexures.

1.2 **Priority of Documents**

This Contract shall be construed and interpreted as a whole provided that in the event of any conflict or inconsistency between the provisions of the Main Body, the Schedules and the Annexures, or between any of the Schedules, then, save as expressly provided for by Clause 1.3 (*The Senior Lenders' Direct Agreement*), the conflict or inconsistency shall be resolved according to the following descending order of priority:

1.2.1 the Main Body and Schedule 1 (*Definitions*);

1.2.2 Schedule 2 (Output Specification) and Schedule 4 (Payment Mechanism);

1.2.3 the Schedules and Annexures (excluding Schedule 1 (*Definitions*), Schedule 2 (*Output Specification*) and Schedule 4 (*Payment Mechanism*)).

1.3 **The Senior Lenders' Direct Agreement**

Notwithstanding the provisions of Clause 1.2 (*Priority of Documents*), the provisions of the Senior Lenders' Direct Agreement shall prevail over Clause 81 (*Step in*) of this Contract in the event of any conflict or inconsistency between the Senior Lenders' Direct Agreement and Clause 81 (*Step in*) of this Contract.

1.4 **Project Documents**

If there is any conflict or inconsistency between the terms of this Contract and another Project Document, other than the Senior Lenders' Direct Agreement, then in determining the rights and liabilities of the Parties, the provisions of this Contract shall prevail over and have effect in place of the relevant provisions of the relevant Project Documents.

1.5 **Ancillary Documents**

If there is any conflict or inconsistency between the terms of this Contract and any Ancillary Document, then in determining the rights and liabilities of the Parties, the provisions of this Contract shall prevail over and have effect in place of the relevant provisions of the relevant Ancillary Document.

1.6 **Amendments to the Contract**

All additions, amendments, modifications and/or waivers to this Contract (notwithstanding any provision to the contrary in this Contract) shall be binding only if made in writing and signed by the Authority Representative and the Service Provider Representative. All such additions, amendments and/or modifications shall be dated, numbered and attached or appended to this Contract.

1.7 **Definitions**

The provisions of Schedule 1 (*Definitions*) shall apply and have effect in relation to the words and expressions used in this Contract and the interpretation and construction of this Contract.

1.8 **Interpretation**

In this Contract, except where the context otherwise requires:

- 1.8.1 the masculine includes the feminine and vice-versa;
- 1.8.2 the singular includes the plural and vice-versa;
- 1.8.3 a reference in this Contract to any Clause, Sub-Clause, Paragraph, Schedule or Annexure is, except where it is expressly stated to the contrary, a reference to such Clause, Sub-Clause, Paragraph, Schedule or Annexure of this Contract;
- 1.8.4 save where otherwise provided in this Contract, any reference to this Contract or to any other document shall include any permitted variation, amendment, novation, supplement, extension, reinstatement, replacement or re-enactment;
- 1.8.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.8.6 references to any documents being "in the agreed form" means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
- 1.8.7 where reference is given to consent given by the Authority, the Authority shall in its absolute discretion give or withhold consent, unless otherwise stated;
- 1.8.8 the ejusdem generis rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
- 1.8.9 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.8.10 headings are for convenience of reference only;
- 1.8.11 all references to time of day shall be a reference to whatever time of day shall be in force in England and Wales;
- 1.8.12 without prejudice to Clause 98.2 (*Sterling References*), all monetary amounts are expressed in pounds sterling;

- 1.8.13 the words "including" and "include" means "including without limitation" and "include without limitation" respectively;
- 1.8.14 an obligation on the part of either Party not to do or omit to do or permit or suffer to be done (as the case may be) any act or thing shall be deemed to include an obligation not to knowingly permit or suffer such act or thing to be done or omitted (as the case may be);
- 1.8.15 an obligation on the part of either Party to do any act or thing shall be deemed to include an obligation to procure such act or thing to be done;
- 1.8.16 reference in this Contract to any employed post within a Party shall include successors to such post and such alternative post as shall replace such post from time to time; and
- 1.8.17 the Authority shall not be imputed with knowledge of any fact, matter or thing unless the fact, matter or thing is within the knowledge of those of its servants or agents (including the Authority Representative) who have responsibilities in connection with the conduct of the Service or the Project.

1.9 Housing Grants Act

This Contract is entered into under the PFI. This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Service Provider acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the Parties' rights or obligations under this Contract.

2. DURATION OF CONTRACT

2.1 Commencement of this Contract

This Contract and the rights and obligations of the Parties to this Contract shall take effect on the date of this Contract.

2.2 **Term of this Contract**

The rights and obligations of the Parties shall commence on the date of this Contract and cease on the earlier of:

2.2.1 the Expiry Date; and

2.2.2 the Termination Date;

except as expressly provided for in Clause 93 (*Continuing Obligations*) (the "**Term**").

3. **LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

3.1 **Contract to be a certified contract**

3.1.1 The Service Provider hereby consents to the issue by the Authority of a certificate under section 3 of the Local Government (Contracts) Act 1997 in respect of the Contract.

3.1.2 The Parties agree and acknowledge that they have consented to the Contract being a certified contract within the meaning of section 2 of the Local Government (Contracts) Act 1997.

3.1.3 The Authority shall satisfy the certification requirements (within the meaning of section 3 of the Local Government (Contracts) Act 1997 within six (6) weeks of the date of this Contract.

3.2 **Relevant Discharge Terms**

The relevant discharge terms within the meaning of section 6 of the Local Government (Contracts) Act 1997 are set out in Clause 80.6 (*Relevant Discharge Terms*)

PART B - PRE-COMMENCEMENT PERIOD AND BUSINESS TRANSFER

4. **BUSINESS TRANSFER**

The Service Provider shall enter into and comply with the provisions of Annexure 11 (*Business Transfer Agreement*).

5. PRE-COMMENCEMENT PERIOD

5.1 Mobilisation

5.1.1 The Service Provider shall notify the Authority:

5.1.1.1 from time to time (and no less frequently than monthly) of the progress of the Service Provider in meeting the Mobilisation Requirements (including any changes to the Service Commencement Date); and

5.1.1.2 when the Service Provider considers that the Mobilisation Requirements have been met,

and shall provide such supplementary evidence and/or demonstrations as the Authority (acting reasonably) shall require and deem acceptable to satisfy the Authority (acting reasonably) of such progress or completion of the Mobilisation Requirements.

5.1.2 Not later than seven (7) Business Days prior to the Planned Service Commencement Date, the Service Provider shall either:

5.1.2.1 notify the Authority that it will be able to commence the Service on the Planned Service Commencement Date together with such evidence and/or demonstrations as the Authority (acting reasonably) shall require and deem acceptable to satisfy the Authority (acting reasonably) that the Service Provider is ready to commence the Service; or

5.1.2.2 notify the Authority that it will not be able to commence the Service on the Planned Service Commencement Date, and provide the Authority with a revised date on which it will be able to commence the Service.

5.1.3 In relation to the evidence and/or demonstrations required by the Authority pursuant to Clauses 5.1.1 and 5.1.2.1 above:

- 5.1.3.1 the Authority shall be entitled to attend at any Work Sites in order to verify that such evidence exists or is correct and to attend at any demonstrations provided by the Service Provider as appropriate; and
- 5.1.3.2 the Authority shall have the right to dispute that such evidence exists or is correct or that such demonstrations effectively demonstrate that the Mobilisation Requirements have been achieved.
- 5.1.4 Following receipt of the Notice of Service Commencement, the Authority shall issue a notice to the Service Provider, which shall either:
 - 5.1.4.1 acknowledge that the Service Provider is ready to commence the Service (an "**Acknowledgement of Service Commencement**"); or
 - 5.1.4.2 dispute that such evidence and/or demonstrations provided by the Service Provider indicate that it is ready to commence the Service and decline to issue the Acknowledgement of Service Commencement setting out the Authority's reasons; or
 - 5.1.4.3 indicate, at the Authority's absolute discretion, that notwithstanding that the Authority disputes the evidence and/or demonstrations provided by the Service Provider, the Service Provider may commence the Service on the condition that it provides the Authority with a written undertaking that it will complete all outstanding work in respect of the Mobilisation Requirement(s) that remain outstanding within a reasonable period of time specified by the Authority.
- 5.1.5 If the Authority declines to issue the Acknowledgement of Service Commencement pursuant to Clause 5.1.4.2, the Parties shall endeavour to work together in order to ensure that the Authority is provided with evidence and/or demonstrations which it considers (acting reasonably) is satisfactory, but in the event that such evidence and/or demonstrations are considered by the Authority (acting reasonably) to be unsatisfactory, the matter shall be referred to the Dispute Resolution Procedure.
- 5.1.6 The provisions of Clause 5.1.5 shall continue to apply until such time as the Service Provider serves a notice confirming a revised Intended Service Commencement Date on which it will be able to commence the Service

together with such evidence and/or demonstrations as the Authority (acting reasonably) shall require and deem acceptable to satisfy the Authority (acting reasonably) that the Service Provider is ready to commence the Service and the Authority serves an Acknowledgement of Service Commencement pursuant to Clause 5.1.4.1 or indicated that the Service Provider may commence the Service pursuant to Clause 5.1.4.3 (as the case may be), provided that the Intended Service Commencement Date shall not be later than the Long Stop Date (except as expressly consented to by the Authority in its absolute discretion).

5.2 Authority Obligations

5.2.1 The Authority shall, during the period between the date of this Contract and the Service Commencement Date continue to maintain records in accordance with its usual practice during the two (2) years prior to the date of this Contract and to make such records (including the Inventories) available to the Service Provider.

5.2.2 The Authority shall comply, during the period between the date of this Contract and the Service Commencement Date, with its obligations set out in Section C of Schedule 13 (*Mobilisation*).

5.3 Depot Strategy

The Service Provider warrants that it has prepared a Depot Strategy which is set out in Schedule 36 (*Depot Strategy*) in accordance with this Clause 5.3 (*Depot Strategy*), and that it includes:

5.3.1 details of which of the Authority Depots the Service Provider will occupy in order to deliver the Services (the "**Service Provider Depots**");

5.3.2 the date on which the Service Provider wishes to occupy the Service Provider Depots;

5.3.3 the date on which (if before the Expiry Date) the Service Provider wishes to vacate the Service Provider Depots;

- 5.3.4 full details (including plans where appropriate) of any alterations that the Service Provider intends to make to the Service Provider Depots or any parts thereof or any buildings situated thereon;
- 5.3.5 details of the Services that the Service Provider intends to deliver from each of the Service Provider Depots;
- 5.3.6 details of any planning permission or any other Necessary Consents that the Service Provider will be required to obtain in order to effect the alterations set out at Clause 5.3.4 (provided that the Provisions of Clauses 14 and 16 shall not apply to any planning permissions or Necessary Consents to be obtained by the Service Provider pursuant to this Clause 5.3.6);
- 5.3.7 details of any activities, other than the delivery of the Services, that the Service Provider intends to undertake on the Service Provider Depots, including the administration of any businesses (whether transferred by the Authority pursuant to the Business Transfer Agreement or otherwise); and
- 5.3.8 the terms of any sub-leases or sub-licences that the Service Provider intends to grant to any other organisation that it wishes to occupy the Service Provider Depots;

provided always that the Service Provider undertakes to ensure that the Service Provider's Head Office for the Project shall always be within the city of Sheffield.

- 5.4 Any amendments to the Depot Strategy shall be made pursuant to the Review Procedure.

6. COMMENCEMENT

The Service Provider shall commence delivery of the Service from the Service Commencement Date in accordance with the terms of this Contract.

7. CONDITION OF THE PROJECT NETWORK

- 7.1 The Service Provider confirms that it has, as at the Pre-Commencement Survey Date, satisfied itself as to:

- 7.1.1 the condition and type of the Project Network Parts;

- 7.1.2 in respect of those Project Network Parts which are not listed or individually catalogued in Schedule 20 (*Project Network Information*) the volume of such Project Network Parts; and
- 7.1.3 the work that it needs to carry out on the Project Network for the Term in order to comply with the requirements of Schedule 2 (*Output Specification*),
- save in respect of:
- 7.1.4 any Latent Defect (to which Clause 8 (*Latent Defects*) shall apply); and
- 7.1.5 any Unascertained Land Rights.
- 7.2 The Parties understand and acknowledge that from the Pre-Commencement Survey Date until the date of this Contract the Authority has carried out routine maintenance in accordance with the Routine Maintenance Protocol, and that from the date of this Contract until the Service Commencement Date the Authority shall continue to carry out maintenance on the Project Network in accordance with the Routine Maintenance Protocol.
- 7.3 The Parties acknowledge and agree that the Authority is not obliged to spend more than seven hundred and fifty thousand pounds (£750,000) per Month in carrying out the Routine Maintenance Protocol during the period between the Pre-Commencement Survey Date (calculated cumulatively across the period) and the Service Commencement Date and the Service Provider shall not be entitled to claim a Compensation Event or other relief from its obligations under this Contract if the Authority has either:
- 7.3.1 complied with the Routine Maintenance Protocol; or
- 7.3.2 spent seven hundred and fifty thousand pounds (£750,000) per Month in complying with the Routine Maintenance Protocol.
- 7.4 The Parties agree and acknowledge that any New Works, or any other changes to the Project Network carried out by the Authority between the Pre-Commencement Survey Date and the Service Commencement Date shall be dealt with in accordance with the provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) as if those Project Network Parts had been Accrued to or De-Accrued from the Project Network (as appropriate) as at the Service Commencement Date.

- 7.5 For the purposes of this Clause 7 (*Condition of the Project Network*), the Service Provider shall have access to the Authority's records for the period from the Pre-Commencement Survey Date until the Service Commencement Date as follows:
- 7.5.1 the Mayrise Database;
 - 7.5.2 the most up to date Condition Indices available to the Authority;
 - 7.5.3 the Highway Record;
 - 7.5.4 details of all planned Third Party Works of which the Authority has been notified; and
 - 7.5.5 other data relating to the Project Network as the Service Provider may reasonably require.
- 7.6 Without prejudice to Clauses 7.1.4 and 7.1.5, the Service Provider shall not be able to dispute what the condition and type of the Project Network Parts was at any time prior to the Pre-Commencement Survey Date.

8. LATENT DEFECTS

8.1 Liability for Latent Defects

Subject to the provisions of Clause 8.2, the Service Provider shall be responsible for rectifying and/or managing and/or mitigating the occurrence and effects of any Latent Defect in any Clause 8 Structures in accordance with this Clause 8 (*Latent Defects*), and, upon becoming aware of the occurrence of any Latent Defect (without prejudice to any of the Service Provider's other obligations under this Contract) the Service Provider shall ensure that the affected Clause 8 Structure is made safe to the public, including the establishment of necessary traffic management measures (including road closures, diversions, restricted access to roads or pedestrian thoroughfares).

8.2 Cap on liability for Latent Defects

The Service Provider's liability for carrying out its obligations under Clause 8.1 above shall be limited to:

8.2.1 [REDACTED]

8.2.2 [REDACTED]

in respect of the Latent Defect Direct Costs (together the "**Latent Defect Caps**"). The Parties agree and acknowledge that any Latent Defect Direct Costs which exceed the Estimated Latent Defect Direct Costs (except the Increased Estimated Latent Defect Direct Costs where such have been agreed pursuant to Clause 8.5 (*Estimating Costs*)) shall not count towards the Latent Defect Cap.

8.3 Latent Defect Notification and Notice

8.3.1 The Service Provider shall notify the Authority ("**Latent Defect Notification**") as soon as reasonably practicable of it becoming aware of the occurrence or potential occurrence of any Latent Defect and such notice shall include the following:

8.3.1.1 the nature and extent of the Latent Defect which has or may have occurred in the Clause 8 Structure;

8.3.1.2 details of the Clause 8 Structure affected or potentially affected by the Latent Defect and the affected or potentially affected parts thereof; and

8.3.1.3 any measures which the Service Provider has or will put into place in the short term in order to make the affected Clause 8 Structure safe to the public, including any necessary traffic management measures (including road closures, diversions, restricted access to roads or pedestrian thoroughfares).

8.3.2 The Service Provider shall provide notice to the Authority ("**Latent Defect Notice**") within twenty (20) Business Days of it becoming aware of the

occurrence or potential occurrence of any Latent Defect and such notice shall contain the following information:

- 8.3.2.1 any inspections, tests and/or assessments which the Service Provider (acting reasonably) believes are required to assess the nature and extent of the Latent Defect or to confirm whether a Latent Defect is in existence, including the estimated costs of carrying out such inspections, tests and/or assessment and any inspections, tests and/or assessments necessary to assess any other Clause 8 Structure that may be affected by a similar Latent Defect;
 - 8.3.2.2 any measures adopted or to be adopted by the Service Provider in order to prevent the Latent Defect from deteriorating in the period before rectification work (if relevant) commences; and
 - 8.3.2.3 whether any Latent Defect has previously occurred in the affected Clause 8 Structure and, if so, full details of the costs incurred to date pursuant to this Clause 8 (*Latent Defects*).
- 8.3.3 If, during the period between the issue of the Latent Defect Notification and the issue of the Latent Defect Report, any of the information provided to the Authority pursuant to this Clause 8.3 (*Latent Defect Notification and Notice*) changes in any material way, then the Service Provider shall notify the Authority of such changes as soon as reasonably practicable.
- 8.3.4 The Service Provider shall undertake in accordance with Good Industry Practice all necessary investigations required in respect of the Clause 8 Structure to enable the Service Provider to establish whether a Latent Defect has in fact occurred in respect of such Clause 8 Structure and in order to fully comply with the provisions of Clause 8.4 (*Latent Defect Report*) including the provision of the Rectification Plan, the Mitigation Plan and the Estimated Latent Defect Direct Costs.
- 8.3.5 The Service Provider shall, until the issue of the Latent Defect Report pursuant to Clause 8.4.1 below, update the Authority in the Monthly Monitoring Report of the progress made in the collection of data in relation to any Latent Defect or potential Latent Defect, including the options being considered in respect of the rectification and/or management and/or

mitigation of the Latent Defect or potential Latent Defect, and of any changes in the information previously provided by the Service Provider in respect of such Latent Defect or potential Latent Defect.

8.3.6 Where the Parties do not agree whether a defect in a Clause 8 Structure constitutes a Latent Defect, either Party may refer the matter to Dispute Resolution.

8.4 **Latent Defect Report**

8.4.1 Where it has been agreed or determined that a Latent Defect exists, the Service Provider shall provide to the Authority (at the Service Provider's own expense) a report ("**Latent Defect Report**") within sixty (60) Business Days or such other period as the Parties may agree (acting reasonably) having regard to the nature and complexity of the Latent Defect (which in any event shall not exceed one hundred and twenty (120) Business Days) of the date of the Latent Defect Notice which shall set out the following information:

8.4.1.1 updated and more detailed information in respect of those matters contained in the Latent Defect Notification and Latent Defect Notice;

8.4.1.2 an explanation of the impact of the Latent Defect and any action taken to rectify and/or manage and/or mitigate (as appropriate) such Latent Defect and any impact of the Latent Defect or such action on the performance of the Service;

8.4.1.3 information on how the Service Provider has made the affected Clause 8 Structure and its surroundings safe to the public (including the remediation of all Urgent Defects and Category 1 Defects that the Service Provider would be obliged to remediate regardless of the occurrence of the Latent Defect in accordance with Schedule 2 (*Output Specification*));

8.4.1.4 a full and detailed explanation of what further action the Service Provider is to undertake (including any further tests, surveys and/or assessments required);

8.4.1.5 whether the Service Provider (acting reasonably) believes that any action is necessary to rectify and/or manage and/or mitigate the Latent Defect, and:

8.4.1.5.1 if the Service Provider reasonably believes that no action is required, a full explanation of the reasons for such belief, including any implications arising from taking no action; or

8.4.1.5.2 if the Service Provider indicates that action is required to rectify, manage and/or mitigate the Latent Defect, full and detailed proposals of the Service Provider's long-term solution for the Latent Defect, including (as practicable):

(a) options for rectifying the Latent Defect (in whole or in part) including details relating to:

(i) the mitigation of the occurrence and effect of such Latent Defect;

(ii) the management of such Latent Defect;

(iii) the impact of such Latent Defect on the Service;

(iv) any proposed amendments to any Investment Programmes as a result of the proposed rectification; and

(v) the Service Provider's preferred option for rectification of the Latent Defect,

(a "**Rectification Plan**"); and

(b) options for mitigating (but not rectifying) the occurrence and effects of the Latent Defect including details relating to:

- (i) the mitigation of the occurrence and effect of such Latent Defect;
- (ii) the management of such Latent Defect;
- (iii) the impact of such Latent Defect on the Service;
- (iv) any proposed amendments to any Investment Programmes as a result of the proposed mitigation; and
- (v) the Service Provider's preferred option for mitigating the Latent Defect,

(a "**Mitigation Plan**");

8.4.1.6 a full breakdown of the Estimated Latent Defect Direct Costs in relation to each of the proposed options within each of the Rectification Plan and the Mitigation Plan including an allocation of costs against each of the relevant activities and evidence (where applicable) of how the costs have been determined, and also including:

- (a) any Latent Defect Direct Costs already incurred by the Service Provider in managing the effects of the Latent Defect on the Clause 8 Structure; and
- (b) any part of the Estimated Latent Defect Direct Costs that are unascertainable at the date of the Latent Defect Report by the Service Provider (acting reasonably) and an explanation as to why such parts of the Estimated Latent Defect Direct Costs are unascertainable.

8.4.1A The Service Provider shall notify the Authority in each Monthly Monitoring Report following the submission by the Service Provider of the Latent Defect Report of:

8.4.1A.1 any updates to the information provided in the Latent Defect Report; and

8.4.1A.2 whether any Estimated Latent Defect Direct Costs which were specified as being unascertainable pursuant to Clause 8.4.1.6(b) have become certain and provide detail as to the further investigations undertaken by the Service Provider in order to provide certainty to the Estimated Latent Defect Direct Costs,

8.4.1B Notwithstanding the provisions of Clause 8.4.1A.1, the Service Provider shall also, as soon as reasonably practicable following any request by the Authority, provide any additional information relating to the Latent Defect Report to enable the Authority to determine its response pursuant to Clause 8.4.2.

8.4.2 The Authority shall respond to the Service Provider, in writing, within sixty (60) Business Days of receipt of the Latent Defect Report (provided that the Authority shall update the Service Provider no less frequently than monthly of the progress of its consideration of the matters detailed in Clauses 8.4.1 to 8.4.4 inclusive), and such notice may include the following information:

8.4.2.1 the Authority's preferred solution from the Rectification Plan and/or the Mitigation Plan put forward by the Service Provider in the Latent Defect Report;

8.4.2.2 any amendments the Authority proposes to make to the solution referred to in Clause 8.4.2.1;

8.4.2.3 any alternative solution the Authority wishes to propose (including a combination of elements of the Rectification Plan and/or Mitigation Plan) which the Authority considers appropriate; and

8.4.2.4 any element of the Estimated Latent Defect Direct Costs which the Authority disputes with an explanation as to why the Authority disputes such costs,

and where the Authority has proposed any amendments pursuant to Clause 8.4.2.2 or an alternative solution pursuant to Clause 8.4.2.3, the Service

Provider shall respond to the Authority's proposals by providing its views on the reasonableness of the Authority's proposals, the amended Estimated Latent Defect Direct Costs that the Authority's proposals would entail, and any other information required by the Authority (acting reasonably) within twenty (20) Business Days of receipt of the Authority's response pursuant to this Clause 8.4.2 (the "**Updated Latent Defect Report**").

- 8.4.3 As soon as practicable and in any event within twenty (20) Business Days after the later of the receipt of the Authority's response under Clause 8.4.2 or receipt of the Updated Latent Defect Report, the Parties shall meet to discuss and endeavour to agree (acting reasonably) the solutions proposed by both Parties (if applicable) for the rectification, management and/or mitigation (as appropriate) of the Latent Defect and the Estimated Latent Defect Direct Costs.
- 8.4.4 The Authority shall notify the Service Provider as soon as reasonably practicable following the meeting held pursuant to Clause 8.4.3 of its decision (arrived at acting reasonably) in respect of the action the Service Provider is to take in respect of the Latent Defect, which shall be one of the options from the Latent Defect Report or Updated Latent Defect Report (or as otherwise agreed between the Parties pursuant to Clause 8.4.3 (*Latent Defect Report*)), provided that such decision shall not be subject to the Dispute Resolution Procedure.
- 8.4.5 Following notification of the Authority's decision pursuant to Clause 8.4.4 the Service Provider shall (subject, where applicable, to receipt of an instruction pursuant to Clause 8.6.2.2 (*Cap Expiry*)):
- 8.4.5.1 implement the Authority's final decision regarding the appropriate solution for the rectification and/or management and/or mitigation of the Latent Defect in the Clause 8 Structure;
 - 8.4.5.2 submit to the Authority pursuant to the Review Procedure any amendments to the Investment Programmes caused by the Authority's decision pursuant to Clause 8.4.4 including the action the Service Provider is required to take; and

8.4.5.3 notify the Authority in each Monthly Monitoring Report following the notification by the Authority pursuant to Clause 8.4.4 of:

- (a) any updates to the information provided in the Latent Defect Report; and
- (b) whether any Estimated Latent Defect Direct Costs which were specified as being unascertainable pursuant to Clause 8.4.1.6(b) have been ascertained and provide detail as to the further investigations undertaken by the Service Provider in order to provide certainty to the Estimated Latent Defect Direct Costs,

until the action the Service Provider is required to take pursuant to Clause 8.4.5.1 has been fully implemented (if applicable).

8.5 **Estimating Costs**

8.5.1 Where:

8.5.1.1 the Service Provider is obliged to rectify and/or manage and/or mitigate (as appropriate) a Latent Defect in accordance with this Clause 8 (*Latent Defects*); and

8.5.1.2 the Service Provider has notified the Authority pursuant to Clause 8.4.1.6(b) of unascertained Estimated Latent Defect Direct Costs; and

8.5.1.3 the Service Provider (acting reasonably) considers that the Estimated Latent Defect Direct Costs submitted to the Authority pursuant to Clause 8.4 (*Latent Defect Report*) shall be exceeded as a result of such unascertained Estimated Latent Defect Direct Costs being ascertained,

the Service Provider shall notify the Authority, in writing, (the "**Increased Estimated Latent Defect Direct Costs Notice**") as soon as the Service Provider considers (acting reasonably) that the relevant Estimated Latent Defect Direct Costs will be exceeded, and the date on which the Estimated Latent Defect Direct Costs will be exceeded (the "**Estimated Latent Defect**

Direct Costs Increase Date") and such Increased Estimated Latent Defect Direct Costs Notice shall provide:

8.5.1.4 a full and detailed explanation of the previously unascertainable Estimated Latent Defect Direct Costs that have been ascertained and why these exceed the previous estimate in the Latent Defect Notice or Updated Latent Defect Notice (as applicable);

8.5.1.5 a full and detailed explanation (including the revised Investment Programmes) of what works of rectification and/or management and/or mitigation (as appropriate) will be outstanding on the Estimated Latent Defect Direct Costs Increase Date and/or the further Estimated Latent Defect Direct Costs of such outstanding work ("**Increased Estimated Latent Defect Direct Costs**"); and

8.5.1.6 whether or not either of the Latent Defect Caps will be exceeded if the Service Provider incurs the Increased Estimated Latent Defect Direct Costs, in which case Clause 8.6 (*Cap Expiry*) shall apply,

provided that the Service Provider shall not be entitled to claim any costs from the Authority in excess of the relevant Latent Defect Cap other than pursuant to Clause 8.6 (*Cap Expiry*).

8.5.2 The Authority shall, within thirty (30) Business Days of receipt of the Increased Estimated Latent Defect Direct Costs Notice (or, having regard to the nature and complexity of the Latent Defect or the rectification and/or management and/or mitigation solution, such longer period (notified by the Authority to the Service Provider in writing) as the Authority (acting reasonably) requires), notify the Service Provider that:

8.5.2.1 it agrees with the amount and/or contents of Increased Estimated Latent Defect Direct Costs; or

8.5.2.2 it disagrees with the amount and/or contents of the Increased Estimated Latent Defect Direct Costs, giving reasons for such disagreement,

and, in each case, whether:

8.5.2.3 it requires the Service Provider to carry on with the rectification and/or management and/or mitigation of the Latent Defect (as appropriate) in accordance with the solution previously notified by the Authority pursuant to Clause 8.4.4, except that where either of the Latent Defect Caps would be exceeded if the Service Provider were to incur the Increased Estimated Latent Defect Direct Costs, the provisions of Clause 8.5.5.1 or Clause 8.6 will apply;

8.5.2.4 it does not require the Service Provider to carry out any further rectification, management and/or mitigation (as appropriate) of the Latent Defect (in which case Clause 8.7 (*Service Provider not required to Rectify, Manage and/or Mitigate*) shall apply); or

8.5.2.5 it proposes variations to the preferred solution, in which case the provisions of Clause 8.4.2 (*Latent Defect Report*) shall apply, provided that the timescales in Clause 8.4.2 shall apply from the date on which the Authority provides its notice to the Service Provider pursuant to this Clause 8.5.2.

8.5.3 Where Clause 8.5.2.2 applies, the Authority and the Service Provider shall meet to endeavour to agree such Increased Estimated Latent Defect Direct Costs within a further twenty (20) Business Days of the date of issue of the notice by the Authority pursuant to Clause 8.5.2.

8.5.4 If no agreement is reached pursuant to Clause 8.5.3 either Party may refer the matter to the Dispute Resolution Procedure.

8.5.5 The Service Provider shall, following agreement of the Increased Estimated Latent Defect Direct Costs by the Authority pursuant to Clause 8.5.2.1, or between the Parties pursuant to Clauses 8.5.3 and/or 8.5.4, continue to rectify, manage and/or mitigate the Latent Defect (save where Clause 8.5.2.4 applies) until such time as either:

8.5.5.1 a Latent Defect Cap would be exceeded were the Service Provider to incur the Increased Estimated Latent Defect Direct Costs, in which case the provisions of Clause 8.6 (*Cap Expiry*) shall apply; or

8.5.5.2 the action to be taken by the Service Provider pursuant to Clauses 8.4.4 or 8.5.2.3 is fully implemented mutatis mutandis.

8.5.6 The provisions of this Clause 8.5 (*Estimating Costs*) shall apply mutatis mutandis where unascertainable Estimated Latent Defect Direct Costs which had been notified pursuant to Clause 8.4.1.6(b) have been ascertained.

8.6 **Cap Expiry**

8.6.1 The Service Provider shall notify the Authority if the Service Provider considers that either of the Latent Defect Caps will be exceeded in respect of any Clause 8 Structure as soon as reasonably practicable after it becomes apparent to the Service Provider and in any event prior to the date on which the Service Provider considers the relevant Latent Defect Cap will be exceeded ("**Cap Expiry Date**"). The Service Provider shall provide a full and detailed explanation of why the Service Provider considers that the Latent Defect Cap will be exceeded.

8.6.2 Where Clause 8.6.1 applies, the Authority shall notify the Service Provider as soon as reasonably practicable whether the Authority requires the Service Provider to continue to carry out rectification and/or management and/or mitigation works (at the Authority's cost) in respect of any relevant Latent Defect, and, if the Authority does require the Service Provider to continue to rectify, manage and/or mitigate (as appropriate) the Latent Defect, whether the Authority requires any change to the solution notified by the Authority pursuant to Clause 8.4.4 (*Latent Defect Report*) or Clause 8.5.2.5 (*Estimating Costs*) (as applicable) at the Authority's absolute discretion.

8.6.3 The Service Provider shall, within twenty (20) Business Days, or such longer period agreed between the Parties (acting reasonably) (having regard to the nature of the content of Authority's notification pursuant to Clause 8.6.2 above), (but in any event not exceeding one hundred and twenty (120) Business Days) of receipt of the notice from the Authority pursuant to Clause 8.6.2, respond to the Authority's notification by providing its response on the Authority's proposals together with a detailed cost proposal.

8.6.4 As soon as practicable, and in any event within twenty (20) Business Days, after receipt of the Service Provider's response pursuant to Clause 8.6.3, the

Parties shall meet to discuss the revised solution proposed by the Authority notified to the Service Provider pursuant to Clause 8.6.2 for the rectification and/or management and/or mitigation (as appropriate) of the Latent Defect and the Service Provider's cost proposal in relation thereto.

8.6.5 The Authority shall notify the Service Provider as soon as reasonably practicable following the meeting held pursuant to Clause 8.6.4 of its decision in respect of the action the Service Provider is to take in respect of the Latent Defect (as discussed pursuant to clause 8.6.4) together (where practicable) with a breakdown of the costs decided by the Authority (acting reasonably) in respect of such action which shall be in accordance with the Service Provider's cost proposal provided pursuant to Clause 8.6.3 (as may have been agreed to be amended by the Parties at the meeting pursuant to Clause 8.6.4), and the aggregate of such costs shall be the "**Additional Latent Defect Action Cap**", provided that such decision shall not be subject to the Dispute Resolution Procedure.

8.6.6 Following notification of the Authority's decision pursuant to Clause 8.6.5, the Service Provider shall:

8.6.6.1 implement the Authority's decision under Clause 8.6.5 regarding the appropriate solution for the continued rectification and/or management and/or mitigation of the Latent Defect in the Clause 8 Structure;

8.6.6.2 submit to the Authority pursuant to the Review Procedure any amendments to the Investment Programmes required as a result of the Authority's decision pursuant to Clause 8.6.5 including the action the Service Provider is required to take; and

8.6.6.3 notify the Authority in each Monthly Monitoring Report following the notification by the Authority pursuant to Clause 8.6.5 of:

(a) any updates to the information provided in the Latent Defect Report; and

(b) the amount of costs expended in implementing the Authority's decision for the continued rectification and/or

management and/or mitigation of the Latent Defect in the Clause 8 Structure,

until the action the Service Provider is required to take pursuant to Clause 8.6.5 has been fully implemented (if applicable) or the Additional Latent Defect Action Cap has been reached.

- 8.6.7 Subject to the Additional Latent Defect Action Cap, in any Month following a Month in which the Service Provider has carried out any action pursuant to Clause 8.6.6.1, the Service Provider shall be entitled to include with the Draft Monthly Payment Report pursuant to Clause 56.4 (*Draft Monthly Payment Report*) its reasonably and properly incurred costs expended in that Month in carrying out such action where such costs are in excess of the Latent Defect Cap(s) and are in accordance with the cost breakdown agreed or determined pursuant to Clause 8.6.5 shall provide with any such Draft Monthly Payment Report evidence of the amounts expended by the Service Provider and also evidence that such amounts have been paid by the Service Provider, provided that the Authority shall not be obliged to pay any of the Service Provider's costs which are in excess of the Additional Latent Defect Action Cap.
- 8.6.8 The Service Provider shall notify the Authority if the Service Provider considers that the Additional Latent Defect Action Cap will be exceeded as soon as reasonably practicable after it becomes apparent to the Service Provider and in any event prior to the date on which the Service Provider considers the Additional Latent Defect Action Cap will be exceeded, and thereafter the provisions of Clauses 8.6.2 to 8.6.7 (inclusive) shall apply mutatis mutandis.

8.7 Service Provider not required to Rectify, Manage and/or Mitigate

Where the Service Provider is advised that it is not obliged to rectify, manage and/or mitigate a Latent Defect pursuant to this Clause 8 (*Latent Defects*) the Authority may require the Service Provider to pay an amount equivalent to any unexpended element of the Estimated Latent Defect Direct Costs to the Authority within twenty (20) Business Days of receipt of a request for the same provided that the Service Provider shall not be required to pay any sum in excess of the applicable Latent Defect Cap.

8.8 Latent Defects Log

8.8.1 The Service Provider shall maintain a record (the "**Latent Defects Log**") of:

8.8.1.1 each Latent Defect or potential Latent Defect notifiable under Clause 8.3;

8.8.1.2 all Estimated Latent Defect Direct Costs and Increased Estimated Latent Defect Direct Costs (as applicable) agreed or determined in accordance with this Clause 8 (*Latent Defects*), and all Latent Defect Direct Costs incurred, in respect of each Latent Defect; and

8.8.1.3 any other matters relevant to determining whether or not any applicable Latent Defect Cap in respect of that Latent Defect is, will or is likely to be exceeded pursuant to Clause 8.6 (*Cap Expiry*) including the potential impact of any unascertainable Estimated Latent Defect Direct Costs,

and following the occurrence of a Latent Defect or potential Latent Defect, shall update the Latent Defects Log monthly and shall present the Latent Defects Log at each next occurring Service Operations Board Meeting until the relevant Latent Defect has been rectified or, where such Latent Defect is not to be rectified, until the Authority determines that such record should no longer be kept.

8.8.2 The Service Provider shall provide a copy of the Latent Defects Log to the Authority annually, to be submitted no later than one (1) month before the start of the Contract Year, and as soon as reasonably practicable upon request by the Authority at any other time during the Contract Year.

8.8.3 If either Party considers the Latent Defects Log to be inaccurate in any respect, it shall notify the other Party accordingly and the Service Provider shall correct any inaccuracy as notified (or where such inaccuracy is disputed, as determined pursuant to the Dispute Resolution Procedure) as soon as reasonably practicable and provide an updated copy to the Authority.

8.9 General

8.9.1 Nothing in this Clause 8 (*Latent Defects*) shall prevent the Authority from issuing an Authority Change in respect of any Structure affected by a Latent Defect.

8.9.2 Where, as a result of a Latent Defect (including following a relevant Cap Expiry Date or if the Additional Latent Defect Action Cap is reached) or the action being undertaken by the Service Provider to rectify and/or manage or mitigate a Latent Defect, the Service Provider is unable to or is adversely affected in its ability to perform the Services in accordance with the requirements of this Contract, [REDACTED]

9. AGREED NON-COMPLIANT

9.1 The Service Provider shall comply with all the provisions of Schedule 2 (*Output Specification*) in respect of Agreed Non-Compliant Project Network Parts save that in respect of:

9.1.1 Agreed Non-Compliant Structures and Agreed Non-Compliant Street Lighting, the Service Provider shall not be responsible for ensuring that such Agreed Non-Compliant Structures and Agreed Non-Compliant Street Lighting meet the following required standards in Schedule 2 (*Output Specification*) and the Contract:

9.1.1.1 for Agreed Non-Compliant Street Lighting, the relevant Lighting Standards for that Street Lighting (until, in relation to Agreed Non-Compliant Lighting Units Type 1, such Lighting Units are replaced, in which case Performance Requirement 4.3 shall apply); and

9.1.1.2 for Agreed Non-Compliant Structures, the Height Criteria but only so far as such is specified in Schedule 16 (*Agreed Non-Compliant Project Network Parts*),

and in respect of such standards, such Agreed Non-Compliant Structures and Agreed Non-Compliant Street Lighting shall be deemed to comply with the relevant provisions of the Schedule 2 (*Output Specification*) and the Contract.

9.1.2 The Service Provider shall comply with all requirements in relation to any Agreed Non-Compliant Structures or Agreed Non-Compliant Street Lighting as are specified in Schedule 2 (*Output Specification*) for Agreed Non-Compliant Structures or Agreed Non-Compliant Street Lighting.

9.1.3 The Service Provider shall comply with all the provisions of Schedule 2 (*Output Specification*) in respect of Partially Compliant Street Lighting save those of the obligations pursuant to Paragraph (p) of Annexure 1 to Service Standard 4 that the Service Provider considers (acting reasonably) cannot be complied with.

PART C - STATUTORY POWERS

10. TRAFFIC MANAGEMENT

The Service Provider acknowledges that the Authority has duties imposed upon it by the Traffic Management Act and shall co-operate and liaise with the Authority to assist the Authority in discharging its duties under section 16 of the Traffic Management Act.

11. NRSWA – NEW ROADS AND STREET WORKS ACT

11.1 The Service Provider shall at all times in carrying out the Services take all steps necessary to ensure that the Authority is able to comply with its duties under NRSWA, the Regulations and the Codes of Practice and assist the Authority in carrying out such duties.

11.2 Notwithstanding the other provisions of this Clause 11 (*NRSWA*); and the obligations set out in NRSWA, the Parties agree and acknowledge that the Output Specification shall apply to the giving of statutory notices and permits in relation to works carried out in connection with the Service.

11.3 The Service Provider shall be entitled to carry out inspections and investigations on behalf of the Authority under the power granted to the Authority pursuant to section 72 of NRSWA, to the extent that such inspections or investigations are agreed pursuant to this Clause 11 (*NRSWA*) or are required by the Service Provider in order to perform its obligations under Performance Requirements 1.93 to 1.104(b) of the Output Specification.

11.4 Where the Service Provider wishes to carry out inspections and/or investigations in addition to those which are required to comply with the Output Specification, the Service Provider shall submit to the Authority pursuant to the Review Procedure a NRSWA Protocol relating to the additional inspections and/or investigations it wishes to carry out, to be submitted no later than one (1) month before the start of the Contract Year, and the NRSWA Protocol shall include:

11.4.1 the number, or method of calculation of the number, of inspections and/or investigations to be carried out, including (where applicable) any additional investigations and/or inspections detailed in any improvement plan agreed with any Statutory Undertaker and/or Licence Holder pursuant to Performance Requirements 1.103(a) or 1.103(b);

11.4.2 the Statutory Undertaker(s) and/or Licence Holder(s), or the criteria for determining the identity of such Statutory Undertakers and/or Licence Holders, that the Service Provider wishes to carry out such inspections and/or investigations in relation to (so far as these can be provided); and

11.4.3 the nature and timing, or the method of determining the nature and timing, of such inspections and/or investigations;

11.4.4 the level of resources (including Personnel and assets) that the Service Provider intends to utilise to deliver the above,

and the Service Provider shall only be entitled to carry out such inspections and/or investigations to the extent that the NRSWA Protocol has been agreed pursuant to the Review Procedure. Where the Service Provider wishes to update the NRSWA Protocol during any Contract Year, the Service Provider shall submit the amended NRSWA Protocol pursuant to the Review Procedure, provided that the Service Provider shall not be entitled to carry out any such additional inspections and/or investigations (not authorised by the previously applicable NRSWA Protocol) pursuant to this Clause 11 prior to the amended NRSWA Protocol being agreed pursuant to the Review Procedure.

11.5 In relation to the performance by the Service Provider of:

11.5.1 Performance Requirement 1.96, relating to the Target Number of Sample Inspections;

11.5.2 Performance Requirements 1.98(b) to 1.100(b) relating to making safe of Reinstatement Defects Causing Danger, Higher Risk Inadequacies, Lower Risk Inadequacies and Non-Dangerous Reinstatement Defects; and

11.5.3 any inspections and/or investigations as agreed with the Authority pursuant to Clause 11.4 above and for which the Authority would be entitled to charge the relevant Statutory Undertaker or Licence Holder pursuant to NRSWA;

the Service Provider shall be entitled (subject to the provisions of Clause 11.4) to include in the next occurring Draft Monthly Payment Report submitted pursuant to Clause 56 (*Payment and Financial Matters*) 85% of the sums relating to the Services set out in this Clause 11.5, and in all cases, as such sums are calculated in accordance with Clause 11.6 below, and the Service Provider shall not be entitled to seek or to recover any charges from any Third Party in respect of such Services or from the Authority except as pursuant to this Clause 11.5.

11.6 When calculating any sums due pursuant to Clause 11.5, the Service Provider shall only be entitled to include:

11.6.1 sums which have been prescribed in Regulations issued pursuant to NRSWA;
or

11.6.2 where such sums have not been so prescribed, sums in accordance with such rates as are submitted by the Service Provider in the NRSWA Protocol (which shall be, as far as reasonably practicable, based on the Day Works Rates and on the guidance set out in relation to such fees in the NRSWA Code of Practice for Inspections).

11.7 The Service Provider shall ensure that:

11.7.1 when carrying out any of the Services, it shall do so in accordance with the Caring Contractor Scheme; and

11.7.2 when carrying out any relevant inspections and/or investigations, it shall report to the Authority via the Monthly Monitoring Report on the performance of the Statutory Undertakers and Licence Holders in complying with the Caring Contractor Scheme.

12. AUTHORITY ACCESS

- 12.1 The Service Provider shall procure that the Authority or any representative or adviser of the Authority may at all reasonable times enter upon the Work Sites, to inspect the Service Provider's arrangements for providing the Services and to monitor compliance by the Service Provider with its obligations.
- 12.2 The Service Provider shall procure that satisfactory facilities are made available to the Authority and any representatives and advisers of the Authority and that reasonable assistance is given to the Authority for the purposes of Clauses 12.1, 12.3 and Clauses 30.1 and 30.2 which shall include making the Service Provider Equipment and the Service Provider Party Equipment available for such use as may reasonably be required by the Authority or its representatives or advisers, and making available a suitably qualified Service Provider Party to operate such equipment as may reasonably be required by the Authority.
- 12.3 Where, pursuant to Clauses 12.1, 12.2, or Clauses 30.1 or Clause 30.2, the Authority wishes to access, use or operate the Service Provider Equipment or any Service Provider Party Equipment, the Authority shall either:
- 12.3.1 use a suitably qualified Service Provider Party to operate such equipment pursuant to Clause 12.2; or
 - 12.3.2 ensure that a suitably qualified and insured Authority Party shall attend in order to access, use or operate the Service Provider Equipment or Service Provider Party Equipment.
- 12.4 The Authority and its representatives and advisers and any suitably qualified and insured Authority Party shall at all times comply with any reasonable health and safety requirements when exercising its rights under this Clause 12 (*Authority Access*).
- 12.5 The Service Provider shall procure that:
- 12.5.1 the Authority Representative shall have five (5) Business Days notice of the time, date and location of and have the right to attend Monthly site and other similar progress meetings held by the Service Provider and/or any Sub-contractor;

12.5.2 one (1) copy of all drawings and specifications for construction are kept at the Service Provider's Head Office, and that the same shall at all reasonable times be available for inspection and use by and provided as a copy as required (acting reasonably) to the Authority Representative and by any other person authorised by the Authority Representative;

12.5.3 the Authority or its representative or adviser and any contractor or other designee of the Authority has unrestricted access to the Work Sites at all reasonable times throughout the Term in order:

12.5.3.1 to perform any obligations or exercise any rights of the Authority under this Contract; or

12.5.3.2 to fulfil any statutory functions of the Authority; or

12.5.3.3 without limitation to Clauses 12.6 (*Trials*) and 12.5.3.1, to conduct any study or trial for purposes of research initiated by or participated in or otherwise carried out by the Authority, provided that any such study or trial shall be conducted in accordance with the provisions of Clause 12.6 (*Trials*);

provided always that nothing in this Clause 12 (*Authority Access*) shall be taken to imply that there is any restriction at any time on the Authority Representative or the Authority having access to the Work Sites.

12.6 **Trials**

12.6.1 The Authority may conduct any study or trial referred to in Clause 12.5.3.3 (*Authority Access*) in such manner as to use reasonable endeavours to minimise the loss of availability of any part of the Project Network or any adverse effect on traffic flows on the Project Network arising from such study or trial and, where such study or trial substantially affects the physical integrity of the Project Network, [REDACTED]

12.6.2 The Service Provider shall procure that all Relevant Authorities have access to all Work Sites throughout the Term in order to carry out any work (including surveys and inspections) in accordance with any Law or to exercise any right, power or duty of such Relevant Authority under any Law

subject, other than in the case of an Emergency, to reasonable notice being given. Whenever consistent with the requirements of the Relevant Authority in carrying out such work, such access may be limited so as not unnecessarily to impede or restrict traffic flows or any works being carried out by the Service Provider.

12.7 **Authority monitoring of Service Provider's obligations**

12.7.1 Without prejudice to the provisions of Clause 30 (Monitoring of Surveys and Inspections), Clause 81 (Step in) and Schedule 4 (Payment Mechanism), if the Authority acting reasonably believes that the Service Provider is not carrying out the Service in accordance with Schedule 2 (Output Specification) or Schedule 3 (Method Statements) or the Investment Programmes then the Authority shall have the right to carry out such inspections, surveys or tests as it considers necessary in order to satisfy the Authority that the Service Provider is carrying out its obligations under this Contract and to ascertain if there has been a breach by the Service Provider of its obligations pursuant to this Contract and what action may be necessary to remedy any such breach.

12.7.2 The Authority shall notify the Service Provider a minimum of ten (10) Business Days in advance of the date on which it intends to carry out any inspection, survey or test pursuant to Clause 12.7.1, and the Service Provider or Service Provider Party shall have the right to attend such inspection, survey or test. The Authority shall consider in good faith any reasonable request by the Service Provider for the inspection, survey or test to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the inspection, survey or test on the notified date would materially prejudice the Service Provider's ability to provide the Services.

12.7.3 If the Authority exercises its rights pursuant to this Clause 12.7 (*Authority monitoring of Service Provider's obligations*), the Service Provider shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any such inspections, surveys or tests.

12.7.4 If the Authority exercises its rights pursuant to this Clause 12.7 (*Authority monitoring of Service Provider's obligations*) and it is found that:

12.7.4.1 the Service Provider has breached any of its obligations pursuant to this Contract, the Authority shall be entitled to be reimbursed by the Service Provider for the reasonable cost of such inspections, surveys or tests as are carried out by or on behalf of the Authority;

12.7.4.2 the Service Provider has not breached any of its obligations pursuant to this Contract, the Authority shall bear the cost of such inspections, surveys or tests as are carried out by or on behalf of the Authority.

12.7.5 When carrying out inspections, surveys or tests pursuant to this Clause 12.7 (*Authority monitoring of Service Provider's obligations*), the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider and shall comply with any reasonable instructions of the Service Provider in relation to health and safety matters.

12.7.6 Whether or not the Authority has carried out any inspection, survey or test pursuant to Clause 12.7.1, where the Authority acting reasonably considers that the Service Provider is not carrying out the Service in accordance with Schedule 2 (*Output Specification*) or Schedule 3 (*Method Statements*) or the Investment Programmes the Authority shall be entitled to:

12.7.6.1 notify the Service Provider of the obligations which the Authority reasonably considers are being breached by the Service Provider; and

12.7.6.2 specify a reasonable period within which the Service Provider must respond to such notification to agree or dispute that the aforementioned breach has taken place.

12.7.7 If, pursuant to Clause 12.7.6.2, the Service Provider disagrees (acting reasonably) that it has breached any of its obligations the matter shall be referred to the Dispute Resolution Procedure.

12.7.8 If, pursuant to Clause 12.7.6.2, the Service Provider agrees (acting reasonably) or it is determined pursuant to Clause 12.7.7 that it has breached any of its obligations (but not in respect of Investment Programmes):

12.7.8.1 the Service Provider shall provide to the Authority within five (5) Business Days of the notice pursuant to Clause 12.7.6.1, a plan dealing with the rectification of such breach ("**Service Provider Breach Rectification Plan**") which shall, where appropriate, include such revised Investment Programmes as the Service Provider considers appropriate to remedy its breach (having regard to its obligations in Clause 31 (*Obligation to Provide the Service and Performance Standards*), which shall be submitted to the Authority pursuant to the Review Procedure;

12.7.8.2 the Authority shall confirm to the Service Provider within ten (10) Business Days of the submission of the Service Provider Breach Rectification Plan, whether it accepts or rejects the Service Provider Breach Rectification Plan, or where the Service Provider has not provided a Service Provider Breach Rectification Plan, the Authority may develop and notify the Service Provider of the Authority's own Service Provider Breach Rectification Plan. If the Authority accepts the Service Provider Breach Rectification Plan or has developed its own Service Provider Breach Rectification Plan, the Service Provider shall fully implement the Service Provider Breach Rectification Plan within the period specified in the Authority's notice and any costs incurred in implementing the Service Provider Breach Rectification Plan shall be at the Service Provider's own expense;

12.7.8.3 during the period where the Service Provider is implementing and completing the Service Provider Breach Rectification Plan pursuant to Clause 12.7.8.2, the Service Provider shall provide to the Authority such information and/or evidence as the Authority shall reasonably require to satisfy itself that the breach is being rectified and that the Service Provider is implementing the Service Provider Breach Rectification Plan; and

12.7.8.4 in the event that the Service Provider fails to carry out the Service Provider Breach Rectification Plan pursuant to Clause 12.7.8.2 and/or the rectification work is not carried out to the standard specified in the Service Provider Breach Rectification Plan, the

Authority may itself carry out the Service Provider Breach Rectification Plan at the cost of the Service Provider.

12.8 Authority entitled to make enquiry

12.8.1 The Authority shall be entitled to make any enquiry or test, or conduct any investigation it sees fit to satisfy itself as to the origin, type and quality of any material used by the Service Provider or any Service Provider Party in performing the Service and the Service Provider shall, as soon as reasonably practicable following a request by the Authority, provide samples of any requested material.

12.8.2 If any enquiry, test, or investigation conducted by the Authority pursuant to Clause 12.8.1 establishes that any material used by the Service Provider or any Service Provider Party is in breach of Schedule 2 (*Output Specification*) and/or Schedule 3 (*Method Statements*):

12.8.2.1 the provisions of Schedule 4 (*Payment Mechanism*) shall apply; and

12.8.2.2 the Service Provider shall confirm to the Authority within five (5) Business Days the quantity of the relevant material used and the precise location of the material on the Project Network.

13. CONTRACTING OUT

For the avoidance of doubt, the Service Provider shall provide the Services as a service to the Authority, to assist the Authority in carrying out its functions and, save where expressly stated otherwise nothing in this Contract shall be construed to be an authorisation by the Authority (pursuant to the Deregulation and Contracting Out Act 1994 or otherwise) to the Service Provider to exercise any of the Authority's functions.

14. EXERCISING POWERS

14.1 The Parties acknowledge that rights, powers, duties and obligations of the Authority under all public and private laws, statutes, byelaws, orders and regulations may be as fully and effectually exercised by the Authority whether in relation to the Project or otherwise as if it were not party to this Contract or any other Project Document or any Ancillary Document and this Contract, all other Project Documents and all Ancillary Documents had not been executed by the Authority.

- 14.2 The exercise by the Authority whether acting by any officer, agent, or employee or other representative of the Authority or otherwise of its rights, powers, duties and obligations in the manner aforesaid other than in its capacity as a contracting counterparty shall not be deemed, for the purposes of this Contract, to be an act or omission of the Authority or any Authority Party.
- 14.3 Nothing contained or implied in this Contract or any Project Document or Ancillary Document shall prejudice, affect, restrict or fetter the Authority's rights, powers, duties and obligations in the exercise of its functions in any statutory capacity (including as highway authority, as public lighting authority, as planning authority or otherwise).
- 14.4 Without prejudice to the Authority's position as set out in Clauses 14.1 to 14.3 (inclusive), subject to Clause 14.11 (*Authorised Statutory Powers*) where the Service Provider considers (acting reasonably) that the exercise of any statutory function (whether a power or duty) (whether by the granting of any Necessary Consent or by the exercise of any such function against any Third Party) but not including the exercise of the General Power of Competence is necessary in order to enable the Service Provider to perform any of the Services (the "**Requested Statutory Power**"), the provisions of the following Clauses of Clause 14 shall apply.
- 14.5 In Clause 14.4, the word 'necessary' shall be construed to mean that:
- 14.5.1 it would be reasonable in all the circumstances (having regard to the action a local authority in the same position as the Authority acting in accordance with Good Industry Practice would take in those circumstances) for the Service Provider to request that the Authority exercises the Requested Statutory Power; and
- 14.5.2 the Service Provider has demonstrated to the reasonable satisfaction of the Authority that it could not avoid or have avoided the need for the exercise of the Requested Statutory Power by taking such steps as it could reasonably be expected to take or have taken without incurring material additional expenditure.

- 14.6 In the circumstances described in Clause 14.4, the Service Provider shall either:
- 14.6.1 in the event that the Authority has a specified or published procedure for applications to exercise the Requested Statutory Power,
 - 14.6.1.1 request the exercise of the Requested Statutory Power by way of an application pursuant to that specified or published procedure; and
 - 14.6.1.2 provide a copy of such application to the Authority Representative for information at the same time as the application under Clause 14.6.1.1, along with an explanation of the reason for the Service Provider believing that the exercise of the Requested Statutory Power is necessary in accordance with the definition given at Clause 14.5, including the likely effect upon delivery of the Services of not exercising the Requested Statutory Power and the obligations that the Service Provider will be unable to perform;
 - 14.6.2 in the event that the Authority does not have a specified or published procedure for applications to exercise the Requested Statutory Power, give notice to the Authority Representative, which notice shall set out:
 - 14.6.2.1 the Requested Statutory Power that the Service Provider wishes the Authority to exercise and how it wishes such Requested Statutory Power to be exercised;
 - 14.6.2.2 the reason for the Service Provider believing that the exercise of the Requested Statutory Power in the manner described in Clause 14.6.2.1 is necessary in accordance with the definition given at Clause 14.5, including the likely effect upon delivery of the Services of not exercising the Requested Statutory Power and the obligations that the Service Provider will be unable to perform; and
 - 14.6.2.3 the date by which the Service Provider (acting reasonably) wishes the Authority to exercise the Requested Statutory Power;
- 14.7 Within fifteen (15) Business Days of receipt of a notice from the Service Provider pursuant to Clause 14.6.2, the Authority shall acknowledge receipt of the notice and shall give an estimate of the time for the Authority (acting reasonably) to process such request, provided that no such estimate shall be binding on the Authority.

14.8 The Authority shall provide a response to the Service Provider's notice served pursuant to Clause 14.6.2 as soon as is reasonably practicable, taking into account the reasonable decision-making processes and consultation that may be required to be undertaken by the Authority, and provided that such response shall not be subject to the Dispute Resolution Procedure.

14.9 If:

14.9.1 whether requested pursuant to Clause 14.6.1 or 14.6.2, the Authority refuses to exercise the Requested Statutory Power in the manner requested by the Service Provider; or

14.9.2 the Authority unreasonably delays in exercising the Requested Statutory Power;

[REDACTED]

14.9.3 where relevant, the response given by the Authority pursuant to Clause 14.8;

14.9.4 the date on which the Service Provider required the Requested Statutory Power to be exercised by, as notified pursuant to Clause 14.6.2.3; and

14.9.5 the date by which the Authority could reasonably be expected to have exercised the Requested Statutory Power, taking into account the date of the application or notice given by the Service Provider pursuant to Clause 14.6 and, if relevant, the Authority's specified or published procedure.

14.10 In Clause 14.9.2, the unreasonableness of any delay by the Authority in exercising the Requested Statutory Power shall be assessed in the context of the processes which the Authority would properly go through in order to arrive at its decision on matters of this type, which in relation to:

14.10.1 an application pursuant to Clause 14.6.1, exceeds any relevant timescales set out by the Authority (whether in its specified or published procedures, or otherwise) in relation to the exercising of the Requested Statutory Power; or

14.10.2 a notice served pursuant to Clause 14.6.2, or where Clause 14.10.1 does not apply for the reason that timescales have not been set out by the Authority,

including a consideration of any mandatory or appropriate discretionary consultation periods and decision making periods, whether set out in the constitutional documents of the Authority or otherwise,

provided that, where the Authority is required to obtain any consent, confirmation or order of the Secretary of State or any Court prior to exercise of the Requested Statutory Power in the manner requested by the Service Provider but the Authority does not have a specified or published procedure for applications to exercise the Requested Statutory Power which includes the requirement to obtain such consent, confirmation or order of the Secretary of State or any Court, then, the unreasonableness of any delay by the Authority in exercising the Requested Statutory Power shall be assessed on the assumption, for the purposes of this sub-clause only, that the Authority were not required to obtain such consent, confirmation or order of the Secretary of State or any Court.

14.11 **Authorised Statutory Powers**

Subject to Clause 14.12 (*Administration of Authorised Powers*) the Authority hereby authorises the Service Provider to exercise (at the Service Provider's cost) the following statutory powers of the Authority as agent of the Authority (without prejudice to the Authority's ability to continue to exercise such rights itself) where such statutory powers are required to be exercised (as determined by the Service Provider (acting reasonably)) in order for the Service Provider to carry out Programmed Maintenance or Reactive Maintenance or as a consequence of Services required as a result of a Highway Emergency:

14.11.1 the removal or repositioning of skips on the highway pursuant to section 140 of the Highways Act 1980 or enforcement of the terms of a skip licence pursuant to section 139 of the Highways Act 1980;

14.11.2 the removal of builders materials from a highway pursuant to section 171 of the Highways Act 1980;

14.11.3 the issue of notices in respect of things deposited on the highway which are causing a nuisance and application thereafter for a court order for removal of such thing, or the removal of such things which could reasonably be considered as causing a danger and which require to be removed without delay, pursuant to section 149 of the Highways Act 1980;

14.11.4 the application for a court order to remove scaffolding on the highway pursuant to section 169 of the Highways Act 1980; and

14.11.5 the service of a notice and to enforce the terms of such notice pursuant to section 115K of the Highways Act 1980 on operators of a facility for refreshment or recreation who has committed a breach of the terms of their permission issued pursuant to section 115E of the Highways Act 1980,

(the "**Authorised Statutory Powers**") provided that such statutory powers shall not (subject to Clause 14.12) be capable of being Requested Statutory Powers pursuant to Clause 14.5.

14.12 **Administration of Statutory Powers**

The Service Provider shall comply with the Statutory Powers Protocol. In the event that the Authority becomes aware of a breach or potential breach of the Statutory Powers Protocol the following procedure shall apply:

14.12.1 the Authority shall be entitled to notify the Service Provider of the breach or potential breach of the Statutory Powers Protocol of which the Authority has become aware, and which of the Authorised Statutory Powers are affected by the breach or potential breach;

14.12.2 upon receipt of a notice pursuant to Clause 14.12.1, the Service Provider shall, within five (5) Business Days, respond to the Authority's notice setting out whether it confirms or denies the alleged breach or potential breach, and if it admits the breach of the Statutory Powers Protocol, whether it considers that the breach is capable of rectification, setting out the rectification that the Service Provider proposes to undertake;

14.12.3 in the event that the Service Provider denies the alleged breach or potential breach pursuant to Clause 14.12.2, the Parties shall, within five (5) Business days of the Service Provider's notice pursuant to Clause 14.12.2, meet to discuss and endeavour to agree (acting reasonably) any areas of disagreement between the Service Provider and the Authority, following which either Party may refer any outstanding areas of disagreement to Dispute Resolution;

14.12.4 where, as a result of the meeting pursuant to Clause 14.12.3, it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that

there has been a breach of the Statutory Powers Protocol, or where the Service Provider set out activities to rectify the breach pursuant to Clause 14.12.2 but failed to carry out such rectification, the Authority shall have the ability (at the Authority's absolute discretion) to:

14.12.4.1 allow Clause 14.11 to continue to apply to the Authorised Statutory Powers set out by the Authority in its notice pursuant to Clause 14.12.1 without condition, or impose conditions on the continued application of Clause 14.11 (provided that such conditions shall be such as are reasonably necessary to incentivise the Service Provider to address the breach and/or implement procedures in accordance with Good Industry Practice to prevent a recurrence of the breach) and/or require amendments to be made to the Statutory Powers Protocol in order to address such breach;

14.12.4.2 suspend the application of Clause 14.11 in relation to the Authorised Statutory Powers set out by the Authority in its notice pursuant to Clause 14.12.1 until the Service Provider is able to demonstrate to the satisfaction of the Authority (acting reasonably) in accordance with Clause 14.12.5 that it has put in place procedures in accordance with Good Industry Practice to prevent recurrence of the breach (the "**Statutory Powers Requirements**")

[REDACTED]

14.12.5 Following a suspension of the Authorised Statutory Powers pursuant to Clause 14.12.4.2 above, the Service Provider shall be entitled to notify (the "**Statutory Powers Notice**") the Authority when it considers that it is able to demonstrate that the Statutory Powers Requirements have been met and shall provide such supplementary evidence and/or demonstrations as the Authority (acting reasonably) shall require and deem acceptable to satisfy the Authority (acting reasonably) that the Statutory Powers Requirements have been met.

14.12.6 As soon as reasonably practicable following receipt of the Statutory Powers Notice the Authority shall issue a notice to the Service Provider, which shall either:

14.12.6.1 acknowledge that the Statutory Powers Requirements have been met and revoke the suspension of the Authorised Statutory Powers pursuant to Clause 14.12.4.2 with effect from the date immediately following the date of receipt of such notice; or

14.12.6.2 dispute that such evidence and/or demonstrations provided by the Service Provider indicate that the Statutory Powers Requirements have been met setting out the Authority's reasons.

14.12.7 If the Authority issues a notice pursuant to Clause 14.12.6.2 the Parties shall meet and work together (acting reasonably) in order to ensure that the Authority is provided with evidence and/or demonstrations which it considers (acting reasonably) is satisfactory, but in the event that such evidence and/or demonstrations are considered by the Authority (acting reasonably) to be unsatisfactory, either Party may refer the matter to the Dispute Resolution Procedure.

14.12.8 The provisions of Clause 14.12.5 to 14.12.7 shall continue to apply until such time as the Service Provider serves a revised Statutory Powers Notice together with such evidence and/or demonstrations as the Authority (acting reasonably) shall require and deem acceptable to satisfy the Authority (acting reasonably) that the Statutory Powers Requirements have been met and the Authority serves a notice pursuant to Clause 14.12.6.1 or, if earlier, until such time as it is determined pursuant to the Dispute Resolution Procedure that the Statutory Powers Requirements have been satisfied.

14.13 The Authority shall be entitled to revoke the provisions of Clause 14.11 (or any part thereof) at any time during the Term, provided that on such revocation the procedure set out in Clauses 14.5 to 14.10 (inclusive) shall thereafter apply to any request by the Service Provider for the Authority to exercise such Authorised Statutory Powers, unless the Parties agree that an alternative procedure shall apply.

PART D - LAND RIGHTS

15. OWNERSHIP OF AND ACCESS TO THE PROJECT NETWORK

15.1 Licence to the Service Provider for Existing Project Network Parts

The Authority hereby licences the Existing Project Network Parts to the Service Provider with effect from the Service Commencement Date on the terms of the Licence set out in Clause 15.5 (*Terms of the Licence*).

15.2 Property of the Authority

Subject to Clause 15.3 (*Licence to the Service Provider for New Project Network Parts*), all New Project Network Parts shall become part of the Project Network and the property of the Authority upon the date when such New Project Network Parts are installed on the Project Network by the Service Provider or any Service Provider Party in accordance with this Contract.

15.3 Licence to the Service Provider for New Project Network Parts

With effect from the date that title in the New Project Network Parts passes to the Authority pursuant to Clause 15.2 (*Property of the Authority*), the Authority hereby licences the New Project Network Parts to the Service Provider, on the terms of the Licence set out in Clause 15.5 (*Terms of the Licence*).

15.4 Licence to the Service Provider for the Project Network

The Authority hereby grants a licence to the Service Provider to enter onto the Project Network with effect from the Service Commencement Date on the terms of the Licence set out in Clause 15.5 (*Terms of the Licence*).

15.5 Terms of the Licence

The Authority hereby grants to the Service Provider a licence ("**Licence**") on the following terms:

15.5.1 the Licence shall permit the Service Provider to:

15.5.1.1 access the Project Network in order to carry out the Services; and/or

15.5.1.2 install Apparatus or other relevant Project Network Parts; and/or

15.5.1.3 use, manage, work on, remove, maintain, clean and repair the Project Network Parts including the Apparatus; and/or

15.5.1.4 affix or remove Attachments to or from the Project Network Parts (subject to the provisions of Schedule 8 (*Attachments and Advertising*)),

in each case in connection with and only insofar as such access, installation, use, management, work, removal, maintenance, cleaning, repair, affixing and removal is necessary or expedient for the performance of the Service Provider's obligations or the exercise of the Service Provider's rights under this Contract;

15.5.2 the Service Provider shall be entitled to grant a sub-licence (and such sub-licence shall include the right to grant sub-sub-licences) to a Service Provider Party to:

15.5.2.1 access the Project Network in order to carry out the Services; and/or

15.5.2.2 install Apparatus or other relevant Project Network Parts; and/or

15.5.2.3 use, manage, work on, remove, maintain, clean and repair the Project Network Parts including the Apparatus; and/or

15.5.2.4 affix or remove Attachments to or from the Project Network Parts (subject to the provisions of Schedule 8 (*Attachments and Advertising*)),

in each case in connection with and only insofar as such access, installation, use, management, work, removal, maintenance, cleaning, repair, affixing and removal is necessary or expedient for the performance of the Service Provider's obligations or the exercise of the Service Provider's rights under this Contract;

15.5.3 the Licence shall commence:

15.5.3.1 in respect of the Existing Project Network Parts as set out in Clause 15.1 (*Licence to the Service Provider for Existing Project Network Parts*); and

15.5.3.2 in respect of the New Project Network Parts as set out in Clause 15.3
(*Licence to the Service Provider for New Project Network Parts*);
and

15.5.3.3 otherwise in respect of the Project Network, as set out in Clause 15.4
(*Licence to the Service Provider for the Project Network*);

15.5.4 and the Licence shall terminate:

15.5.4.1 in respect of any De-Accrued Project Network Parts, on the date the
De-Accrual occurs in accordance with Paragraph 4 of Schedule 19
(*Accrual and De-Accrual of Project Network Parts*); and

15.5.4.2 otherwise on the Expiry Date or, if earlier, the Termination Date;

15.5.5 in the exercise of the Licence, the Service Provider shall comply with the
provisions of Clause 31.1 (*Standard of Service*) and, subject to Clause 16
(*Necessary Consents*), and Schedule 8 (*Attachments and Advertising*), obtain
all Necessary Consents;

15.5.6 the Licence is not a licence under NRSWA and is granted subject and without
prejudice to:

15.5.6.1 any right of the Authority pursuant to Clause 11 (*NRSWA*) and/or any
other express provision of this Contract;

15.5.6.2 the Authority's rights, powers, duties generally and the exercise of its
rights, functions and performance of its obligations in accordance
with this Contract; and

15.5.6.3 the rights of agents of the Authority, statutory undertakers and
holders of licences under the NRSWA (or any agents of the same);

15.5.7 the Licence is not a lease of any Project Network Part and the Parties do not
intend the Licence to transfer any real property from the Authority to the
Service Provider or grant to the Service Provider any interest in any Project
Network Part which is the subject of this Licence or in the land on, over or
under which any such Project Network Part is placed.

15.5.8 The Parties acknowledge and agree that the Authority in granting this Licence has not granted and does not purport to grant any additional or implied rights which the Service Provider requires in order to perform the Service (including the requirements set out in Clause 16 (*Necessary Consents*)).

15.6 Existing Project Network Parts

From 00.00.01 on the Service Commencement Date, and thereafter until it reverts to the Authority in accordance with Clause 15.8 (*Transfer of Risk to the Authority*), all risk in the Existing Project Network Parts shall be borne by the Service Provider. The Service Provider shall, in providing the Service and at its own cost, take such steps as are necessary to repair or replace any item of Existing Project Network Parts which for any reason is damaged (whether as a result of accident or vandalism or otherwise) so that Schedule 2 (*Output Specification*) and the other requirements of this Contract are complied with.

15.7 New Project Network Parts

Risk in the New Project Network Parts shall be the responsibility of the Service Provider until it reverts to the Authority in accordance with Clause 15.8 (*Transfer of Risk to the Authority*). The Service Provider shall, in providing the Service, take such steps as are necessary to repair or replace any item of New Project Network Parts which for any reason is damaged (whether as a result of an accident, vandalism or otherwise) so that Schedule 2 (*Output Specification*) and the other requirements of this Contract are complied with.

15.8 Transfer of Risk to the Authority

Subject to Paragraph 3 of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*), risk in the Project Network Parts shall pass to the Authority at 23:59:59 on the last day of the Term.

16. NECESSARY CONSENTS

16.1 Obtaining of Necessary Consents

The Service Provider shall, subject to Paragraph 3.5 of Schedule 8 (*Attachment and Advertising*), obtain all Necessary Consents as are required to carry out the Service,

whether pursuant to Clause 14 (*Exercising Powers*), Clauses 16.2 to 16.14 inclusive, or otherwise, and shall comply with the terms of such Necessary Consents, and the Service Provider shall not do anything, or permit anything to be done, in relation to the Service which will cause a Necessary Consent to be breached or revoked.

16.2 Necessary Consents for accessing Project Network Parts on Third Party Land

The Service Provider may, in the course of providing the Service, require Necessary Consents in order to gain access to land building, structures or other property which is not owned by the Authority in its capacity as Highways Authority ("**Third Party Land**") in order to access or maintain Project Network Parts existing from time to time and the Service Provider shall (at its cost) comply with the provisions of Clauses 16.3 to 16.11 inclusive.

16.3 In the first instance, the Service Provider shall assume that such relevant Necessary Consents exist and undertake the provision of the relevant aspect of the Service on the relevant Third Party Land unless notified by the Third Party Land owner or by the Authority or otherwise becomes aware that such Necessary Consents do not exist.

16.4 Where the Service Provider is or becomes aware that such relevant Necessary Consents do not exist, the Service Provider shall use all reasonable endeavours to obtain such Necessary Consents, and, in the event that it is able to obtain such Necessary Consents, shall notify the Authority that the same has been obtained and (where relevant) shall provide copies of any Necessary Consents that are given.

16.5 Where the Service Provider has been unable to obtain a Necessary Consent under Clause 16.4, the Service Provider shall notify the Authority of the same and such notice shall set out all details of:

16.5.1 the relevant Project Network Part that the Service Provider requires access to or needs to maintain;

16.5.2 the land on which the relevant Project Network Part is situated or to which access is required, including details of whom the Service Provider reasonably considers the Third Party Land Owner to be (including their name, address and a contact telephone number); and

- 16.5.3 how the Service Provider came to be aware that the relevant Necessary Consent does not exist, including any steps previously taken by the Service Provider in an attempt to obtain the Necessary Consent;
- 16.6 The Authority shall, within twenty (20) Business Days of receipt of notice served pursuant to Clause 16.5 notify the Service Provider in writing that the Authority shall:
- 16.6.1 obtain any relevant Necessary Consents; or
- 16.6.2 where (in the Authority's opinion (acting reasonably)) it would not be possible (or would not be possible without incurring material expenditure) to obtain any relevant Necessary Consents and that it requires the Service Provider to propose an alternative location in respect of the Project Network Part and such alternative location shall be in accordance with or represent a minimum departure from the Highway Standards and the requirements in Schedule 2 (*Output Specification*); or
- 16.6.3 that the Authority (acting reasonably) considers that a Necessary Consent is not required to enter onto the Third Party Land, or that the Project Network Part is not located on or is not accessible only via Third Party Land.
- 16.7 Where Clause 16.6.1 applies, [REDACTED] until such time as the Authority provides a copy of all relevant Necessary Consents to the Service Provider and the Service Provider has first accessed the relevant Project Network Part (whether or not it completes the Service in respect of such Project Network Part upon first accessing it).
- 16.8 Where Clause 16.6.2 applies, the Service Provider shall provide a proposal containing an alternative location or locations for the relevant Project Network Part (including where relevant, details of any Project Network Parts that the Authority would be required to De-Accrue under the provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) within twenty (20) Business Days of receipt of the notice served by the Authority pursuant to Clause 16.6.2.
- 16.9 Where Clause 16.6.3 applies, the Service Provider shall carry out the Service in relation to the relevant Project Network Part and, in the event that the Authority's

belief is incorrect, [REDACTED]
[REDACTED]

16.10 Within ten (10) Business Days of receipt of the proposal served by the Service Provider pursuant to Clause 16.8, the Authority and the Service Provider shall meet to discuss the alternative location for the relevant Project Network Part as proposed by the Service Provider.

16.11 From the date on which the Authority and the Service Provider first meet pursuant to Clause 16.10 until the earlier of:

16.11.1 the relevant Project Network Part is installed in an alternative location;

16.11.2 the relevant Project Network Part is De-Accrued in accordance with Schedule 19 (*Accrual and De-Accrual of Project Network Parts*); or

16.11.3 an Authority Change is implemented in accordance with Schedule 18 (*Change Protocol*),

the failure to gain access to the relevant Project Network Part [REDACTED]
[REDACTED]

16.12 Necessary Consents for Installing and/or Attaching Project Network Parts on Third Party Land

16.12.1 Where, in order to perform the Service in accordance with the requirements of this Contract, the Service Provider considers it necessary to access Third Party Land in order to install and/or attach a new Project Network Part, it shall use all reasonable endeavours to obtain such Necessary Consents as is required to access such Third Party Land, and, in the event that it is able to obtain such Necessary Consents, shall notify the Authority that the same has been obtained and (where relevant) shall provide copies of any Necessary Consents that are given in writing.

16.12.2 Where the Service Provider is unable to obtain the relevant Necessary Consent to access any Third Party Land, and it is unable to provide the Service in accordance with this Contract, then the Service Provider shall provide proposals of such alternative access or location for the Project Network Part that may be available which avoids the need for access over

Third Party Land, such proposal to be in accordance with or represent the minimum departure from the requirements of the Service and to contain such details for such alternative access or location as the Authority shall require (acting reasonably).

16.12.3 In the event that the Service Provider is unable to provide a satisfactory alternative for the relevant Project Network Part or such alternatives as are proposed constitute too great a departure from the requirements of the Service (as determined by the Authority, acting reasonably) and the Authority is satisfied (acting reasonably) that the Service Provider has otherwise complied with the provisions of Clauses 16.12.1 and 16.12.2, the Service Provider shall be entitled to request that the Authority obtains the Necessary Consent for it to access the relevant Third Party Land, and shall provide to the Authority:

16.12.3.1 details of the type and duration of access required to the Third Party Land; and

16.12.3.2 details of who the Service Provider reasonably considers the Third Party Land Owner to be of the relevant Third Party Land (including their name, address and a contact telephone number).

16.12.4 Where, pursuant to Clause 16.12.3, the Authority agrees that it is to obtain a Necessary Consent over the relevant Third Party Land, the Authority shall use reasonable endeavours to obtain such Necessary Consent prior to the date on which the applicable installation of the new Project Network Part is to be carried out in accordance with the relevant Annual Investment Programme.

16.13

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. REMOVAL OF APPARATUS

17.1 Removal of Apparatus

The Service Provider shall be responsible (at the Authority's cost to the extent that such cost is reasonably and properly incurred by the Service Provider) for complying with (in accordance with the Public Health Act 1961 and any other applicable Legislation) any requests from Owners to:

17.1.1 remove Apparatus from buildings temporarily during periods of repair or reconstruction; and

17.1.2 remove Apparatus from buildings permanently.

17.2 Owner's request to remove Apparatus

In the event that a request is made by a Third Party Land Owner to remove Apparatus from a building pursuant to Clause 17.1 (*Removal of Apparatus*) the Service Provider shall:

17.2.1 where the Apparatus is to be removed temporarily, remove and refix the relevant Apparatus and during the period of removal take such alternative measures as are necessary to ensure that Schedule 2 (*Output Specification*) is complied with;

17.2.2 where the Third Party Land Owner has requested the Apparatus be removed permanently, inform the Authority in writing forthwith and use reasonable endeavours to agree with the Third Party Land Owner that the Apparatus remain in its original position. Where the Service Provider has been unable to obtain agreement from the Third Party Land Owner that the Apparatus shall remain in its original position, then the Service Provider shall serve a notice on the Authority containing the information set out in Clause 16.5 (*Necessary Consents for accessing Project Network Parts on Third Party Land*) and thereafter Clauses 16.6 (*Necessary Consents for accessing Project Network Parts on Third Party Land*) to 16.12.2 (inclusive) shall apply mutatis mutandis.

17.3 **Court Proceedings to remove Apparatus**

The Authority may at its discretion commence proceedings under the Public Health Act 1961 (or other applicable Legislation) so that a court can determine whether a Third Party Land Owner is obliged to allow or entitled to disallow the Apparatus to be fixed to the relevant building.

18. **USE AND DISPOSAL OF THE PROJECT NETWORK**

18.1 **Restriction on Use**

The Service Provider shall not use any part of the Project Network for any purpose other than for the performance of the Service Provider's obligations under this Contract.

18.2 **Permitted Transfer and Disposal**

The Service Provider may sell, lease, transfer, grant rights over or otherwise dispose or part with possession of any Project Network Part or waste item deriving from any Project Network Part to the extent that:

18.2.1 in the Service Provider's reasonable opinion, the item is of a waste or scrap nature; and

18.2.2 the creation of or coming into existence of such waste or scrap items arises from the Service Provider carrying out the Services in accordance with Schedule 2 (*Output Specification*),

provided that such sale, lease, transfer, granting of rights, disposal or parting with possession of shall be at the cost of the Service Provider, including any responsibilities or liabilities incurred in relation to any applicable taxation, shall be carried out in compliance with all applicable Legislation, and any income derived by the Service Provider from such sale, lease, transfer, granting of rights, disposal or parting with possession of shall be the sole property of the Service Provider.

18.3 **Restriction on Transfer or Disposal**

Subject to Clause 18.2 (*Permitted Transfer and Disposal*), the Service Provider shall not sell, lease, transfer, grant rights over or otherwise dispose or part with possession of or any interest in any Project Network Part (or purport to do any of the foregoing) without obtaining the prior consent of the Authority (other than by way of security in favour of the Senior Lenders) under Clause 18.4 (*Consent*).

18.4 **Consent**

18.4.1 Any consent granted by the Authority pursuant to Clause 18.3 (*Restriction on Transfer or Disposal*) may be given generically in relation to a particular Project Network Part, or specifically in relation to materials forming a Project Network Part, and shall be subject to such conditions as the Authority may specify in its absolute discretion (including, as to price and that any proceeds, including any related profit, is remitted to and belongs to the Authority or as it otherwise may direct).

18.4.2 Any sale, transfer, grant or other disposal pursuant to this Clause 18 (*Use and Disposal of the Project Network*) is made without any warranties as to the condition or any other matter whatsoever being given by or on behalf of the Authority.

18.5 **Disposal of Materials**

18.5.1 The Service Provider may only excavate, extract, dispose of, exploit or otherwise deal with any materials, including any soil, aggregates, rocks, coal, minerals or other deposits, arising out of or produced in connection with the carrying out of the Services on the Project Network (together "**Project Network Materials**"):

18.5.1.1 if and to the extent that the Authority has the right to do so by Law or pursuant to the terms of any agreement;

18.5.1.2 if and to the extent that, in the case of excavation or extraction of Project Network Materials, such excavation or extraction is necessary for the purpose of carrying out the Services in accordance with Schedule 2 (*Output Specification*);

18.5.1.3 subject to the rights of any Third Party, whether being rights in or to the Project Network Materials, Land Rights or otherwise;

18.5.1.4 subject to any limitation, restriction or condition whether pursuant to any Law or otherwise, applying to or affecting the right of the Authority to undertake any excavation, extraction, disposal, exploitation or other dealing; and

18.5.1.5 subject to the granting of and in accordance with any Necessary Consents.

19. SECURITY OF PROJECT FACILITIES

19.1 Responsibility for Protestors and Trespassers

The Authority shall not be responsible for any Protestor or Trespasser or for any act, omission or default of any such person during the Term.

19.2 Service Provider to Bear Loss

19.2.1 As between the Authority and the Service Provider, the Service Provider shall bear, without recourse to the Authority, any Loss suffered by any person which is caused by any Protestor or Trespasser, including any damage to property, any personal injury or death, and any loss of income (including any reduction in the Monthly Payment).

19.2.2 For the avoidance of doubt, nothing in Clause 19.2.1 above shall affect:

19.2.2.1 any right of the Authority to make or recover pursuant to any Claim against any Protestor or Trespasser for damage suffered by the Authority, its agents or contractors (other than the Service Provider) or sub-contractors or any employees of any of them; or

19.2.2.2 any right of the Service Provider to make or recover pursuant to any Claim against any Protestor or Trespasser for damage suffered by the Service Provider, its agents, contractors or Sub-contractors of any tier or any employees of any of them.

19.3 **No Payments to Protestors**

The Service Provider shall not give directly or indirectly to any Protestor or Trespasser any inducement (monetary or otherwise) with a view to avoiding, limiting or influencing the manner of activities carried on by that Protestor or Trespasser or by other Protestors or Trespassers.

19.4 **Gypsies and Travellers**

19.4.1 The Service Provider shall at all times treat gypsies and travellers with courtesy and respect and in a humane and compassionate manner.

19.4.2 The Service Provider shall not take any action in relation to gypsies and travellers other than in accordance with the Authority's published policy on unauthorised encampments from time to time in effect, or after prior consultation with the Authority.

19.4.3 The Service Provider shall not make any provision on the Project Network for any temporary or permanent site for gypsies or travellers.

19.4.4 The Service Provider shall promptly notify the Authority in writing of the presence of any gypsies, travellers or any other unauthorised occupation on the Project Network.

19.4.5 Subject to the prior written consent of the Authority, the Service Provider shall bring an action in the name of the Authority for the possession of any part of the Project Network which is subject to an unauthorised encampment.

19.4.6 From the date twenty (20) Business Days after the Service Provider notifying the Authority in accordance with Clause 19.4.4 until the earlier of:

19.4.6.1 a successful action for possession brought under Clause 19.4.5; or

19.4.6.2 an Authority Change implemented in accordance with Schedule 18 (*Change Protocol*),

the acts (or presence) of gypsies and travellers shall (so far as the acts (or presence) of gypsies and travellers prevent the Service Provider from performing the Services in accordance with this Contract) [REDACTED]

PART E - PROGRAMMES

20. INVESTMENT PROGRAMMES

20.1 Investment Programmes

20.1.1 The Service Provider shall:

20.1.1.1 prepare and develop each Investment Programme:

- (a) in accordance with Good Industry Practice;
- (b) in order to meet the requirements of Schedule 2 (*Output Specification*);
- (c) taking into account programmed works by Third Party Authorities, other third parties and the Authority on or adjacent to the Project Network, having carried out liaison with all relevant third parties in accordance with the provisions of Clause 21 (*Liaison with stakeholders*) and the relevant provisions of Schedule 2 (*Output Specification*) or as otherwise dictated by the nature of the works to be programmed;
- (d) taking into account the Programmed Works Protocol;
- (e) in a way which will assist the Authority in carrying out its obligations under the Traffic Management Act;
- (f) taking into account the results of all Inspections, Surveys, Service Provider Inspections, tests, assessments, Inspection Strategies and reports carried out or produced pursuant to Clauses 27 (*Independent Surveys and Inspections*) and 28 (*Service Provider Surveys and Inspections*);

- (g) taking into account (where appropriate) the contents of any programmes, plans and reports which are required to be prepared by the Service Provider and submitted annually in accordance with the provisions of Schedule 2 (*Output Specification*),
- (h) in order to be consistent with all other Investment Programmes and comply with Schedule 3 (*Method Statements*); and

20.1.1.2 diligently perform the Service in accordance with the Investment Programmes as applicable from time to time, and the Service Provider shall not be permitted to perform any of the Service that is required to be contained within the Investment Programmes if such Service has not been programmed in an Investment Programme and approved by the Authority pursuant to the Review Procedure.

20.1.2 The Service Provider warrants that it has prepared all of the Investment Programmes, including the Original Populated Carbon Models and the Original Traffic Management Targets, which are set out in Schedule 25 (*Investment Programmes*) in accordance with this Clause 20 (*Investment Programmes*).

20.2 The Core Investment Period Programme

No later than four (4) Months before the commencement of each Contract Year of the Core Investment Period following the first Contract Year, the Service Provider shall update the Core Investment Period Programme in respect of the remaining term of the Core Investment Period and submit the same to the Authority pursuant to the Review Procedure, and each Core Investment Period Programme shall include the following information:

20.2.1 an appropriate database, for each Community Assembly Area, indicating the Programmed Maintenance to be carried out as part of the Service in each year of the Core Investment Period following the date of the commencement of the Core Investment Period Programme, which must include a summary of the work to be carried out in respect of:

20.2.1.1 Carriageways and Footways, showing, for each Carriageway Hierarchical Type and Footway Hierarchical Type, the aggregate quantity in kilometres and in square metres of the work to be carried out, to be further sub-divided into each Treatment Type proposed;

20.2.1.2 Apparatus, for each type of Apparatus showing the overall number to be removed from and/or installed in the Project Network;

20.2.1.3 Structures, showing the overall number of strengthening or major structural works to be carried out on Structures;

20.2.1.4 Highway Trees, showing the overall number that the Service Provider intends to remove and/or replace (subject to Performance Requirement 6.49 of Schedule 2 (*Output Specification*)),

and the Service Provider shall, where appropriate, also provide a plan shown on a GIS layer summarising the above work to be carried out;

20.2.2 the Programmed Populated Carbon Model for each Contract Year of the Core Investment Period;

20.2.3 the Programmed Traffic Management Calculation for each Contract Year of the Core Investment Period; and

20.2.4 any amendments to Schedule 43 (*Carriageway and Footway Works Summary*) arising as a result of the Core Investment Period Programme.

20.3 The Annual Investment Programme

No later than four (4) Months before the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit, pursuant to the Review Procedure, an Annual Investment Programme in respect of the subsequent Contract Year which shall include the following information:

20.3.1 a detailed plan (shown on a GIS layer) and also an appropriate database, for each street (and indicating the street name) and for each Community Assembly Area, indicating the Programmed Maintenance to be carried out as part of the Service in the relevant Contract Year including the location at which work is to be carried out (including the start and finish points), the start

date and duration of the work, and the type of work to be carried out in respect of:

20.3.1.1 Carriageways and Footways, showing the Treatment Type to be carried out and the area of the Carriageway and/or Footway to be treated in kilometres and square metres;

20.3.1.2 Structures, showing the name of each Structure and/or any identification number of all Structures to which Services will be carried out, and a summary of such Services;

20.3.1.3 Traffic Signal/Control Infrastructure, showing details of each Traffic Signal/Control Infrastructure Site to be Removed and/or installed,

and the Annual Investment Programme shall also indicate alternative work which could be carried out by the Service Provider in the event that for any reason the planned work cannot be carried out, such alternative work to be work which was due to be carried out in the two (2) Contract Years following the Contract Year to which the relevant Annual Investment Programme relates and which is included in the Three Year Investment Programme;

20.3.2 a detailed plan (shown on a GIS layer) and also an appropriate database, for each street (and indicating the street name) and for each Community Assembly Area, indicating the Programmed Maintenance to be carried out as part of the Service in the three Months starting at the commencement of the Contract Year, including the location at which work is to be carried out, the start date and duration of the work, and the type of work to be carried out in respect of:

20.3.2.1 Apparatus (excluding Traffic Signal/Control Infrastructure), for each type of Apparatus showing the overall number to be removed from and/or installed in the Project Network;

20.3.2.2 Highway Trees, showing the overall number that the Service Provider intends to remove and/or replace (subject to Performance Requirement 6.49 of Schedule 2 (*Output Specification*));

20.3.3 an appropriate database, for each Community Assembly Area, indicating the Programmed Maintenance to be carried out in the remainder of the Contract

Year excluding the period referred to in Clause 20.3.2, which must include a summary of the work to be carried out in respect of:

20.3.3.1 Apparatus (excluding Traffic Signal/Control Infrastructure), for each type of Apparatus showing each item of Apparatus to be Removed and/or installed, with a separate GIS plan to be submitted per Apparatus type;

20.3.3.2 Highway Trees, showing the location, species and maturity of the existing Highway Tree and the location, species and maturity of the proposed replacement for such Highway Tree (subject to Performance Requirement 6.49 of Schedule 2 (*Output Specification*)),

and the Service Provider shall, where appropriate, also provide a plan shown on a GIS layer summarising the above work to be carried out;

20.3.4 the Programmed Traffic Management Target for the relevant Contract Year;

20.3.5 the location, extent and period in days of any Planned Road Closures that will be required to carry out the Annual Investment Programme;

20.3.6 the Programmed Populated Carbon Model for the relevant Contract Year;

20.3.7 any Necessary Consents which will be required by the Service Provider to carry out the Annual Investment Programme; and

20.3.7A any amendments to Schedule 43 (*Carriageway and Footway Works Summary*) arising as a result of the Annual Investment Programme,

and no later than the 1st day of April, July and October in each Contract Year, the Service Provider shall update the Annual Investment Programme in respect of the three (3) Month period commencing three (3) Months after the 1st day of April, July or October (as applicable) and submit the updated Annual Investment Programme to the Authority pursuant to the Review Procedure, and such update shall include the following:

20.3.8 a detailed plan (shown on a GIS layer) and also an appropriate database, for each street (and indicating the street name and start and finish points) and for

each Community Assembly Area, indicating the Programmed Maintenance to be carried out as part of the Service in the relevant three Month period, including the location at which work is to be carried out, the start date and duration of the work, any anticipated traffic management measures that will be undertaken during the works, and the type of work to be carried out in respect of:

20.3.8.1 Apparatus (excluding Traffic Signal//Control Infrastructure), showing details of each item of Apparatus to be Removed and/or installed, with a separate GIS plan to be submitted per Apparatus type;

20.3.8.2 Highway Trees, showing the location, species and maturity of the existing Highway Tree and the location, species and maturity of the proposed replacement for such Highway Tree (subject to Performance Requirement 6.49 of Schedule 2 (*Output Specification*));

20.3.9 an update on the impact that the works described pursuant to Clause 20.3.8 will have (if any) on the Programmed Traffic Management Calculation, the Programmed Populated Carbon Model and/or the Planned Road Closures detailed in the original Annual Investment Programme;

20.3.10 any Necessary Consents which will be required by the Service Provider to carry out the updated Annual Investment Programme which are additional to those set out in the original Annual Investment Programme; and

20.3.11 an update on the information included within the Annual Investment Programme pursuant to Clause 20.3.3.

20.4 Three Year Investment Programme

No later than four (4) Months before the commencement of each Contract Year of the Term, the Service Provider shall submit, pursuant to the Review Procedure, a draft Three Year Investment Programme in respect of the subsequent three (3) Contract Years which shall include the Annual Investment Programme in respect of the first (1st) Contract Year of the relevant three year period and shall include the following information for the second (2nd) and third (3rd) Contract Years:

20.4.1 a detailed plan (shown on a GIS layer) and also on an appropriate database, for each street (and indicating the street name) and for each Community Assembly Area, indicating the Programmed Maintenance to be carried out as part of the Service in each relevant Contract Year including the location at which work is to be carried out (including the start and finish points),, the start date and duration of the work, any anticipated traffic management measures that will be undertaken during the works, and the type of work to be carried out in respect of:

20.4.1.1 Carriageways and Footways, showing the Treatment Type to be carried out and the area of the Carriageway and/or Footway to be treated in kilometres and square metres;

20.4.1.2 Structures, showing the name of each Structure and/or any identification number of all Structures to which the Service will be carried out, and a summary of such Service;

20.4.1.3 Traffic Signal/Control Infrastructure, showing details of each Traffic Signal/Control Infrastructure Site to be Removed and/or installed; and

20.4.2 an appropriate database, for each Community Assembly Area, indicating the Programmed Maintenance to be carried out in the second (2nd) and third (3rd) Contract Years of the Three Year Investment Programme, which must include a summary of the work to be carried out in respect of:

20.4.2.1 Apparatus (excluding Traffic Signal/Control Infrastructure), for each type of Apparatus showing the overall number to be removed from and/or installed in the Project Network;

20.4.2.2 Highway Trees, showing the overall number that the Service Provider intends to remove and/or replace (subject to Performance Requirement 6.49 of Schedule 2 (*Output Specification*)),

and the Service Provider shall, where appropriate, also provide a plan shown on a GIS layer summarising the above work to be carried out;

20.4.3 the Programmed Populated Carbon Model for each Contract Year of the Three Year Investment Programme (excluding the first Contract Year);

- 20.4.4 the Programmed Traffic Management Calculation for each Contract Year of the Three Year Investment Programme (excluding the first Contract Year);
- 20.4.5 the location, extent and period in days of any Planned Road Closures that will be required to carry out the Three Year Investment Programme and
- 20.4.6 any amendments to Schedule 43 (*Carriageway and Footway Works Summary*) arising as a result of the Three Year Investment Programme.

20.5 Lifecycle Investment Programme

No later than four (4) Months before the commencement of each Contract Year of the Term following the first Contract Year, the Service Provider shall update the Lifecycle Investment Programme in respect of the Lifecycle Investment Period and submit the same to the Authority pursuant to the Review Procedure, and each Lifecycle Investment Programme shall include the following information:

- 20.5.1 an appropriate database, for each Community Assembly Area, indicating the Programmed Maintenance to be carried out as part of the Service in each year of the Lifecycle Investment Period, which must include a summary of the work to be carried out in respect of:

- 20.5.1.1 Carriageways and Footways, showing, for each Carriageway Hierarchical Type and for each Footway Hierarchical Type, the quantity in kilometres and in square metres of the work to be carried out, to be further sub-divided into each Treatment Type proposed;

- 20.5.1.2 Apparatus, for each type of Apparatus showing the overall number to be removed and/or installed;

- 20.5.1.3 Structures, showing the overall number of strengthening or major structural works to be carried out on Structures;

- 20.5.1.4 Highway Trees, showing the overall number that the Service Provider intends to remove and/or replace (subject to Performance Requirement 6.49 of Schedule 2 (*Output Specification*)),

and the Service Provider shall, where appropriate, also provide a plan shown on a GIS layer summarising the above work to be carried out;

- 20.5.2 the Programmed Populated Carbon Model for each Contract Year of the Lifecycle Investment Period;
- 20.5.3 the Programmed Traffic Management Calculation for each Contract Year of the Lifecycle Investment Period;
- 20.5.4 any amendments to Schedule 43 (*Carriageway and Footway Works Summary*) arising as a result of the Lifecycle Investment Programme.

20.6 Traffic Management Targets, Populated Carbon Models and Carbon Model Targets

The Parties agree and acknowledge that:

- 20.6.1 the Service Provider shall be entitled to amend any or all of the Original Traffic Management Targets or the Original Carbon Model Targets (as applicable) if the Service Provider can demonstrate to the satisfaction of the Authority (acting reasonably) that:

- 20.6.1.1 the amendment of the relevant Original Traffic Management Target or the Original Carbon Model Target(s) by the alteration of the Original Populated Carbon Model (as applicable) is as a result of an alteration to the timing of Programmed Maintenance from one Contract Year to another Contract Year, and that such amendment to the Original Traffic Management Target or the Original Populated Carbon Model (as applicable) reflects the Programmed Maintenance that is to be carried out; and

- 20.6.1.2 the alteration to the timing of the relevant Programmed Maintenance is due to an amendment to the relevant Investment Programme(s) that are being submitted by the Service Provider pursuant to the relevant provisions of this Clause 20 (*Investment Programmes*) or pursuant to Clause 22 (*Updates and Changes to Investment Programmes*); and

- 20.6.1.3 the relevant aggregate Original Traffic Management Target(s) or the Original Carbon Model Target(s) (as applicable) for the Core Investment Period or Lifecycle Investment Period (as applicable) are not altered by the amendment referred to in Clause 20.6.1.1 above,

and where the Authority is satisfied (acting reasonably) of the applicability of Clauses 20.6.1.1 to 20.6.1.3, the Authority shall confirm its agreement in writing to the Service Provider to the amendment of the Original Traffic Management Target (the "**Updated Traffic Management Target**") or the Original Populated Carbon Model as proposed by the Service Provider (the "**Updated Populated Carbon Model**") (as applicable); and

20.6.2 for the avoidance of doubt, the Original Traffic Management Targets, the Updated Traffic Management Targets, the Original Populated Carbon Models or the Updated Populated Carbon Models (as applicable) shall not be amended by the submission or approval of any Programmed Traffic Management Target(s) or Programmed Populated Carbon Model(s) unless, until and to the extent that the Authority confirms its acceptance of the applicability of Clauses 20.6.1.1 to 20.6.1.3.

20.7 Carbon Model

The Service Provider warrants that it has prepared the Carbon Model, which is set out in Appendix 1 to Schedule 40 (*Carbon Model*), and the Carbon Model Instructions, which is set out in Appendix 2 to Schedule 40 (*Carbon Model*), in accordance with the principles set out in Schedule 40.

20.8 Updates to Carbon Model

20.8.1 Where as a result of changes to the Carbon Emission Factors set out in Appendix 3 to Schedule 40 (*Carbon Model*), the Authority requires the Carbon Model to be amended, the Authority shall notify the Service Provider of such amendments to the Carbon Model and, within twenty (20) Business Days of such notification, the Service Provider shall provide to the Authority amended versions of all Populated Carbon Models in force at such time to take into account the amendments to the Carbon Model.

20.8.2 Where as a result of new Treatment Types in respect of Programmed Maintenance that the Service Provider proposes to add to the Carbon Model, the Service Provider shall notify the Authority of the proposed amendments to the Carbon Model and the Authority shall notify the Service Provider within ten (10) Business Days (acting reasonably) as to whether it agrees with the amendments to the Carbon Model, provided that any amendments to the

Carbon Model made pursuant to this Clause 20.8.2 shall not amend the Original Populated Carbon Models or the Updated Populated Carbon Models (as applicable).

21. LIAISON WITH STAKEHOLDERS

- 21.1 The Service Provider shall comply with the provisions of Schedule 2 (*Output Specification*) in relation to liaison with relevant stakeholders.
- 21.2 In addition to the liaison required pursuant to Clause 21.1, the Service Provider shall ensure that it carries out sufficient liaison with:
- 21.2.1 Third Party Authorities and other third parties who may carry out works on or adjacent to the Project Network, in order to establish any planned works by any other body which may impact on any of the Service Provider's future Investment Programmes and ensure that any such works are taken into account in the preparation of such draft Investment Programmes; and
- 21.2.2 the Traffic Manager, in order to share any of the Service Provider's draft plans of work and/or Investment Programmes with the Traffic Manager in order to establish whether such plans and/or Investment Programmes are likely to be acceptable to the Traffic Manager or whether amendments would be required in order to ensure they are more likely to be accepted by the Traffic Manager.
- 21.3 The liaison referred to in Clause 21.2 may take the form of attendance by the Service Provider at relevant meetings and/or forums, and the provision by the Service Provider of relevant data and/or reports, including draft Investment Programmes, as would in the opinion of the Service Provider reasonably facilitate such liaison, provided that the result of such liaison shall not constitute a Necessary Consent by the Traffic Manager to any proposed works by the Service Provider and any such Necessary Consent required must still be obtained by the Service Provider in accordance with the obligation set out in Clause 16.1 (*Obtaining of Necessary Consents*).

22. UPDATES AND CHANGES TO INVESTMENT PROGRAMMES

22.1 Amendment of Investment Programmes

Where the Service Provider wishes to revise any Investment Programme for any reason, then it shall make such amendments as are necessary to the relevant Investment Programme(s) and shall submit the same to the Authority for review in accordance with Schedule 21 (*Review Procedure*).

22.2 The Service Provider shall submit the relevant Investment Programme(s) to the Authority every three (3) Months taking account of all the changes which have been made to such Investment Programme(s) pursuant to Clause 22.1 above.

22.3 The Service Provider shall maintain the Investment Programmes in a form which shall be capable of being accessed by the Authority on-line at all times, and shall ensure that any changes made to the Investment Programme(s) pursuant to Clause 22.1 (*Amendment of Investment Programmes*) shall be reflected within the relevant Investment Programme(s) within two (2) Business Days.

22.4 Upon request by the Authority, the Service Provider shall provide to the Authority hard copies of all or some of the Investment Programmes (as requested by the Authority). The reasonable costs and expenses properly incurred of providing such copies to the Authority shall be borne by the Authority save in circumstances where the Authority is unable to access copies of the Investment Programmes on-line by reason of any fault or problem relating to the Service Provider's information technology systems.

22.5 Urgent Amendments to the Investment Programmes

22.5.1 In the event that the Service Provider wishes to carry out Services which comprise Programmed Maintenance but which are not contained within an Investment Programme, and wishes to revise any Investment Programme(s) in order to carry out such Services which the Service Provider requires to carry out as a matter of urgency:

22.5.1.1 where, in the opinion of the Service Provider (acting reasonably) the proposed revisions to the Investment Programme(s) would not prevent, alter or add materially to the cost of any Non-Core Services or HWA Works, the Service Provider shall be entitled to amend the

following aspects of the Programmed Maintenance contained within the relevant Investment Programme(s) without obtaining prior review pursuant to the Review Procedure:

- (a) moving the start date and end date of the Programmed Maintenance backwards by no more than two (2) weeks;
- (b) moving the start date and end date of the Programmed Maintenance forwards by no more than two (2) weeks;
- (c) moving the start date of the Programmed Maintenance forwards or backwards by no more than two (2) weeks without moving the end date; or
- (d) move the end date of the Programmed Maintenance forwards or backwards by no more than two (2) weeks without moving the start date;

provided that nothing in this Clause 22.5.1.1 (*Urgent Amendments to the Investment Programmes*) shall relieve the Service Provider of its obligation to obtain all relevant Necessary Consents in accordance with Clause 16.1 (*Obtaining of Necessary Consents*), and further provided that the Service Provider shall amend the Investment Programme(s) to take account of such amendments made pursuant to this Clause 22.5.1.1 (*Urgent Amendments to the Investment Programmes*) and notify the Authority of such amended Investment Programme(s) prior to carrying out the relevant Programmed Maintenance; or

22.5.1.2 where, in the opinion of the Service Provider (acting reasonably), the proposed revisions to the Investment Programme(s) would prevent, alter or add materially to the cost of any Non-Core Services or HWA Works, or where Clause 22.5.1.1 (*Urgent Amendments to the Investment Programmes*) does not apply, the Service Provider shall notify the Authority Representative of the Services it wishes to carry out, the amendments that would be required to the relevant Investment Programme(s), the reason that the Programmed Maintenance is urgent and that the Service Provider therefore cannot

comply with the procedure in Clause 22.1 (*Amendment of Investment Programmes*), and its proposed amendment to the timescales in the Review Procedure in relation to this matter; and

22.5.1.3 the Authority Representative shall, within five (5) Business Days of the Service Provider's notice pursuant to Clause 22.5.1.2:

- (a) notify the Service Provider that it agrees (acting reasonably) that the matter is urgent and that the timescales in the Review Procedure can be amended as proposed by the Service Provider, and Paragraph 2 of Schedule 21 (*Review Procedure*) shall be amended accordingly; or
- (b) notify the Service Provider that it disagrees (acting reasonably) that the matter is urgent and/or the that the timescales in the Review Procedure can be amended as proposed by the Service Provider, in which event the matter shall be referred to the Dispute Resolution Procedure.

23. ROAD CLOSURES

The Service Provider shall not effect any Planned Road Closures save in accordance with the relevant Investment Programmes, and any closures whether in respect of Programmed Maintenance or otherwise shall be subject to any Necessary Consents which the Service Provider requires before it is able to carry out the Service.

24. SPECIAL EVENTS

24.1 Prior to the commencement of each Contract Year the Authority shall provide the Service Provider with a list of Special Events likely to occur during that Contract Year, and update the list by prompt notice to the Service Provider as and when further details of listed Special Events, or new Special Events, become available.

24.2 If the Service Provider receives notice of a Special Event occurring or being rearranged for a date less than seven (7) days in advance, and as a result the Service Provider is unable to carry out any planned Services, [REDACTED]

25. MANAGEMENT INFORMATION SYSTEM

- 25.1 With effect from the Service Commencement Date, the Service Provider shall procure that there is a Management Information System in place for use in relation to the Project which complies in all respects with the provisions of Schedule 2 (*Output Specification*).
- 25.2 The Parties acknowledge that:
- 25.2.1 the documents listed in Schedule 20 (*Project Network Information*) is incorporated into this Contract in the form of a CD Rom which shall form part of Schedule 20 (*Project Network Information*);
 - 25.2.2 the documents listed in Schedule 44 (*Electronic Contractual Information*) are incorporated into this Contract in the form of a CD Rom which shall form part of Schedule 3 (*Method Statement*);
 - 25.2.3 the Base Case is incorporated into this Contract in the form of a CD Rom which shall form Schedule 5 (*Base Case*);
 - 25.2.4 the Investment Programmes are incorporated into this Contract in the form of a CD Rom which shall form Schedule 25 (*Investment Programmes*);
 - 25.2.5 the schedules to the memorandum of understanding between the Authority and the South Yorkshire Passenger Transport Executive as referred to in Schedule 23 (*Third Party Agreements*) are incorporated into this Contract in the form of a CD Rom which shall form part of Schedule 23 (*Third Party Agreements*); and
 - 25.2.6 the Carbon Model and Carbon Model Instructions are incorporated into this Contract in the form of a CD Rom which shall form Appendices 1, 2 and 3 to Schedule 40 (*Carbon Model*).

PART F - MILESTONES, SURVEYS, INSPECTIONS AND CERTIFICATION

26. MILESTONES

26.1 Milestones

The Service Provider shall carry out the Service during the Core Investment Period in order to complete each Milestone by the relevant Planned Milestone Determination Date and in accordance with the requirements of this Contract. The Milestones shall be as set out in Schedule 35 (*Milestones*).

26.2 Completion of a Milestone

26.2.1 Completion of a Milestone shall occur when, on either (i) each Planned Milestone Determination Date; (ii) in the case of any Milestone Rectification Works, on a Milestone Rectification Determination Date; or (iii) following the Planned CIP Completion Date:

26.2.1.1 in respect of the Milestones relating to Street Lighting and items of Traffic Signal/Control Infrastructure, the aggregate numbers of Lighting Units and items of Traffic Signal/Control Infrastructure (as the case may be) Certified as having been Removed within Lighting Schemes and/or Traffic Signal/Control Infrastructure Sites at that time is equal to or greater than that required for the relevant Milestone as set out in Schedule 35 (*Milestone*); and

26.2.1.2 in respect of the Milestones relating to the achievement of certain Condition Indices in respect of Carriageways, Footways and Structures, the data produced by the Independent Surveyor and the Independent Bridge Inspector as a result of the Surveys and Structure Inspections pursuant to Clause 27.16 (*Production of Data*) and the Condition Indices calculated pursuant to Clause 27.17 (*Calculation of the Index*) in respect of the Carriageways, Footways and Structures demonstrate that the Service Provider has met or exceeded the relevant required Milestone in Schedule 35 (*Milestones*),

provided that, notwithstanding the provisions of Clause 26.2.1.1, the Service Provider shall be entitled to an uplift in the Unitary Charge in accordance with the formula set out at Paragraph 3.3 of the Payment Mechanism in

respect of any Month of the Core Investment Period in which items of Street Lighting and items of Traffic Signal/Control Infrastructure are Certified as having been Removed pursuant to the procedure set out in Clause 29.7 (*Certification*) (provided that the uplift in the Unitary Charge that can be achieved by the Service Provider as set out in this Clause shall be capped at the annual Milestone figure).

26.3 Milestone Default Termination Points

If the Service Provider fails to achieve completion of any Milestone by the relevant Planned Milestone Determination Date:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

26.4 Capital Contributions

26.4.1 The Authority shall pay to the Service Provider at each Milestone Determination Date an amount equivalent to the Capital Contribution calculated in accordance with the formula set out in Paragraph 3.1.4 of Schedule 4 (*Payment Mechanism*), provided that:

26.4.1.1 the aggregate of the Capital Contributions payable by the Authority to the Service Provider pursuant to this Clause 26.4 (*Capital Contributions*) shall not exceed £135,000,000 (one hundred thirty-five million pounds) (the "**Capital Contribution Cap**");

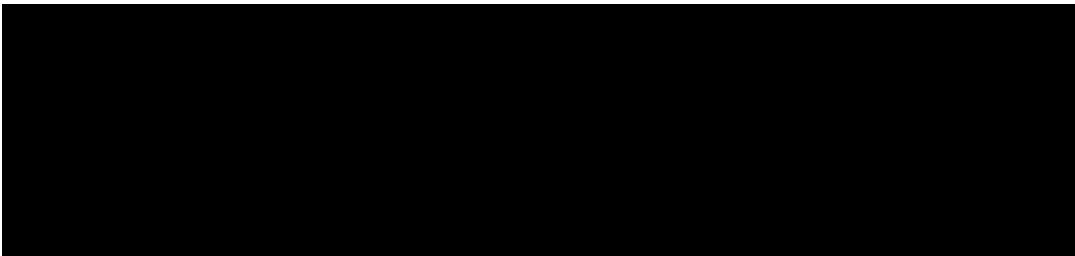
26.4.1.2 the Capital Contribution payable by the Authority to the Service Provider at each Planned Milestone Determination Date shall not, when aggregated with any previous Capital Contributions payable by the Authority to the Service Provider, exceed the aggregate of the Maximum Annual Capital Contributions shown in the second column of Table A1 for the relevant Milestone Year and for any previous Milestone Years, provided that, subject to the Capital Contribution Cap, the Service Provider may reallocate the Maximum Annual Capital Contributions between Milestone Years to take account of any amendment made to the Investment Programmes in accordance with the provisions of this Contract;

26.4.1.3 no payment of a Capital Contribution shall be due and payable by the Authority to the Service Provider unless the Service Provider has provided to the Authority a certificate addressed to the Authority from the Agent and confirming the Actual Drawdown Figure (the "**Agent's Certificate**");

26.4.1.4 where the Agent's Certificate demonstrates that the Drawdown Factor is lower than the Achieved Milestone Factor, then the Drawdown Factor shall be substituted for the Achieved Milestone Factor in the calculation of the Capital Contribution; and

26.4.1.5 [REDACTED]

[REDACTED]



26.4.2 The Parties acknowledge that the Capital Contributions are a contribution towards the capital expenditure incurred by the Service Provider and the Service Provider Parties in carrying out the work required as part of the Core Investment Period Programme to meet the Milestone Targets.

27. INDEPENDENT SURVEYS AND INSPECTIONS

27.1 Independent Surveyor, Independent Machine Surveyor and Independent Bridge Inspector

On or prior to the date of this Contract the Authority and the Service Provider shall appoint the Independent Surveyor, the Independent Machine Surveyor and the Independent Bridge Inspector using the Independent Surveyor's Appointment, Independent Machine Surveyor's Appointment and the Independent Bridge Inspector's Appointment. The Independent Surveyor's Appointment, the Independent Machine Surveyor's Appointment and the Independent Bridge Inspector's Appointment shall set out the duties owed by the Independent Surveyor, the Independent Machine Surveyor and the Independent Bridge Inspector to the Authority and the Service Provider, and an Independent Surveyor, an Independent Machine Surveyor and an Independent Bridge Inspector shall be appointed at all times during the Term.

27.2 The Service Provider undertakes to exercise its rights and fulfil its obligations under the Independent Surveyor's Appointment, Independent Machine Surveyor's Appointment and the Independent Bridge Inspector's Appointment, and the Service Provider shall not appoint any organisation (or any Affiliate of any organisation) acting as the Independent Surveyor, the Independent Machine Surveyor or the Independent Bridge Inspector to carry out any of the activities that are the responsibility of the Service Provider pursuant to this Clause 27 (*Independent Surveys and Inspections*).

- 27.3 The Service Provider shall not terminate the Independent Surveyor's Appointment, the Independent Machine Surveyor's Appointment and/or the Independent Bridge Inspector's Appointment except in accordance with the terms of the Independent Surveyor's Appointment, the Independent Machine Surveyor's Appointment and/or the Independent Bridge Inspector's Appointment (as appropriate).
- 27.4 If pursuant to the Independent Surveyor's Appointment, the Independent Machine Surveyor's Appointment and/or the Independent Bridge Inspector's Appointment (as appropriate), the Service Provider considers that the Independent Surveyor's Appointment, the Independent Machine Surveyor's Appointment or the Independent Bridge Inspector's Appointment should be or is to be terminated, or if the Independent Surveyor's Appointment, the Independent Machine Surveyor's Appointment or the Independent Bridge Inspector's Appointment is due to expire within the next three (3) Months, the following procedure shall apply:
- 27.4.1 the Service Provider shall propose an alternative Independent Surveyor, Independent Machine Surveyor and/or Independent Bridge Inspector to the Authority, including details of the relevant Independent Surveyor, Independent Machine Surveyor or Independent Bridge Inspector's skills and experience;
- 27.4.2 the Authority shall, within ten (10) Business Days of receipt of a notification from the Service Provider pursuant to Clause 27.4.1 confirm to the Service Provider whether the proposed alternative Independent Surveyor, Independent Machine Surveyor and/or Independent Bridge Inspector is acceptable to the Authority together with reasons for its decision;
- 27.4.3 where the relevant appointment has been terminated, and the Authority has consented to the alternative Independent Surveyor, Independent Machine Surveyor and/or Independent Bridge Inspector under Clause 27.4.2, the Service Provider and the Authority shall appoint the alternative Independent Bridge Inspector, Independent Machine Surveyor or Independent Surveyor in accordance with the Independent Bridge Inspector's Appointment, the Independent Machine Surveyor's Appointment or the Independent Surveyor's Appointment (as appropriate);
- 27.4.4 where the Authority has not consented to the alternative Independent Surveyor, Independent Machine Surveyor and/or Independent Bridge

Inspector, either Party may refer the matter to the Dispute Resolution Procedure.

27.5 **Determination of Carriageway and Footway Condition**

The Service Provider shall, or shall procure that the Independent Surveyor or Independent Machine Surveyor shall (as appropriate), carry out all of the required tasks relating to Carriageways and Footways as detailed in this Clause 27 (*Independent Surveys and Inspections*), and as set out in the Independent Surveyor's Appointment or the Independent Machine Surveyor's Appointment (as applicable), at such frequency as is specified during the Term, including:

- 27.5.1 carrying out the CVI Surveys, as set out in Clause 27.10 (*CVI Surveys*);
- 27.5.2 carrying out the SCANNER Surveys, as set out in Clause 27.11 (*SCANNER Surveys*);
- 27.5.3 carrying out the SCRIM Surveys, as set out in Clause 27.12 (*SCRIM Surveys*);
- 27.5.4 carrying out the Deflectograph Surveys, as set out in Clause 27.13 (*Deflectograph Surveys*);
- 27.5.5 carrying out the Patching Surveys, as set out in Clause 27.14 (*Patching Surveys*);
- 27.5.6 carrying out the Footway Surveys, as set out in Clause 27.15 (*Footway Surveys*);
- 27.5.7 validating and providing the raw data generated by the Surveys carried out pursuant to Clauses 27.5.1 to 27.5.6 to the Service Provider and the Authority in accordance with Clause 27.16 (*Production of Data*); and
- 27.5.8 processing the data generated by the Surveys in order for the Independent Surveyor to calculate the Carriageway Condition Indices and Footway Condition Indices achieved by the Service Provider in accordance with Clause 27.17 (*Calculation of the Index*).

27.6 **Determination of Structures Condition**

The Service Provider shall, or shall procure that the Independent Bridge Inspector shall (as appropriate) carry out all of the required tasks as detailed in this Clause 27 (*Independent Surveys and Inspections*), and as set out in the Independent Bridge Inspector Appointment, annually during the Term, including:

27.6.1 carrying out the Structure Inspections as set out in Clauses 27.18 (*General Inspections*), 27.19 (*Principal Inspections*) and 27.20 (*Special Inspections*) and the risk assessments set out in Clause 27.21 (*Risk Assessments*), the activities set out in Clause 27.22 (*Pre and Post Inspection Process for Structures*) and the Structural Reviews and Structural Assessments set out in Clause 27.23 (*Assessment of Structures*); and

27.6.2 calculating the Bridge Condition Indices and Retaining Wall Condition Indices achieved by the Service Provider calculated in accordance with Clause 27.17, as evidenced by the raw data produced as a result of the Structure Inspections and all other activities carried out pursuant to Clause 27.6.1 (*Determination of Structures Condition*).

27.7 **Survey Programmes, Inspection Programmes and Inspection Strategies**

27.7.1 The Service Provider warrants that all of the Survey Programmes and Inspection Programmes in respect of the first Contract Year have been submitted as part of the Investment Programmes set out in Schedule 25 (*Investment Programmes*) at the date of the Contract, and have been prepared in accordance with the provisions of this Clause 27 (*Independent Surveys and Inspections*).

27.7.2 The Service Provider warrants that all of the Inspection Strategies in respect of the first Contract Year are set out in Annexure 14 (*Inspection Strategies*) at the date of the Contract, and have been prepared in accordance with the provisions of this Clause 27 (*Independent Surveys and Inspections*).

27.8 **Access by the Independent Surveyor and the Independent Bridge Inspector**

The Service Provider shall ensure that the Independent Surveyor, the Independent Machine Surveyor and the Independent Bridge Inspector are afforded sufficient rights of access to the Work Sites in order to carry out their obligations under their

respective appointments and such access shall as a minimum afford the Independent Surveyor, the Independent Machine Surveyor and the Independent Bridge Inspector the same rights as the Authority under Clause 12 (*Authority Access*).

27.9 General

27.9.1 The Service Provider shall ensure, and shall procure that the Independent Surveyor, the Independent Machine Surveyor and the Independent Bridge Inspector shall ensure (as applicable), that all Structure Inspections, Surveys, Service Provider Inspections, tests and assessments undertaken and all Inspection Strategies and reports produced by the Service Provider, the Independent Surveyor, the Independent Machine Surveyor and the Independent Bridge Inspector are in accordance with this Clause 27 (*Independent Surveys and Inspections*), Clause 28 (*Service Provider Surveys and Inspections*) and the Highways Maintenance Code, the Highways Structures Code, Highways Signals Code and the Highways Lighting Code (as appropriate) so that the Authority can:

27.9.1.1 be satisfied that the condition of the Project Network has been adequately surveyed and inspected in accordance with the Authority's obligations as a Highways Authority in order to support a defence under section 58 of the Highways Act and any other relevant Legislation;

27.9.1.2 be satisfied that the Service Provider is providing the Services in accordance with the requirements of Schedule 2 (*Output Specification*) including the extent to which the Service Provider is achieving the required Condition Indices as set out in Schedule 2 (*Output Specification*); and

27.9.1.3 provide such evidence as may be required by the Authority or any Relevant Authority that any information provided to them (including in respect of any National Indicators or Local Performance Indicators of which the Authority has notified the Service Provider (or any alternative or replacement measures)) has been calculated correctly.

27.9.2 The Service Provider shall ensure that the results of all Structure Inspections, Surveys, Service Provider Inspections, tests, assessments, Inspection

Strategies and reports carried out or produced pursuant to Clause 27 (*Independent Surveys and Inspections*) and Clause 28 (*Service Provider Surveys and Inspections*) are reflected where appropriate in any revisions to the Investment Programmes in accordance with Clause 20.1.1.1(f) (*Investment Programmes*).

27.10 CVI Surveys

27.10.1 No later than 1st November in each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised CVI Survey Programme pursuant to the Review Procedure, which shall include a summary of the percentage of the Carriageways (identified by Carriageway Hierarchical Type and as a total percentage of the relevant Carriageways within the Project Network) that will be subject to a CVI Survey in the relevant Contract Year. The Service Provider shall provide a copy of such CVI Survey Programme to the Independent Surveyor within five (5) Business Days of the CVI Survey Programme being agreed or determined pursuant to the Review Procedure. In the case of any Milestone Rectification Works CVI Survey, the Service Provider shall, no later than 1st February in any Contract Year following a relevant Milestone Year, submit to the Authority a Milestone Rectification Works CVI Survey Programme.

27.10.2 The Service Provider shall ensure that all CVI Survey Programmes include the start and end dates for the carrying out of the CVI Surveys to be undertaken by the Service Provider to all Carriageway Hierarchical Types within the Project Network in the forthcoming Contract Year and in the case of any Milestone Rectification Works CVI Survey Programme, the start and end dates for the carrying out of the Milestone Rectification Works CVI Surveys to be undertaken by the Service Provider to all Carriageway Hierarchical Types within the Project Network which are the subject matter of a rectification programme under Clause 73.2.2 ("**Rectifiable CVI Surveyed Carriageway**").

27.10.3 The Service Provider shall, and (where applicable) shall procure that the Independent Surveyor shall, carry out all CVI Surveys and Milestone Rectification Works CVI Surveys in accordance with this Clause 27 (*Independent Surveys and Inspections*), the UKPMS Visual Survey Manual

2009 and the CVI Survey Programme or, as the case may be, the Milestone Rectification Works CVI Survey Programme for the relevant Contract Year, and shall ensure that the percentage defectiveness is recorded in accordance with the Technical Specification Document.

27.10.4 The Service Provider shall carry out a CVI Survey (at Full XSP Level for the Primary Secondary and Link Road Network, and at Minimal XSP Level for the Local Road Network) on a minimum of 48% of all Carriageways within each Carriageway Hierarchical Type within the Project Network (the "**CVI Surveyed Carriageway**") every Contract Year for the duration of the Term (provided that the Service Provider shall ensure that no Road Section Length XSP is omitted from the CVI Survey Programmes for two consecutive Contract Years). In the case of any Milestone Rectification Works CVI Survey, the Service Provider shall carry out a Milestone Rectification Works CVI Survey (at Full XSP Level for the Primary Secondary and Link Road Network, and at Minimal XSP Level for the Local Road Network) on all relevant Rectifiable CVI Surveyed Carriageway.

27.10.5 Within five (5) Business Days of the end of the last day of any Week in which the Service Provider has carried out any CVI Surveys (a "**CVI Surveying Week**") or any Milestone Rectification Works CVI Surveys (a "**Milestone Rectification Works CVI Surveying Week**"), the Service Provider shall notify the Independent Surveyor and the Authority of:

27.10.5.1 the locations of the CVI Surveyed Carriageway or the Rectifiable CVI Surveyed Carriageway for the relevant CVI Surveying Week or Milestone Rectification Works CVI Surveying Week (as the case may be); and

27.10.5.2 details of the data (which shall be compliant with Clause 27.10.13) that was produced by the Service Provider as a result of the CVI Surveys or Milestone Rectification Works CVI Surveys carried out during the relevant CVI Surveying Week or Milestone Rectification Works CVI Surveying Week (as the case may be), including a summary of the percentage of the Carriageways (identified by Carriageway Hierarchical Type and as a total percentage of the relevant Carriageways within the Project Network)

that has been subject to a CVI Survey or Milestone Rectification Works CVI Surveys in the relevant CVI Surveying Week or Milestone Rectification Works CVI Surveying Week (as the case may be) (the "**CVI Survey Data**").

27.10.6 The Service Provider shall procure that, within the Week occurring after the production of the CVI Survey Data pursuant to Clause 27.10.5.2 (a "**CVI Sampling Week**"):

27.10.6.1 the Independent Surveyor shall carry out an audit of the survey data collected from a random ten (10) % (by length) sample of the Carriageways within each Carriageway Hierarchical Type within the Project Network which comprised the CVI Surveyed Carriageways or Rectifiable CVI Surveyed Carriageways (as the case may be) for the relevant CVI Surveying Week or relevant Milestone Rectification Works CVI Surveying Week (as the case may be), in accordance with the Audit Document, such random sample to be determined by the Independent Surveyor acting in its absolute discretion, except insofar as the Authority has notified the Independent Surveyor of CVI Surveyed Carriageways that must or must not be included within the sample prior to the commencement of the CVI Sampling Week, in which case the Service Provider shall procure that the Independent Surveyor shall comply with the Authority's notification; and

27.10.6.2 the Independent Surveyor shall note any Road Section Length XSP(s) that have failed the audit process in accordance with the Audit Document, and any discrepancies in the data collected by the Service Provider in accordance with the Audit Document arising as a result of such audit carried out during the relevant CVI Sampling Week or Milestone Rectification Works CVI Surveying Week (the "**CVI Sampling Data**").

27.10.7 The Service Provider shall procure that the Independent Surveyor produces a written report to the Service Provider and the Authority within two (2) Business Days of the end of the CVI Sampling Week or Milestone Rectification Works CVI Surveying Week, setting out the results of the audit of the CVI Survey Data required pursuant to Clause 27.10.6 and setting out

the CVI Sampling Data, and where Clause 27.10.8 applies, any corrective action that should be taken by the Service Provider to address any issues with the CVI Surveys or Milestone Rectification Works CVI Surveys (the "**CVI Sampling Report**").

27.10.8 Where, in respect of the relevant CVI Sampling Week, the CVI Sampling Report shows that a Road Section Length XSP has failed the audit process in accordance with the Audit Document (unless Clause 27.10.9 is applicable):

27.10.8.1 the Service Provider shall carry out a further CVI Survey or Milestone Rectification Works CVI Survey of the relevant Road Section Length XSP within ten (10) Business Days of receipt of the CVI Sampling Report (the "**CVI Re-Survey**");

27.10.8.2 the Service Provider shall procure that the Independent Surveyor shall audit (at the Service Provider's cost) the CVI Re-Survey within five (5) Business Days of the CVI Re-Survey being carried out (the "**CVI Re-Survey Audit**"); and

27.10.8.3 where the Independent Surveyor has stated that it considers that a Road Section Length XSP has failed the CVI Re-Survey Audit, the relevant Sub-Section Condition Indices for the Carriageway Hierarchical Type for such Road Section Length XSP shall be set at the relevant threshold value contained in Table A1.1 of Service Standard 2 when the Carriageway Condition Indices for the relevant Contract Year are calculated pursuant to Clause 27.17 (*Calculation of the Index*), unless the Service Provider carries out a further CVI Survey or Milestone Rectification Works CVI Survey of such Road Section Length XSP, in which case the provisions of Clauses 27.10.8.1 and Clause 27.10.8.2 shall apply.

27.10.9 Where, in respect of the relevant CVI Sampling Week, the CVI Sampling Report shows that twenty (20) % or more (but not more than forty (40) %) of the Road Section Length XSPs audited have failed the audit process in accordance with the Audit Document, the Service Provider shall procure that, within ten (10) Business Days of receipt of the CVI Sampling Report, the Independent Surveyor shall carry out a further random ten (10) % (by length) sample of the Carriageways within each Carriageway Hierarchical Type

within the Project Network which comprised the CVI Surveyed Carriageways for the relevant CVI Surveying Week, or, as the case may be, which comprised the Rectifiable CVI Surveyed Carriageways for the relevant Milestone Rectification Works CVI Surveying Week in accordance with the Audit Document (at the Service Provider's cost), such random sample to be determined by the Independent Surveyor acting in its absolute discretion, except insofar as the Authority has notified the Independent Surveyor of CVI Surveyed Carriageways that must or must not be included within the sample prior to the commencement of the CVI Sampling Week, in which case the Service Provider shall procure that the Independent Surveyor shall comply with the Authority's notification (the "**Additional CVI Sampling**"); and

27.10.9.1 the Service Provider shall procure that the Independent Surveyor shall note any Road Section Length XSP(s) that have failed the audit process in accordance with the Audit Document and note any discrepancies in the data collected by the Service Provider in accordance with the Audit Document arising as a result of such audit carried out during the relevant Additional CVI Sampling (the "**Additional CVI Sampling Data**");

27.10.9.2 the Service Provider shall procure that the Independent Surveyor produces a written report to the Service Provider and the Authority within two (2) Business Days of the completion of the Additional CVI Sampling, setting out:

- (a) the results of the Additional CVI Sampling required pursuant to Clause 27.10.9.1;
- (b) a calculation of whether, in respect of all of the CVI Sampling Data and the Additional CVI Sampling Data, the Independent Surveyor has stated that it considers that the survey data for twenty (20) % or more of the Road Section Length XSPs audited in respect of a CVI Surveying Week or, as the case may be, Milestone Rectification Works CVI Surveying Week, have failed the audit process in accordance with the Audit Document; and

- (c) any corrective action that should be taken by the Service Provider to address any issues with the CVI Surveys or Milestone Rectification Works CVI Surveys,

(the "**Additional CVI Sampling Report**")

27.10.10 Where:

27.10.10.1 the CVI Sampling Report and the Additional CVI Sampling Report show that twenty (20) % or more of the Road Section Length XSPs audited in respect of a CVI Surveying Week or, as the case may be, Milestone Rectification Works CVI Surveying Week, have failed the audit process in accordance with the Audit Document; or

27.10.10.2 the CVI Sampling Report shows that 40% or more of the Road Section Length XSPs audited in respect of a CVI Surveying Week or Milestone Rectification Works CVI Surveying Week (as the case may be) have failed the audit process in accordance with the Audit Document,

the relevant Sub-Section Condition Indices for the Carriageway Hierarchical Type for all of the Road Section Length XSPs which formed the CVI Surveyed Carriageway for the relevant CVI Surveying Week or which formed the Rectifiable CVI Surveyed Carriageway for the relevant Milestone Rectification Works CVI Surveying Week shall be set at the relevant threshold value contained in Table A1.1 of Service Standard 2 when the Carriageway Condition Indices for the relevant Contract Year are calculated pursuant to Clause 27.17 (*Calculation of the Index*), unless the Service Provider carries out a further CVI Survey or Milestone Rectification Works CVI Survey of such Road Section Length XSPs, in which case the provisions of Clause 27.10.8.1 and Clause 27.10.8.2 shall apply.

27.10.11 Where the CVI Sampling Report and the Additional CVI Sampling Report show that less than twenty (20) % of the Road Section Length XSPs audited in respect of a CVI Surveying Week or Milestone Rectification Works CVI Surveying Week have failed the audit process in accordance with the Audit Document, the provisions of Clause 27.10.8 shall apply.

27.10.12 The Service Provider shall ensure:

27.10.12.1 in respect of any Personnel of the Service Provider or any Service Provider Party that carries out any CVI Surveys or any Milestone Rectification Works CVI Surveys, that such Personnel hold a currently valid CVI accreditation certificate in accordance with the procedure contained within the UKPMS Audit Accreditation Scheme, and provide all such accreditation certificates to the Authority and the Independent Surveyor;

27.10.12.2 in respect of any Personnel of the Independent Surveyor that carries out audits of the CVI Surveys or any Milestone Rectification Works CVI Surveys, that such Personnel hold a currently valid audit accreditation certificate in accordance with the procedure contained within the UKPMS Audit Accreditation Scheme, and procure that all such accreditation certificates are provided to the Authority; and

27.10.12.3 in respect of any software used by the Service Provider or any Service Provider Party to input data arising as a result of CVI Surveys or any Milestone Rectification Works CVI Surveys, that such software is accredited in accordance with the process approved from time to time by the UK Roads Board and provide all such accreditation certificates to the Authority and the Independent Surveyor,

prior to the commencement of the CVI Survey Programme in any Contract Year, and shall demonstrate to the Authority and the Independent Surveyor (as applicable) upon demand that such accreditation certificate remains valid at any point during the CVI Survey Programme.

27.10.13 The Service Provider shall ensure that the data captured and recorded as a result of the CVI Surveys or any Milestone Rectification Works CVI Surveys:

27.10.13.1 is recorded using software accredited pursuant to Clause 27.10.12.3;

27.10.13.2 is supplied in HMDIF;

27.10.13.3 has been recorded and is displayed in accordance with the UKPMS Visual Survey Manual 2009;

27.10.13.4 has been validated by the Service Provider in order to ensure that the data is in the correct format;; and

27.10.13.5 shows the data in percentage defectiveness in accordance with the Technical Specification Document,

and:

27.10.13.6 the Service Provider shall ensure that the CVI Survey Data (including identification of any Road Section Length XSPs that have failed the audit process pursuant to Clauses 27.10.8.3 or 27.10.10) is recorded in the Collaborative Working Platform pursuant to Performance Requirement 1.38 and is accessible on-line and Available to the Independent Surveyor to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a);

27.10.13.7 the Parties acknowledge and agree that the data set out in the Collaborative Working Platform at the 30th September in each Contract Year pursuant to Clause 27.10.13.6 shall be the data that is validated and produced to the Service Provider and the Authority pursuant to Clause 27.16 (*Production of Data*), and is used for the basis of calculation of the relevant Condition Indices pursuant to Clause 27.17 (*Calculation of the Index*).

27.11 SCANNER Surveys

27.11.1 No later than 1st November in each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised SCANNER Survey Programme pursuant to the Review Procedure. The Service Provider shall provide a copy of such SCANNER Survey Programme to the Independent Machine Surveyor within five (5) Business Days of the SCANNER Survey Programme being agreed or determined pursuant to the Review Procedure. In the case of any Milestone Rectification Works

SCANNER Survey, the Service Provider shall, no later than 1st February in any Contract Year following a relevant Milestone Year, submit to the Authority and the Independent Machine Surveyor the Milestone Rectification Works SCANNER Survey Programme.

27.11.2 The Service Provider shall ensure that all SCANNER Survey Programmes include the start and end dates for the carrying out of the SCANNER Surveys to be undertaken by the Independent Machine Surveyor in the forthcoming Contract Year and in the case of any Milestone Rectification Works SCANNER Survey Programme, the start and end dates for the carrying out of the Milestone Rectification Works SCANNER Surveys to be undertaken by the Independent Machine Surveyor.

27.11.3 The Service Provider shall procure that the Independent Machine Surveyor carries out all SCANNER Surveys and Milestone Rectification Works SCANNER Surveys in accordance with this Clause 27 (*Independent Surveys and Inspections*), the SCANNER Specification 2009 Volumes 1 to 4, the Audit Document and either the SCANNER Survey Programme for the relevant Contract Year or, as the case may be, the relevant Milestone Rectification Works SCANNER Survey Programme.

27.11.4 The Service Provider shall procure that a SCANNER Survey is carried out by the Independent Machine Surveyor on a minimum of 96% of all permanent lanes in one direction of each Carriageway within the Primary Road Network and Secondary Road Network once every Contract Year for the duration of the Term (provided that the Service Provider shall procure that no lane of any Road Section Length XSP is omitted from the SCANNER Survey Programmes for two consecutive Contract Years). In the case of any Milestone Rectification Works SCANNER Survey, the Service Provider shall procure that the Independent Machine Surveyor shall carry out a Milestone Rectification Works SCANNER Survey for all lanes of each Carriageway of any Road Section Lengths within the Primary Road Network or the Secondary Road Network which are the subject matter of a rectification programme or Milestone Rectification Programme under Clause 73.2.2.

27.11.5 The Service Provider shall ensure that the SCANNER Surveys and Milestone Rectification Works SCANNER Surveys are undertaken by a machine which

has passed an acceptance test and which holds a currently valid accreditation certificate in accordance with the requirements set out in the SCANNER Specification 2009, and shall produce such accreditation certificate to the Authority prior to the commencement of the SCANNER Survey Programme in any Contract Year, and shall demonstrate to the Authority upon demand that such accreditation certificate remains valid at any point during the SCANNER Survey Programme or any Milestone Rectification Works SCANNER Survey Programme.

27.11.6 The Service Provider shall procure that the data captured and recorded by the Independent Machine Surveyor as a result of the SCANNER Surveys or Milestone Rectification Works SCANNER Surveys (the "**SCANNER Survey Data**"):

27.11.6.1 is supplied in HMDIF; and

27.11.6.2 has been recorded and is displayed in accordance with the Scanner Specification 2009 (as updated from time to time by the UKPMS Rules and Parameters);

and:

27.11.6.3 the Service Provider shall ensure that the SCANNER Survey Data is recorded in the Collaborative Working Platform pursuant to Performance Requirement 1.38 and is accessible on-line and Available to the Independent Surveyor to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a); and

27.11.6.4 the Parties acknowledge and agree that the data set out in the Collaborative Working Platform pursuant to Clause 27.11.6.3 at the 30th September in each Contract Year shall be the data that is validated and produced and then is provided to the Service Provider and the Authority pursuant to Clause 27.16 (*Production of Data*) and is used for the basis of calculation of the relevant Condition Indices pursuant to Clause 27.17 (*Calculation of the Index*).

27.12 SCRIM Surveys

27.12.1 No later than 1st November in each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised SCRIM Survey Programme pursuant to the Review Procedure. The Service Provider shall provide a copy of such SCRIM Survey Programme to the Independent Machine Surveyor within five (5) Business Days of the SCRIM Survey Programme being agreed or determined pursuant to the Review Procedure.

27.12.2 The Service Provider shall ensure that all SCRIM Survey Programmes include the start and end dates for the carrying out of the SCRIM Surveys to be undertaken by the Independent Machine Surveyor in the forthcoming Contract Year.

27.12.3 The Service Provider shall procure that the Independent Machine Surveyor carries out all SCRIM Surveys in accordance with the Single Annual Survey Method as set out in HD 28/04, Annex 3, A3.12 to produce the Characteristic SCRIM Coefficient (CSC) for each ten (10) metre sub-section of the relevant Carriageway, and also in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Technical Specification Document, the Audit Document and the SCRIM Survey Programme for the relevant Contract Year.

27.12.4 The Service Provider shall procure that a SCRIM Survey is carried out by the Independent Machine Surveyor on:

27.12.4.1 a minimum of 96% of all permanent lanes in both directions of each Carriageway within the Primary Road Network, Secondary Road Network and Link Road Network; and

27.12.4.2 100% of all permanent lanes of each Carriageway which carries tram tracks,

once every Contract Year for the duration of the Term, (provided that the Service Provider shall procure that no lane of any Road Section Length is omitted from the SCRIM Survey Programmes for two consecutive Contract Years).

27.12.5 The Service Provider shall ensure that the SCRIM Surveys are undertaken by a machine which has passed an acceptance test and which holds a currently

valid accreditation certificate, and shall produce such accreditation certificate to the Authority prior to the commencement of the SCRIM Survey Programme in any Contract Year, and shall demonstrate to the Authority upon demand that such accreditation certificate remains valid at any point during the SCRIM Survey Programme.

27.12.6 The Service Provider shall procure that the data captured and recorded by the Independent Machine Surveyor as a result of the SCRIM Surveys (the "**SCRIM Survey Data**"):

27.12.6.1 is supplied in HMDIF; and

27.12.6.2 contains all thresholds and the corrected Characteristic SCRIM Coefficient (CSC) in accordance with the Single Annual Survey Method,

and:

27.12.6.3 the Service Provider shall ensure that the SCRIM Survey Data is recorded in the Collaborative Working Platform pursuant to Performance Requirement 1.38 and is accessible on-line and Available to the Independent Surveyor to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a); and

27.12.6.4 the Parties acknowledge and agree that the data set out in the Collaborative Working Platform pursuant to Clause 27.12.6.3 at the 30th September in each Contract Year shall be the data that is validated and produced and then is provided to the Service Provider and the Authority pursuant to Clause 27.16 (*Production of Data*) and is used for the basis of calculation of the relevant Condition Indices pursuant to Clause 27.17 (*Calculation of the Index*) provided that, where any Milestone Rectification Works have been undertaken to any Carriageway, the corrected Characteristic Scrim Coefficient (CSC) for each ten (10) metre sub-section of the relevant Carriageway to which such Milestone Rectification Works have been undertaken shall, for the purposes of Clause 27.16 (*Production of*

Data) and Clause 27.17 (*Calculation of the Index*), be deemed to be at the Investigatory Level for a period of three (3) Months after such Milestone Rectification Works have been undertaken, following which the corrected Characteristic Scrim Coefficient (CSC) for each ten (10) metre sub-section of the relevant Carriageway shall revert to the previously recorded value unless the Service Provider carries out a further SCRIM Survey to determine the corrected Characteristic Scrim Coefficient (CSC) for each ten (10) metre sub-section of the relevant Carriageway, in which case the value obtained from such SCRIM Survey shall prevail.

27.13 Deflectograph Surveys

27.13.1 No later than 1st November in each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Deflectograph Survey Programme pursuant to the Review Procedure. The Service Provider shall provide a copy of such Deflectograph Survey Programme to the Independent Machine Surveyor within five (5) Business Days of the Deflectograph Survey Programme being agreed or determined pursuant to the Review Procedure.

27.13.2 The Service Provider shall ensure that all Deflectograph Survey Programmes include the start and end dates for the carrying out of the Deflectograph Surveys to be undertaken by the Independent Machine Surveyor in the forthcoming Contract Year, provided that such Deflectograph Survey Programmes shall be carried out by the Service Provider between the 1 March to 15 June and 16 September to 31 October in each Contract Year.

27.13.3 The Service Provider shall procure that the Independent Machine Surveyor carries out all Deflectograph Surveys in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Highways Maintenance Code, the Audit Document and the Deflectograph Survey Programme for the relevant Contract Year.

27.13.4 The Service Provider shall procure that a Deflectograph Survey is carried out by the Independent Machine Surveyor on each lane of each Carriageway within the Primary Road Network and Secondary Road Network at a frequency which ensures that by the end of:

27.13.4.1 the ninth (9th), fourteenth (14th) and nineteenth (19th) Contract Years, the Deflectograph Survey results for each lane of the Carriageway shall be no older than five (5) years; and

27.13.4.2 the twenty fourth (24th) Contract Year of the Term, the Deflectograph Survey results for each lane of the Carriageway shall be no older than one (1) year,

provided that the Service Provider shall not be required to procure that a Deflectograph Survey is carried out on those Carriageways which have had Major Surfacing Works carried out to them within the last two (2) Contract Years.

27.13.5 The Service Provider shall ensure that the Deflectograph Surveys are undertaken by a machine which has passed an acceptance test and which holds a currently valid accreditation certificate in accordance with the applicable procedure for accreditation endorsed by the DfT, and shall produce such accreditation certificate to the Authority prior to the commencement of the Deflectograph Survey Programme in any Contract Year, and shall demonstrate to the Authority upon demand that such accreditation certificate remains valid at any point during the Deflectograph Survey Programme.

27.13.6 The Service Provider shall procure that the data captured and recorded by the Independent Machine Surveyor in each Contract Year as a result of the Deflectograph Surveys (the "**Deflectograph Survey Data**") is processed through a system approved by the Authority to produce the deflections, in millimetres x 10⁻², for every three (3) metres of the Project Network which is subject to Deflectograph Surveys and the system outputs the deflections in CSV file format containing the following comma separated values in the order listed: "section label", "XSP", "Start Chainage", "End Chainage", "uncorrected near side deflection (to 3 decimal points)" and "uncorrected off side deflection (to 3 decimal points), and:

27.13.6.1 the Service Provider shall ensure that the Deflectograph Survey Data is recorded in the Collaborative Working Platform no later than one Month after the date required pursuant to Performance Requirement 1.38 and is accessible on-line and Available to the

Independent Surveyor to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a); and

27.13.6.2 the Parties acknowledge and agree that the data set out in the Collaborative Working Platform pursuant to Clause 27.13.6.1 at the 30th September in each Contract Year shall be the data that is validated and produced and then is provided to the Service Provider and the Authority by 30th October in that Contract Year pursuant to Clause 27.16 (*Production of Data*).

27.13.7 Where as a result of the Deflectograph Surveys, the overall Deflection Condition Index achieved by the Deflectograph Surveys as calculated by the 30th November in the ninth (9th), fourteenth (14th), nineteenth (19th) and twenty fourth (24th) Contract Years (each being the "**Deflectograph Survey Calculation Date**") is greater than that required in Schedule 2 (*Output Specification*):

27.13.7.1 the Service Provider shall produce and submit to the Authority a rectification programme ("**Deflectograph Rectification Programme**") pursuant to the Review Procedure which shall take into account the works required to ensure that the Deflection Condition Index achieved in the Deflectograph Surveys is reduced to the level required in Schedule 2 (*Output Specification*) by the next relevant Deflectograph Survey Calculation Date; and

27.13.7.2 following the relevant Deflectograph Survey Calculation Date,

[REDACTED]



27.13.8 Where the Service Provider has carried out treatments to improve the structural condition of the Carriageway within the five (5) year period prior to the Deflectograph Survey Calculation Date, then in calculating the Deflection Condition Index, subject to approval by the Authority (acting reasonably), the Service Provider may incorporate appropriate allowances into the Deflection Condition Index for the anticipated reduction in the Deflection Condition Index resulting from the treatments carried out in such five (5) year period provided that the Service Provider shall also take into account any expected deterioration in the Deflection Condition Index in respect of such Carriageways since the date of the relevant treatments.

27.14 Patching Surveys

27.14.1 No later than 1st November in each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Patching Survey Programme pursuant to the Review Procedure, which shall include a summary of the percentage of the Carriageways (identified by Carriageway Hierarchical Type and as a total percentage of the relevant Carriageways within the Project Network) that will be subject to a Patching Survey in the relevant Contract Year. The Service Provider shall provide a copy of such Patching Survey Programme to the Independent Surveyor within five (5) Business Days of the Patching Survey Programme being agreed or determined pursuant to the Review Procedure. In the case of any Milestone Rectification Works Patching Survey, the Service Provider shall, no later than 1 February in any Contract Year following a relevant Milestone Year, submit to the Authority a Milestone Rectification Works Patching Survey Programme.

27.14.2 The Service Provider shall ensure that all Patching Survey Programmes include the start and end dates for the carrying out of the Patching Surveys to be undertaken by the Service Provider to all Carriageway Hierarchical Types within the Project Network in the forthcoming Contract Year and in the case

of any Milestone Rectification Works Patching Survey Programme, the start and end dates for the carrying out of the Milestone Rectification Works Patching Surveys to be undertaken by the Service Provider to all Carriageway Hierarchical Types within the Project Network which are the subject matter of a rectification programme under Clause 73.2.2 ("**Rectifiable Patching Surveyed Carriageway**").

27.14.3 The Service Provider shall, and (where applicable) shall procure that the Independent Surveyor shall, carry out all Patching Surveys and Milestone Rectification Works Patching Surveys in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Technical Specification Document and the Patching Survey Programme or, as the case may be, Milestone Rectification Works Patching Survey Programme for the relevant Contract Year, and shall ensure that the percentage area of patching is recorded in accordance with the Technical Specification Document

27.14.4 The Service Provider shall carry out a Patching Survey (at Full XSP Level for the Primary Secondary and Link Road Network, and at Minimal XSP Level for the Local Road Network) on a minimum of 48% of all Carriageways within each Carriageway Hierarchical Type within the Project Network (the "**Patching Surveyed Carriageway**") every Contract Year for the duration of the Term (provided that the Service Provider shall ensure that no Road Section Length XSP is omitted from the Patching Survey Programmes for two consecutive Contract Years). In the case of any Milestone Rectification Works Patching Survey Programme, the Service Provider shall carry out a Milestone Rectification Works Patching Survey (at Full XSP Level for the Primary Secondary and Link Road Network, and at Minimal XSP Level for the Local Road Network) on all Rectifiable Patching Surveyed Carriageway.

27.14.5 Within five (5) Business Days of the end of the last day of any Week in which the Service Provider has carried out any Patching Surveys (a "**Patching Surveying Week**") or any Milestone Rectification Works Patching Survey (a "**Milestone Rectification Works Patching Surveying Week**"), the Service Provider shall notify the Independent Surveyor and the Authority of:

27.14.5.1 the locations of the Patching Surveyed Carriageway or the Rectifiable Patching Surveyed Carriageway for the relevant Patching Surveying Week or Milestone Rectification Works Patching Surveying Week (as the case may be); and

27.14.5.2 details of the data (which shall be compliant with Clause 27.14.13) that was produced by the Service Provider as a result of the Patching Surveys or Milestone Rectification Works Patching Surveys carried out during the relevant Patching Surveying Week or Milestone Rectification Works Patching Surveying Week (as the case may be), including a summary of the percentage of the Carriageways (identified by Carriageway Hierarchical Type and as a total percentage of the relevant Carriageways within the Project Network) that has been subject to a Patching Survey or Milestone Rectification Works Patching Survey in the relevant Patching Surveying Week or Milestone Rectification Works Patching Surveying Week (as the case may be) (the "**Patching Survey Data**").

27.14.6 The Service Provider shall procure that, within the Week occurring after the production of the Patching Survey Data pursuant to Clause 27.14.5.2 (a "**Patching Sampling Week**"):

27.14.6.1 the Independent Surveyor shall carry out an audit of the survey data collected from a random ten (10) % (by length) sample of the Carriageways within each Carriageway Hierarchical Type within the Project Network which comprised the Patching Surveyed Carriageways or Rectifiable Patching Surveyed Carriageway (as the case may be) for the relevant Patching Surveying Week or Milestone Rectification Works Patching Surveying Week (as the case may be), in accordance with the Audit Document, such random sample to be determined by the Independent Surveyor acting in its absolute discretion, except insofar as the Authority has notified the Independent Surveyor of Patching Surveyed Carriageways that must or must not be included within the sample prior to the commencement of the Patching Sampling Week, in which case the Service Provider shall procure that the Independent Surveyor shall comply with the Authority's notification; and

27.14.6.2 the Independent Surveyor shall note any Road Section Length XSP(s) that have failed the audit process in accordance with the Audit Document, and any discrepancies in the data collected by the Service Provider in accordance with the Audit Document arising as a result of such audit carried out during the relevant Patching Sampling Week (the "**Patching Sampling Data**").

27.14.7 The Service Provider shall procure that the Independent Surveyor produces a written report to the Service Provider and the Authority within two (2) Business Days of the end of the Patching Sampling Week, setting out the results of the audit of the Patching Survey Data required pursuant to Clause 27.14.6 and setting out the Patching Sampling Data, and where Clause 27.14.8 applies, any corrective action that should be taken by the Service Provider to address any issues with the Patching Surveys or Milestone Rectification Works Patching Surveys (the "**Patching Sampling Report**").

27.14.8 Where, in respect of the relevant Patching Sampling Week, the Patching Sampling Report shows that a Road Section Length XSP has failed the audit process in accordance with the Audit Document (unless Clause 27.14.9 is applicable):

27.14.8.1 the Service Provider shall carry out a further Patching Survey or Milestone Rectification Works Patching Survey of the relevant Road Section Length XSP within ten (10) Business Days of receipt of the Patching Sampling Report (the "**Patching Re-Survey**");

27.14.8.2 the Service Provider shall procure that the Independent Surveyor shall audit (at the Service Provider's cost) the Patching Re-Survey within five (5) Business Days of the Patching Re-Survey being carried out (the "**Patching Re-Survey Audit**"); and

27.14.8.3 where the Independent Surveyor has stated that it considers that a Road Section Length XSP has failed the Patching Re-Survey Audit, the relevant Sub-Section Condition Indices for the Carriageway Hierarchical Type for such Road Section Length XSP shall be set at the relevant threshold value contained in Table A1.1 of Service Standard 2 when the Carriageway Condition Indices for the relevant

Contract Year are calculated pursuant to Clause 27.17 (*Calculation of the Index*), unless the Service Provider carries out a further Patching Survey or Milestone Rectification Works Patching Surveying Week of such Road Section Length XSP, in which case the provisions of Clauses 27.14.8.1 and Clause 27.14.8.2 shall apply.

27.14.9 Where, in respect of the relevant Patching Sampling Week, the Patching Sampling Report shows that twenty (20) % or more (but not more than forty (40) %) of the Road Section Length XSPs audited have failed the audit process in accordance with the Audit Document, the Service Provider shall procure that, within ten (10) Business Days of receipt of the Patching Sampling Report, the Independent Surveyor shall carry out a further random ten (10) % (by length) sample of the Carriageways within each Carriageway Hierarchical Type within the Project Network which comprised the Patching Surveyed Carriageways for the relevant Patching Surveying Week or, as the case may be, which comprise the Rectifiable Patching Surveyed Carriageways for the relevant Milestone Rectification Works Patching Surveying Week, in accordance with the Audit Document (at the Service Provider's cost), such random sample to be determined by the Independent Surveyor acting in its absolute discretion, except insofar as the Authority has notified the Independent Surveyor of Patching Surveyed Carriageways that must or must not be included within the sample prior to the commencement of the Patching Sampling Week, in which case the Service Provider shall procure that the Independent Surveyor shall comply with the Authority's notification (the "**Additional Patching Sampling**"); and

27.14.9.1 the Service Provider shall procure that the Independent Surveyor shall note any Road Section Length XSP(s) that have failed the audit process in accordance with the Audit Document and note any discrepancies in the data collected by the Service Provider in accordance with the Audit Document arising as a result of such audit carried out during the relevant Additional Patching Sampling (the "**Additional Patching Sampling Data**");

27.14.9.2 the Service Provider shall procure that the Independent Surveyor produces a written report to the Service Provider and the Authority

within two (2) Business Days of the completion of the Additional Patching Sampling, setting out:

- (a) the results of the Additional Patching Sampling required pursuant to Clause 27.14.9.1;
- (b) a calculation of whether, in respect of all of the Patching Sampling Data and the Additional Patching Sampling Data, the Independent Surveyor has stated that it considers that the survey data for twenty (20) % or more of the Road Section Length XSPs audited in respect of a Patching Surveying Week or, as the case may be, Milestone Rectification Works Patching Surveying Week have failed the audit process in accordance with the Audit Document; and
- (c) any corrective action that should be taken by the Service Provider to address any issues with the Patching Surveys or Milestone Rectification Works Patching Surveys,

(the "**Additional Patching Sampling Report**")

27.14.10 Where:

27.14.10.1 the Patching Sampling Report and the Additional Patching Sampling Report show that twenty (20) % or more of the Road Section Length XSPs audited in respect of a Patching Surveying Week or, as the case may be, Milestone Rectification Works Patching Surveying Week have failed the audit process in accordance with the Audit Document; or

27.14.10.2 the Patching Sampling Report shows that 40% or more of the Road Section Length XSPs audited in respect of a Patching Surveying Week or Milestone Rectification Works Patching Surveying Week (as the case may be) have failed the audit process in accordance with the Audit Document,

the relevant Sub-Section Condition Indices for the Carriageway Hierarchical Type for all of the Road Section Length XSPs which formed the Patching Surveyed Carriageway for the relevant Patching Surveying Week or which

formed the Rectifiable Patching Surveyed Carriageways for the relevant Milestone Rectification Works Patching Surveying Week shall be set at the relevant threshold value contained in Table A1.1 of Service Standard 2 when the Carriageway Condition Indices for the relevant Contract Year are calculated pursuant to Clause 27.17 (*Calculation of the Index*), unless the Service Provider carries out a further Patching Survey or Milestone Rectification Works Patching Survey of such Road Section Length XSPs, in which case the provisions of Clause 27.14.8.1 and Clause 27.14.8.2 shall apply.

27.14.11 Where the Patching Sampling Report and the Additional Patching Sampling Report show that less than twenty (20) % of the Road Section Length XSPs audited in respect of a Patching Surveying Week or Milestone Rectification Works Patching Surveying Week have failed the audit process in accordance with the Audit Document, the provisions of Clause 27.14.8 shall apply.

27.14.12 The Service Provider shall ensure that the Independent Surveyor and any Personnel of the Service Provider or any Service Provider Party that carries out any Patching Surveys or Milestone Rectification Works Patching Surveys are suitable qualified and experienced to carry out the Patching Surveys and/or Milestone Rectification Works Patching Surveys and/or audits relating to Patching Surveys and/or Milestone Rectification Works Patching Surveys (as applicable), and that any software used by the Service Provider or any Service Provider Party to input data arising as a result of Patching Surveys and/or Milestone Rectification Works Patching Surveys has been approved by the Authority (acting reasonably).

27.14.13 The Service Provider shall ensure that the data captured and recorded as a result of the Patching Surveys and/or any Milestone Rectification Works Patching Surveys:

27.14.13.1 is recorded using software approved by the Authority pursuant to Clause 27.14.12;

27.14.13.2 is supplied in HMDIF;

27.14.13.3 has been validated by the Service Provider in order to ensure that the data is in the correct format; and

27.14.13.4 is in accordance with the Technical Specification Document,

and:

27.14.13.5 the Service Provider shall ensure that the Patching Survey Data (including identification of any Road Section Length XSPs that have failed the audit process pursuant to Clauses 27.14.8.3 or 27.14.10) is recorded in the Collaborative Working Platform pursuant to Performance Requirement 1.38 and is accessible on-line and Available to the Independent Surveyor to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a);

27.14.13.6 the Parties acknowledge and agree that the data set out in the Collaborative Working Platform pursuant to Clause 27.14.13.5 at the 30th September in each Contract Year shall be the data that is validated and produced to the Service Provider and the Authority pursuant to Clause 27.16 (*Production of Data*), and is used for the basis of calculation of the relevant Condition Indices pursuant to Clause 27.17 (*Calculation of the Index*).

27.15 Footway Surveys

27.15.1 No later than 1st November in each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Footway Survey Programme pursuant to the Review Procedure, which shall include a summary of the percentage of the Footways (identified by Footway Hierarchical Type and as a total percentage of the relevant Footways within the Project Network) that will be subject to a Footway Survey in the relevant Contract Year. The Service Provider shall provide a copy of such Footway Survey Programme to the Independent Surveyor within five (5) Business Days of the Footway Survey Programme being agreed or determined pursuant to the Review Procedure. In the case of any Milestone Rectification Works Footway Survey, the Service Provider shall, no later than 1st February

in any Contract Year following a relevant Milestone Year, submit to the Authority a Milestone Rectification Works Footway Survey Programme.

27.15.2 The Service Provider shall ensure that all Footway Survey Programmes include the start and end dates for the carrying out of the Footway Surveys to be undertaken by the Service Provider to all Footway Hierarchical Types within the Project Network in the forthcoming Contract Year and in the case of any Milestone Rectification Works Footway Survey Programme, the start and end dates for the carrying out of the Milestone Rectification Works Footway Surveys to be undertaken by the Service Provider to all Footway Hierarchical Types within the Project Network which are the subject matter of a rectification programme or Milestone Rectification Programme under clause 73.2.2 ("**Rectifiable Surveyed Footway**").

27.15.3 The Service Provider shall, and (where applicable) shall procure that the Independent Surveyor shall, carry out all Footway Surveys and Milestone Rectification Works Footway Surveys in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Enhanced FNS Methodology and the Footway Survey Programme or, as the case may be, the Milestone Rectification Works Footway Survey Programme for the relevant Contract Year.

27.15.4 The Service Provider shall carry out a Footway Survey (at Minimal XSP Level for the all Footway Hierarchical Types) on a minimum of 48% of all Footways within each Footway Hierarchical Type within the Project Network (the "**Footway Surveyed Footway**") every Contract Year for the duration of the Term (provided that the Service Provider shall ensure that no Footway Section Length is omitted from the Footway Survey Programmes for two consecutive Contract Years). In the case of any Milestone Rectification Works Footway Survey, the Service Provider shall carry out a Milestone Rectification Works Footway Survey at Minimal XSP Level for all relevant Rectifiable Surveyed Footways.

27.15.5 Within five (5) Business Days of the end of the last day of any Week in which the Service Provider has carried out any Footway Surveys (a "**Footway Surveying Week**") or any Milestone Rectification Works Footway Survey (a "**Milestone Rectification Works Footway Surveying**")

Week"), the Service Provider shall notify the Independent Surveyor and the Authority of:

27.15.5.1 the locations of the Footway Surveyed Footway or Rectifiable Surveyed Footways for the relevant Footway Surveying Week or Milestone Rectification Works Footway Surveying Week (as the case may be); and

27.15.5.2 details of the data (which shall be compliant with Clause 27.15.13) that was produced by the Service Provider as a result of the Footway Surveys or Milestone Rectification Works Footway Surveys carried out during the relevant Footway Surveying Week or Milestone Rectification Works Footway Surveying Week, including a summary of the percentage of the Footways (identified by Footway Hierarchical Type and as a total percentage of the relevant Footways within the Project Network) that has been subject to a Footway Survey or Milestone Rectification Works Footway Surveys in the relevant Footway Surveying Week or Milestone Rectification Works Footway Surveying Week (as the case may be) (the **"Footway Survey Data"**).

27.15.6 The Service Provider shall procure that, within the Week occurring after the production of the Footway Survey Data pursuant to Clause 27.15.5.2 (a **"Footway Sampling Week"**):

27.15.6.1 the Independent Surveyor shall carry out an audit of the survey data collected from a random ten (10) % (by length) sample of the Footways within each Footway Hierarchical Type within the Project Network which comprised the Footway Surveyed Footways or Rectifiable Surveyed Footways (as the case may be) for the relevant Footway Surveying Week or Milestone Rectification Works Footway Surveying Week (as the case may be), in accordance with the Audit Document, such random sample to be determined by the Independent Surveyor acting in its absolute discretion, except insofar as the Authority has notified the Independent Surveyor of Footway Surveyed Footways that must or must not be included within the sample prior to the commencement of the Footway Sampling Week,

in which case the Service Provider shall procure that the Independent Surveyor shall comply with the Authority's notification; and

27.15.6.2 the Independent Surveyor shall note any Footway Section Length XSP(s) that have failed the audit process in accordance with the Audit Document, and any discrepancies in the data collected by the Service Provider in accordance with the Audit Document arising as a result of such audit carried out during the relevant Footway Sampling Week (the "**Footway Sampling Data**").

27.15.7 The Service Provider shall procure that the Independent Surveyor produces a written report to the Service Provider and the Authority within two (2) Business Days of the end of the Footway Sampling Week, setting out the results of the audit of the Footway Survey Data required pursuant to Clause 27.15.6 and setting out the Footway Sampling Data, and where Clause 27.15.8 applies, any corrective action that should be taken by the Service Provider to address any issues with the Footway Surveys or Milestone Rectification Works Footway Surveys (the "**Footway Sampling Report**").

27.15.8 Where, in respect of the relevant Footway Sampling Week, the Footway Sampling Report shows that a Footway Section Length XSP has failed the audit process in accordance with the Audit Document (unless Clause 27.15.9 is applicable):

27.15.8.1 the Service Provider shall carry out a further Footway Survey or Milestone Rectification Works Footway Survey of the relevant Footway Section Length XSP within ten (10) Business Days of receipt of the Footway Sampling Report (the "**Footway Re-Survey**");

27.15.8.2 the Service Provider shall procure that the Independent Surveyor shall audit (at the Service Provider's cost) the Footway Re-Survey within five (5) Business Days of the Footway Re-Survey being carried out (the "**Footway Re-Survey Audit**"); and

27.15.8.3 where the Independent Surveyor has stated that it considers that a Footway Section Length XSP has failed the Footway Re-Survey

Audit, the relevant Sub-Section Condition Indices for the Footway Hierarchical Type for such Footway Section Length XSP shall be set at the relevant threshold value contained in Table A1.3 of Service Standard 2 when the Footway Condition Indices for the relevant Contract Year are calculated pursuant to Clause 27.17 (*Calculation of the Index*), unless the Service Provider carries out a further Footway Survey or Milestone Rectification Works Footway Survey of such Footway Section Length XSP, in which case the provisions of Clauses 27.15.8.1 and Clause 27.15.8.2 shall apply.

27.15.9 Where, in respect of the relevant Footway Sampling Week, the Footway Sampling Report shows that twenty (20) % or more (but not more than forty (40) %) of the Footway Section Length XSPs audited have failed the audit process in accordance with the Audit Document, the Service Provider shall procure that, within ten (10) Business Days of receipt of the Footway Sampling Report, the Independent Surveyor shall carry out a further random ten (10) % (by length) sample of the Footways within each Footway Hierarchical Type within the Project Network which comprised the Footway Surveyed Footways for the relevant Footway Surveying Week or, as the case may be, which comprised the Rectifiable Surveyed Footways for the relevant Milestone Rectification Works Footway Surveying Week, in accordance with the Audit Document (at the Service Provider's cost), such random sample to be determined by the Independent Surveyor acting in its absolute discretion, except insofar as the Authority has notified the Independent Surveyor of Footway Surveyed Footways that must or must not be included within the sample prior to the commencement of the Footway Sampling Week, in which case the Service Provider shall procure that the Independent Surveyor shall comply with the Authority's notification (the "**Additional Footway Sampling**"); and

27.15.9.1 the Service Provider shall procure that the Independent Surveyor shall note any Footway Section Length XSP(s) that have failed the audit process in accordance with the Audit Document and note any discrepancies in the data collected by the Service Provider in accordance with the Audit Document arising as a result of such audit

carried out during the relevant Additional Footway Sampling (the **"Additional Footway Sampling Data"**);

27.15.9.2 the Service Provider shall procure that the Independent Surveyor produces a written report to the Service Provider and the Authority within two (2) Business Days of the completion of the Additional Footway Sampling, setting out:

- (a) the results of the Additional Footway Sampling required pursuant to Clause 27.15.9.1;
- (b) a calculation of whether, in respect of all of the Footway Sampling Data and the Additional Footway Sampling Data, the Independent Surveyor has stated that it considers that the survey data for twenty (20) % or more of the Footway Section Length XSPs audited in respect of a Footway Surveying Week or, as the case may be, Milestone Rectification Works Footway Surveying Week have failed the audit process in accordance with the Audit Document; and
- (c) any corrective action that should be taken by the Service Provider to address any issues with the Footway Surveys or Milestone Rectification Works Footway Surveys,

(the **"Additional Footway Sampling Report"**)

27.15.10 Where:

27.15.10.1 the Footway Sampling Report and the Additional Footway Sampling Report show that twenty (20) % or more of the Footway Section Length XSPs audited in respect of a Footway Surveying Week or, as the case may be, Milestone Rectification Works Footway Surveying Week have failed the audit process in accordance with the Audit Document; or

27.15.10.2 the Footway Sampling Report shows that 40% or more of the Footway Section Length XSPs audited in respect of a Footway Surveying Week or Milestone Rectification Works Footway

Surveying Week (as the case may be) have failed the audit process in accordance with the Audit Document,

the relevant Sub-Section Condition Indices for the Footway Hierarchical Type for all of the Footway Section Length XSPs which formed the Footway Surveyed Footway for the relevant Footway Surveying Week or which formed the Rectifiable Surveyed Footway for the relevant Milestone Rectification Works Footway Surveying Week shall be set at the relevant threshold value contained in Table A1.3 of Service Standard 2 when the Footway Condition Indices for the relevant Contract Year are calculated pursuant to Clause 27.17 (*Calculation of the Index*), unless the Service Provider carries out a further Footway Survey or Milestone Rectification Works Footway Survey of such Footway Section Length XSPs, in which case the provisions of Clause 27.15.8.1 and Clause 27.15.8.2 shall apply.

27.15.11 Where the Footway Sampling Report and the Additional Footway Sampling Report show that less than twenty (20) % of the Footway Section Length XSPs audited in respect of a Footway Surveying Week or Milestone Rectification Works Footway Surveying Week (as the case may be) have failed the audit process in accordance with the Audit Document, the provisions of Clause 27.15.8 shall apply.

27.15.12 The Service Provider shall ensure:

27.15.12.1 in respect of any Personnel of the Service Provider or any Service Provider Party that carries out any Footway Surveys or any Milestone Rectification Works Footway Surveys, that such Personnel hold a currently valid FNS accreditation certificate in accordance with the procedure contained within the UKPMS Audit Accreditation Scheme, and provide all such accreditation certificates to the Authority and the Independent Surveyor; and

27.15.12.2 in respect of any Personnel of the Independent Surveyor that carries out audits of the Footway Surveys or any Milestone Rectification Works Footway Surveys, that such Personnel hold a currently valid audit accreditation certificate in accordance with the procedure contained within the UKPMS Audit Accreditation

Scheme, and procure that all such accreditation certificates are provided to the Authority;

27.15.12.3 in respect of any software used by the Service Provider or any Service Provider Party to input data arising as a result of Footway Surveys or any Milestone Rectification Works Footway Surveys, that such software is accredited in accordance with the process approved from time to time by the UK Roads Board and provide all such accreditation certificates to the Authority and the Independent Surveyor,

prior to the commencement of the Footway Survey Programme in any Contract Year, and shall demonstrate to the Authority and the Independent Surveyor (as applicable) upon demand that such accreditation certificate remains valid at any point during the Footway Survey Programme.

27.15.13 The Service Provider shall ensure that the data captured and recorded as a result of the Footway Surveys or any Milestone Rectification Works Footway Surveys:

27.15.13.1 is recorded using software accredited pursuant to Clause 27.15.12.3;

27.15.13.2 is supplied in HMDIF;

27.15.13.3 is captured and recorded using the Enhanced FNS Methodology;

27.15.13.4 has been validated by the Service Provider in order to ensure that the data is in the correct format;; and

27.15.13.5 is recorded in percentage defectiveness in accordance with the Technical Specification Document,

and:

27.15.13.6 the Service Provider shall ensure that the Footway Survey Data (including identification of any Footway Section Length XSPs that have failed the audit process pursuant to Clauses 27.15.8.3 or 27.15.10) is recorded in the Collaborative Working Platform pursuant

to Performance Requirement 1.38 and is accessible on-line and Available to the Independent Surveyor to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a);

27.15.13.7 the Parties acknowledge and agree that the data set out in the Collaborative Working Platform pursuant to Clause 27.15.13.5 at the 30th September in each Contract Year shall be the data that is validated and produced to the Service Provider and the Authority pursuant to Clause 27.16 (*Production of Data*), and is used for the basis of calculation of the relevant Condition Indices pursuant to Clause 27.17 (*Calculation of the Index*).

27.16 Production of Data

27.16.1 The Service Provider shall procure that the Independent Surveyor shall, during October of each Contract Year or, in the case of any Milestone Rectification Works, at the request (and cost) of the Service Provider, check the integrity of the SCANNER Survey Data, the SCRIM Survey Data and the Deflectograph Survey Data, including ensuring that the data is in the correct format to be imported into the UKPMS with Sheffield UKPMS Rules and Parameters and the Sheffield Performance Model, and that no duplications are contained within the data sets, and the Service Provider shall procure that the Independent Surveyor and the Independent Bridge Inspector shall produce and provide the (validated and audited where applicable) information generated under:

27.16.1.1 Clauses 27.10.13 (*CVI Surveys*), 27.11.6 (*SCANNER Surveys*), 27.12.6 (*SCRIM Surveys*), Clause 27.13.6 (*Deflectograph Surveys*), 27.14.13 (*Patching Surveys*), and 27.15.13 (*Footway Surveys*) to the Service Provider and the Authority, by the 31st October in each Contract Year or, in the case of any data arising from Milestone Rectification Works, as soon as reasonably practicable and, in any event, by 31st May in the relevant Contract Year

and the Service Provider shall procure that the Independent Bridge Inspector shall produce and provide the (validated and audited where applicable) information generated under:-

27.16.1.2 Clause 27.22.2 (*Pre and Post Inspection Process for Structures*) to the Service Provider and the Authority, by the 31st October in each Contract Year or, in the case of any data arising from Milestone Rectification Works, as soon as reasonably practicable and, in any event by 31st May in the relevant Contract Year.

27.16.2 The Service Provider shall procure that the Independent Surveyor shall process the data produced pursuant to Clause 27.16.1 (*Production of Data*) through an accredited UKPMS system using the DfT's UKPMS Rules and Parameters to produce the information required for all applicable National Indicators (or any alternative or replacement measures) relating to the condition of the Carriageways and Footways, and shall submit the same to the Authority and the Service Provider by 30th November in each Contract Year or, in the case of any data arising from Milestone Rectification Works, as soon as reasonably practicable and, in any event, by 31st May in the relevant Contract Year.

27.17 Calculation of the Index

27.17.1 The Service Provider shall procure that the Independent Surveyor shall:

27.17.1.1 process the data produced pursuant to Clause 27.16.1 (*Production of Data*) (except in respect of the Deflectograph Survey Data and the SCRIM Survey Data) through an accredited UKPMS system using the Sheffield UKPMS Rules and Parameters to produce the defect lengths;

27.17.1.2 process the defect lengths produced as a result of Clause 27.17.1.1 together with the Deflectograph Survey Data and the SCRIM Survey Data through the Sheffield Performance Model in order to calculate the Carriageway Condition Indices and Footway Condition Indices; and

27.17.1.3 submit the calculated Carriageway Condition Indices and Footway Condition Indices to the Authority and the Service Provider by 30th November in each Contract Year or, in the case of any Milestone Rectification Works, as soon as reasonably practicable and, in any event, by 30th June in the relevant Contract Year

provided that where in respect of any RSL by XSP or FSL by XSP, no Survey data that is less than two (2) years old is available, the relevant Sub-Section Condition Indices for the Carriageway Hierarchical Type or Footway Hierarchical Type for such RSL XSP or FSL XSP for which data is older than two (2) years shall be set at the relevant threshold value contained in Table A1.1 or A1.3 (as applicable) of Service Standard 2.

27.17.2 The Service Provider shall procure that the Independent Bridge Inspector shall calculate the Bridge Condition Indices and Retaining Wall Condition Indices achieved by the Service Provider in respect of Structures (Type 1) from the raw data produced pursuant to Clause 27.16 (*Production of Data*) and shall submit the same to the Authority and the Service Provider by 30th November in each Contract Year or, in the case of any Milestone Rectification Works, as soon as reasonably practicable and, in any event, by 30th June in the relevant Contract Year.

27.18 **General Inspections**

27.18.1 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised General Inspection Programme pursuant to the Review Procedure and a copy of any risk assessments used in the development of all revised General Inspection Programmes, which shall include a summary of the number of Structures and Third Party Structures that will be subject to a General Inspection in the relevant Contract Year. The Service Provider shall provide a copy of such General Inspection Programme to the Independent Bridge Inspector within five (5) Business Days of the General Inspection Programme being agreed or determined pursuant to the Review Procedure. In the case of any Milestone Rectification Works General Inspection, the Service Provider shall, no later than 1st February in any

Contract year following a relevant Milestone Year, submit to the Authority a Milestone Rectification Works GI Programme.

27.18.2 The Service Provider shall ensure that all General Inspection Programmes include (as a minimum) the details (including the date and location) of the General Inspections to be undertaken by the Service Provider to all Structures and Third Party Structures in the forthcoming two (2) Contract Years and in the case of any Milestone Rectification Works GI Programme, the start and end dates for the carrying out of the Milestone Rectification Works General Inspection to be undertaken by the Service Provider for all Structures which are the subject matter of a rectification programme or Milestone Rectification Programme under Clause 73.2.2 ("**Rectifiable Structures**").

27.18.3 The Service Provider shall, and shall ensure that (where applicable) the Independent Bridge Inspector shall, carry out all General Inspections and Milestone Rectification Works General Inspections in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Highways Structures Code, the guidance set out in CSS Bridge Conditions Indicators Volume 2: Guidance Note on Bridge Inspection Reporting (1) and the Addendum to CSS Bridge Condition Indicator Volume 2, the Bridge Inspection Guide (8) and all relevant provisions of the Highways Structures Code including, in particular, Appendix 1 thereof (except where different to the requirements set out in this Clause 27) and either the General Inspection Programme for the relevant Contract Year or the relevant Milestone Rectification Works GI Programme (as the case may be).

27.18.4 The Service Provider shall ensure that a General Inspection is carried out on each Structure and Third Party Structure, once every two (2) Contract Years for the duration of the Term unless a Principal Inspection in respect of such Structure is due to occur in the same Contract Year in accordance with Clause 27.19 (*Principal Inspections*), in which case the Service Provider shall not be obliged to ensure that a General Inspection is undertaken.

27.18.5 The Service Provider shall notify the Independent Bridge Inspector and the Authority:

27.18.5.1 no later than (5) Business Days prior to any Month in which the Service Provider will carry out any General Inspections; and

27.18.5.2 within two (2) Business Days of

- (a) the end of any Month in which the Service Provider has carried out any General Inspections (a "**GI Inspecting Month**"); or
- (b) the last day of any Week in which the Service Provider has carried out any Milestone Rectification Works General Inspection (a "**Milestone Rectification Works GI Week**"),

of the Structures and Third Party Structures or, as the case may be, Rectifiable Structures in respect of which such General Inspections or Milestone Rectification Works General Inspection (as the case may be) will be or have been carried out (as applicable) (the "**General Inspection Structures**"), and when providing the notification pursuant to Clause 27.18.5.2, the Service Provider:

27.18.5.3 shall provide to the Authority the General Inspection Report for each General Inspection Structure or, as the case may be, Rectifiable Structure inspected, and the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated for each Structure (Type 1) or Rectifiable Structure (as the case may be) inspected by the Service Provider during the relevant GI Inspecting Month or Milestone Rectification Works GI Week (as the case may be) (the "**General Inspection Data**"); but

27.18.5.4 shall not provide the General Inspection Data produced in the relevant GI Inspecting Month or Milestone Rectification Works GI Week to the Independent Bridge Inspector.

27.18.6 The Service Provider shall procure that, within the Month immediately following the GI Inspecting Month (a "**GI Sampling Month**") and /or the Week following any Milestone Rectification Works GI Week (a "**Milestone Rectification Works GI Sampling Week**"), the Independent Bridge Inspector shall carry out a General Inspection and/or Milestone Rectification Works General Inspection (as the case may be) of a random twenty (20) % sample of the Structures falling within each limb of the definition of Structures in Schedule 1 (*Definitions*) which comprised the General

Inspection Structures or Rectifiable Structures (as the case may be) in the relevant GI Inspecting Month or Milestone Rectification Works GI Week (as the case may be), rounded up to the nearest one, such random sample to be determined by the Independent Bridge Inspector acting in its absolute discretion except insofar as the Authority has notified the Independent Bridge Inspector of Structures that must or must not be included within the sample prior to the commencement of the GI Sampling Month, in which case the Service Provider shall procure that the Independent Bridge Inspector shall comply with the Authority's notification.

27.18.7 The Service Provider shall:

27.18.7.1 procure that the Independent Bridge Inspector provides to the Authority and the Service Provider the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Independent Bridge Inspector for each Structure (Type 1) inspected by the Independent Bridge Inspector during the relevant GI Sampling Month or Milestone Rectification Works GI Week (the "**General Inspection Sampling Data**") within two (2) Business Days of the end of each GI Sampling Month or Milestone Rectification Works GI Sampling Week (as the case may be);

27.18.7.2 within two (2) Business Days of the receipt of the Information from the Independent Bridge Inspector pursuant to Clause 27.18.7.1, provide the General Inspection Data to the Independent Bridge Inspector; and

27.18.7.3 procure that the Independent Bridge Inspector carries out a comparison of the General Inspection Data against the General Inspection Sampling Data.

27.18.8 The Service Provider shall procure that the Independent Bridge Inspector produces a written report to the Service Provider and the Authority within ten (10) Business Days of the end of the GI Sampling Month or, in respect of any Milestone Rectification Works General Inspection, within five (5) Business Days of the end of a Milestone Rectification Works GI Sampling Week, setting out the results of the comparison required pursuant to

Clause 27.18.7.3 of the General Inspection Data against the General Inspection Sampling Data, and:

27.18.8.1 where in the relevant GI Sampling Month the difference in any BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) between those scores produced by the Service Provider and the Independent Bridge Inspector is less than or equal to +/-5 points, the Service Provider's data shall not be altered;

27.18.8.2 where in the relevant GI Sampling Month or Milestone Rectification Works GI Sampling Week (as the case may be) the difference in any BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) between those scores produced by the Service Provider and the Independent Bridge Inspector is greater than +/-5 points, the Service Provider's data shall be altered so that the Independent Bridge Inspector's score is adopted by the Service Provider;

27.18.8.3 where in the relevant GI Sampling Month or Milestone Rectification Works GI Sampling Week (as the case may be) any BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Service Provider in respect of a Structure (Type 1) is more than five (5) points higher than the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Independent Bridge Inspector in respect of a Structure (Type 1), the Parties agree and acknowledge that this shall constitute a failure of the General Inspection or Milestone Rectification Works General Inspection (as the case may be) for such Structure (Type 1), and:

- (a) where the percentage of failures in respect of a GI Inspecting Month is equal to or exceeds ten (10) % of all of the Structures inspected by the Independent Bridge Inspector in the relevant GI Inspecting Month, the Service Provider shall procure that the percentage of sampling of General Inspections being undertaken by the Independent Bridge Inspector pursuant to Clause 27.18.6 in the three (3) Months immediately following the relevant GI Sampling Month (the

"**Additional GI Sampling Months**") shall be increased in accordance with Table 1 at the Service Provider's cost; or,

- (b) where the percentage of failures in respect of a Milestone Rectification Works GI Week is equal to or exceeds ten (10) % of all of the Structures inspected by the Independent Bridge Inspector in the relevant Milestone Rectification Works GI Week, the Service Provider shall procure that the percentage of sampling of Milestone Rectification Works General Inspections being undertaken by the Independent Bridge Inspector pursuant to Clause 27.18.6 in the three (3) Months immediately following the relevant Milestone Rectification Works GI Sampling Week (the "**Additional Milestone Rectification Works GI Sampling Weeks**") shall be increased in accordance with Table 1 at the Service Provider's cost,

as the case may be.

27.18.8.4 following any relevant Additional GI Sampling Months or, as the case may be, Additional Milestone Rectification Works GI Sampling Weeks, the Parties acknowledge and agree that the percentage of sampling of General Inspections or Milestone Rectification Works General Inspection (as the case may be) carried out by the Independent Bridge Inspector pursuant to Clause 27.18.6 shall revert to twenty (20) %, unless within the Additional GI Sampling Months or, as the case may be, Additional Milestone Rectification Works GI Sampling Weeks, Clause 27.18.8.3 is once again applied, in which case the provisions of that Clause shall prevail; and

27.18.8.5 where the percentage of sampling has increased in accordance with Clause 27.18.8.2 to sixty (60) % or more in any Month, the Service Provider shall, within ten (10) Business Days of the commencement of such Month, provide an improvement plan setting out how the Service Provider (acting reasonably) intends to resolve any issues identified by the Independent Bridge Inspector in respect of the Service Provider's inspection practices and to ensure that

future General Inspections do not continue to fail the sampling process, and the Service Provider shall thereafter comply with such improvement plan within any timescales set out therein.

27.18.9 The Service Provider shall procure that all General Inspections undertaken from the commencement of the nineteenth (19th) Contract Year ("**Year 19**") until the Expiry Date shall include an assessment of whether the Structures comply with Clause 79 (*Handback Procedure*) and the Service Provider shall provide to the Authority a written report detailing such assessments.

27.19 **Principal Inspections**

27.19.1 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Principal Inspection Programme pursuant to the Review Procedure and a copy of any risk assessments used in the development of all Principal Inspection Programmes, which shall include a summary of the number of Structures (Type 1) that will be subject to a Principal Inspection in the relevant Contract Year. The Service Provider shall provide a copy of such Principal Inspection Programme to the Independent Bridge Inspector within five (5) Business Days of the Principal Inspection Programme being agreed or determined pursuant to the Review Procedure. In the Case of any Milestone Works Rectification Principal Inspection, the Service Provider shall, no later than 1st February in any Contract Year following a relevant Milestone Year, submit to the Authority a Milestone Rectification Works PI Programme.

27.19.2 The Service Provider shall ensure that all Principal Inspection Programmes include (as a minimum) the details (including the date and location) of the Principal Inspections to be undertaken by the Service Provider of all Structures (Type 1) in the forthcoming six (6) Contract Years, and in the case of any Milestone Rectification Works PI Programme, the start and end dates for the carrying out of the Milestone Rectification Works Principal Inspection to be undertaken by the Service Provider to all relevant Rectifiable Structures including identification of any specialists, special access equipment and/or any traffic management measures that will be required in order to carry out

such Principal Inspection or Milestone Rectification Works Principal Inspection as the case may be.

27.19.3 The Service Provider shall, and (where applicable) shall procure that the Independent Bridge Inspector shall, carry out all Principal Inspections and Milestone Rectification Works Principal Inspections in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Highways Structures Code, the guidance set out in CSS Bridge Conditions Indicators Volume 2: Guidance Note on Bridge Inspection Reporting (1) and the Addendum to CSS Bridge Condition Indicator Volume 2, the Bridge Inspection Guide (8) and all relevant provisions of the Highways Structures Code including, in particular, Appendix 1 thereof (except where different to the requirements set out in this Clause 27) and the Principal Inspection Programme or, as the case may be, the Milestone Rectification Works PI Programme for the relevant Contract Year.

27.19.4 The Service Provider shall procure that Principal Inspections are carried out on each Structure (Type 1) once every six (6) Contract Years for the duration of the Term.

27.19.5 No later than:

27.19.5.A ten (10) Business Days before any Month in which the Service Provider will be carrying out any Principal Inspections (a "**PI Inspecting Month**"); or

27.19.5.B ten (10) Business Days before the start of any Week in which the Service Provider will carry out any Milestone Rectification Works Principal Inspection (a "**Milestone Rectification Works PI Week**"),

the Service Provider shall:

27.19.5.1 notify the Independent Bridge Inspector and the Authority of the Structures (Type 1) in respect of which Principal Inspections or Milestone Rectification Works Principal Inspections will be carried out in the PI Inspecting Month or Milestone Rectification Works PI

Week (as the case may be) (the "**Principal Inspection Structures**");
and

27.19.5.2 procure the attendance of the Independent Bridge Inspector at a random twenty (20) % stratified sample of the Structures falling within each limb of the definition of Structures (Type 1) in Schedule 1 (*Definitions*) which comprised the Principal Inspection Structures in the relevant PI Inspecting Month or, Rectifiable Structures in the relevant Milestone Rectification Works PI Week (as the case may be), rounded up to the nearest one, in order for the Independent Bridge Inspector to carry out a Principal Inspection or Milestone Rectification Works Principal Inspection at the same time as the Service Provider, such random sample to be determined by the Independent Bridge Inspector acting in its absolute discretion except insofar as the Authority has notified the Independent Bridge Inspector of Structures and/or Third Party Structures that must or must not be included within the sample prior to the commencement of the PI Inspecting Month, in which case the Service Provider shall procure that the Independent Bridge Inspector shall comply with the Authority's notification.

27.19.6 The Service Provider shall:

27.19.6.1 procure that the Independent Bridge Inspector provides to the Authority and the Service Provider the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Independent Bridge Inspector for each Structure (Type 1) inspected by the Independent Bridge Inspector during the relevant PI Inspecting Month or Milestone Rectification Works PI Week (the "**Principal Inspection Sampling Data**") within two (2) Business Days of the end of each PI Inspecting Month or Milestone Rectification Works PI Week (as the case may be);

27.19.6.2 within two (2) Business Days of the end of each PI Inspecting Month or Milestone Rectification Works PI Week, provide to the Authority the data that was produced by the Service Provider as a result of Principal Inspections carried out during the relevant PI

Inspecting Month or Milestone Rectification Works Principal Inspection carried out during the relevant Milestone Rectification Works PI Week (as the case may be), including the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Service Provider for each Structure (Type 1) inspected (the "**Principal Inspection Data**");

27.19.6.3 within four (4) Business Days of the end of each PI Inspecting Month (but not earlier than the date on which the Principal Inspection Data is provided to the Authority pursuant to Clause 27.19.6.2) or within four (4) Business Days of the end of each Milestone Rectification Works PI Week (as the case may be) provide the Principal Inspection Data to the Independent Bridge Inspector; and

27.19.6.4 procure that the Independent Bridge Inspector carries out a comparison of the Principal Inspection Data against the Principal Inspection Sampling Data.

27.19.7 The Service Provider shall procure that the Independent Bridge Inspector produces a written report to the Service Provider and the Authority within five (5) Business Days of the end of the PI Inspecting Month or Milestone Rectification Works PI Week (as the case may be), setting out the results required pursuant to Clause 27.19.6.4 of the comparison of the Principal Inspection Data against the Principal Inspection Sampling Data, and:

27.19.7.1 where in the relevant PI Inspecting Month or Milestone Rectification Works PI Week the difference in any BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) between those scores produced by the Service Provider and the Independent Bridge Inspector is less than or equal to +/-5 points, the Service Provider's data shall not be altered;

27.19.7.2 where in the relevant PI Inspecting Month or Milestone Rectification Works PI Week the difference in any BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) between those scores produced by the Service Provider and the Independent Bridge Inspector is greater than +/-5 points, the Service Provider's data shall

be altered so that the Independent Bridge Inspector's score is adopted by the Service Provider;

27.19.7.3 where in the relevant PI Inspecting Month or Milestone Rectification Works PI Week any BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Service Provider in respect of a Structure (Type 1) is more than five (5) points higher than the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) calculated by the Independent Bridge Inspector in respect of a Structure (Type 1), the Parties agree and acknowledge that this shall constitute a failure of the Principal Inspection or Milestone Rectification Works Principal Inspection (as the case may be) for such Structure (Type 1), and where the percentage of failures in respect of a PI Inspecting Month or Milestone Rectification Works PI Week is equal to or exceeds ten (10) % of all of the Structures inspected by the Independent Bridge Inspector in the relevant PI Inspecting Month or Milestone Rectification Works PI Week (as the case may be), the Service Provider shall procure that the percentage of sampling of Principal Inspections or Milestone Rectification Works Principal Inspections being undertaken by the Independent Bridge Inspector pursuant to Clause 27.18.6 in the three (3) Months immediately following the relevant PI Inspecting Month (the "**Additional PI Sampling Months**") or the remainder of the relevant Milestone Rectification Programme (the "**Additional Rectification Works PI Sampling Period**") shall be increased in accordance with Table 1 at the Service Provider's cost;

27.19.7.4 following any relevant Additional PI Sampling Months or, as the case may be, Additional Rectification Works PI Sampling Period, the Parties acknowledge and agree that the percentage of sampling of Principal Inspections or Additional Rectification Works Principal Inspections carried out by the Independent Bridge Inspector pursuant to Clause 27.19.5 shall revert to twenty (20) %, unless within the Additional PI Sampling Months or Additional Rectification Works PI Sampling Period (as the case may be), Clause 27.19.7.3 is once again applied, in which case the provisions of that Clause shall prevail; and

27.19.7.5 where the percentage of sampling has increased in accordance with Clause 27.19.7.2 to sixty (60) % or more in any Month, the Service Provider shall, within ten (10) Business Days of the commencement of such Month, provide an improvement plan setting out how the Service Provider (acting reasonably) intends to resolve any issues identified by the Independent Bridge Inspector in respect of the Service Provider's inspection practices and to ensure that future Principal Inspections do not continue to fail the sampling process, and the Service Provider shall thereafter comply with such improvement plan within any timescales set out therein.

27.19.8 The Service Provider shall produce a Principal Inspection Report in respect of each Principal Inspection undertaken, and shall provide the Principal Inspection Report to the Independent Bridge Inspector and the Authority within forty (40) Business Days of the Principal Inspection being carried out. In respect of each Milestone Rectification Works Principal Inspection the Service Provider shall provide a report (the "**Milestone Rectification Works Principal Inspection Report**") to the Independent Bridge Inspector within ten (10) Business Days of the Milestone Rectification Works Principal Inspection being carried out.

27.19.9 The Service Provider shall procure that all Principal Inspections carried out are of sufficient scope and quality to determine:

27.19.9.1 the condition of all parts of the Structure (including the stability of the Structure); and

27.19.9.2 the extent of any significant change or deterioration to each such Structure since the last Principal Inspection or Milestone Rectification Works Principal Inspection (as the case may be).

27.19.10 The Service Provider shall procure that all Principal Inspections carried out shall establish:

27.19.10.1 the scope and urgency of any remedial or other actions required before the next Principal Inspection;

27.19.10.2 the need for a Special Inspection and/or additional investigations;
and

27.19.10.3 the accuracy of the main information on the Structure held in the
Management Information System.

27.19.10A The Service Provider shall procure that all Milestone
Rectification Works Principal Inspections carried out shall
establish:

27.19.10A.1 the need for a Milestone Rectification Works
Special Inspection and/or additional
investigations; and

27.19.10A.2 the accuracy of the main information on any
Rectifiable Structure held in the Management
Information System.

27.19.11 The Service Provider shall procure that all Principal Inspections
undertaken from the commencement of Year 19 until the Expiry Date shall
include an assessment of whether the Structures (to which the Principal
Inspections relate) comply with Clause 79 (*Handback Procedure*) and the
Service Provider shall provide to the Authority a written report detailing such
assessments.

27.20 **Special Inspections**

27.20.1 No later than four (4) Months prior to the commencement of each Contract
Year following the first Contract Year, the Service Provider shall submit to
the Authority a revised Special Inspection Strategy pursuant to the Review
Procedure and a copy of any risk assessments used in the development of all
revised Special Inspection Strategies. The Service Provider shall provide a
copy of such Special Inspection Strategy to the Independent Bridge Inspector
within five (5) Business Days of the Special Inspection Strategy being agreed
or determined pursuant to the Review Procedure.

27.20.2 The Service Provider shall carry out all Special Inspections or, as the case
may be, Milestone Rectification Works Special Inspections in accordance
with this Clause 27 (*Independent Surveys and Inspections*), the Highways

Structures Code, the guidance set out in CSS Bridge Conditions Indicators Volume 2: Guidance Note on Bridge Inspection Reporting (1) and the Addendum to CSS Bridge Condition Indicator Volume 2, the Bridge Inspection Guide (8) and all relevant provisions of the Highways Structures Code including, in particular, Appendix 1 thereof (except where different to the requirements set out in this Clause 27) and the Special Inspection Strategy for the relevant Contract Year to which the Special Inspection or Milestone Rectification Works Special Inspection relates.

27.20.3 The Service Provider shall ensure that the guidance on Special Inspections is complied with when developing each Special Inspection Strategy as provided in BD63/07 during the Term.

27.20.4 The Service Provider shall procure that Special Inspections or, as the case may be, Milestone Rectification Works Special Inspections are carried out in the circumstances dictated in the Highways Structures Code, and no later than ten (10) Business Days before any Month in which the Service Provider will be carrying out any Special Inspections or five (5) Business Days before any week in which the Service Provider will be carrying out any Milestone Rectification Works Special Inspection, the Service Provider shall:

27.20.4.1 notify the Independent Bridge Inspector and the Authority of the Structures in respect of which Special Inspections or Milestone Rectification Works Special Inspections will be carried out; and

27.20.4.2 procure the attendance of the Independent Bridge Inspector at all Special Inspections or Milestone Rectification Works Special Inspections that are carried out by the Service Provider (except in relation to Special Inspections which are carried out as a result of the passage or potential passage of Abnormal Loads).

27.20.5 The Service Provider shall produce a Special Inspection Report in respect of each Special Inspection undertaken or a Milestone Rectification Works SI Report in respect of each Milestone Rectification Works Special Inspection, and shall provide the Special Inspection Report or Milestone Rectification Works SI Report to the Independent Bridge Inspector and the Authority within forty (40) Business Days of the Special Inspection being carried out or (as the case may be) provide any Milestone Rectification Works SI Report to

the Independent Bridge Inspector and the Authority within five (5) Business Days of the relevant Milestone Rectification Works Principal Inspection being carried out.

27.20.6 The Service Provider shall procure that all Special Inspections undertaken from the commencement of Year 19 until the Expiry Date shall include an assessment of whether the Structures (to which the Special Inspections relate) comply with Clause 79 (*Handback Procedure*) and the Service Provider shall provide to the Authority a written report detailing such assessments.

27.21 Risk Assessments

27.21.1 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Risk Assessment Strategy pursuant to the Review Procedure.

27.21.2 The Service Provider shall carry out risk assessments on each Structure (or group of similar Structures) in order to assess:

27.21.2.1 the likelihood of rapid deterioration or other incidents; and

27.21.2.2 the consequence of unchecked deterioration or other incidents,

in accordance with the Risk Assessment Strategy.

27.21.3 The Service Provider shall ensure that the assessment of the likelihood of rapid deterioration to all Structures shall include the criteria set out in section 6.4.31 of the Highways Structures Code.

27.21.4 The Service Provider shall ensure that the assessment of unchecked deterioration and other incidents shall include the criteria set out in section 6.4.32 of the Highways Structures Code (as amended and replaced from time to time).

27.21.5 The Service Provider shall ensure that details of each risk assessment are recorded in the relevant Structure File.

27.21.6 The Service Provider shall ensure that the validity of each Structure's risk assessment shall be re-confirmed and recorded in the relevant Structure File

after each Principal Inspection or when any other significant change in the Structure becomes apparent.

27.22 Pre and Post Inspection Process for Structures

27.22.1 The Service Provider shall, and shall (where applicable) procure that the Independent Bridge Inspector shall, prior to carrying out a Structure Inspection, carry out the following (as necessary):

27.22.1.1 obtain and review the Structure File and Structure Health and Safety File of the Structure (where one exists, and where one does not exist, shall create one pursuant to the requirements of Service Standard 3 to the Output Specification) in order to establish any specific issues with the Structure;

27.22.1.2 carry out a desk top survey and reconnaissance of the Structure;
and

27.22.1.3 prepare a method statement which includes (as a minimum) all the information set out in sections 6.5.5.1 to 6.5.5.12 (inclusive) of the Highways Structures Code and add such method statement to the Structure's Health and Safety File.

27.22.2 The Service Provider shall ensure that:

27.22.2.1 data from Structure Inspections and any reports and assessments arising from such Structure Inspections, including the BCI_{AV} , BCI_{CRIT} , $RWCI_{AV}$ and $RWCI_{CRIT}$ scores (as applicable) for Structures (Type 1), produced as part of the General Inspection Data or Principal Inspection Data (as applicable) (or as altered by the General Inspection Sampling Data or the Principal Inspection Sampling Data (as applicable)) shall be entered on the relevant Structure File and recorded and reported in accordance with the provisions of sections 6.5.9 and 6.5.10 of the Highways Structures Code;

27.22.2.2 the element condition rating procedure in the CSS Guidance Documents is used for all Structures;

27.22.2.3 a CSS inspection pro forma (1 and 2) (or equivalent pro forma) is completed before a Structure Inspection;

27.22.2.4 element condition data is captured in accordance with section 6.5.17 of the Highways Structures Code; and

27.22.2.5 inspection reports are produced following each Structure Inspection in accordance with the provisions of sections 6.5.20 to 6.5.22 (inclusive) of the Highways Structures Code and any applicable requirements of this Clause 27;

27.22.2.6 the data, information and/or reports pursuant to Clauses 27.22.2.1 to 27.22.2.5 inclusive are recorded on the relevant Structure File and that the Structure Files are recorded in the Collaborative Working Platform pursuant to Performance Requirement 1.40 and are accessible on-line and Available to the Independent Bridge Inspector to the same extent as it is accessible on-line and Available to the Authority pursuant to Performance Requirements 1.32(d), 1.32(e), 1.34(l), 1.34(m), 1.34(n), 1.34(p), 1.35(b), 1.37(a), 1.37(c) and 1.42(a),

and the Parties acknowledge and agree that the data set out in the Collaborative Working Platform pursuant to Clause 27.22.2.6 shall be the data that is validated and produced to the Service Provider and the Authority pursuant to Clause 27.16 (*Production of Data*), and is used for the basis of calculation of the relevant Condition Indices pursuant to Clause 27.17 (*Calculation of the Index*).

27.22.3 The Service Provider shall evaluate the results of a Structure Inspection within two (2) Months of the completion of such inspections to:

27.22.3.1 determine whether a Structure is Safe for Use; and

27.22.3.2 determine whether an urgent amendment to the Annual Investment Programme is required.

27.22.4 If the need for testing of a Structure is identified during the course of a Structure Inspection, the Service Provider shall comply with section 6.6 of the Highways Structures Code.

27.23 Assessment of Structures

27.23.1 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Structural Review and Assessment Strategy pursuant to the Review Procedure. The Service Provider shall provide a copy of such Structural Review and Assessment Strategy to the Independent Bridge Inspector within five (5) Business Days of the Structural Review and Assessment Strategy being agreed or determined pursuant to the Review Procedure.

27.23.2 The Service Provider shall, and shall (where applicable) procure that the Independent Bridge Inspector shall, carry out all Structural Reviews and Structural Assessments in accordance with this Clause 27 (*Independent Surveys and Inspections*), the Highways Structures Code and the Structural Review and Assessment Strategy for the relevant Contract Year.

27.23.3 The Service Provider shall carry out a Structural Review of a Structure (Type 1) when one or more of the conditions set out in section 7.4.1 of the Highways Structures Code occurs.

27.23.4 The Service Provider shall:

27.23.4.1 notify the Independent Bridge Inspector and the Authority, within two (2) Business Days of the end of any Month in which the Service Provider has carried out any Structural Review, of the Structures (Type 1) in respect of which such Structural Review was carried out (the "**Structural Review Structures**"), and of the Service Provider's recommendations arising from such Structural Review, and

27.23.4.2 procure that the Independent Bridge Inspector shall carry out a Structural Review in April of every Contract Year (except the first Contract Year) of a random ten (10) % sample of all Structural Review Structures from the previous Contract Year, such random sample to be determined by the Independent Bridge Inspector acting in its absolute discretion, except insofar as the Authority has notified the Independent Bridge Inspector of Structures (Type 1) that must or

must not be included within the sample prior to the commencement of the relevant Contract Year, in which case the Service Provider shall procure that the Independent Bridge Inspector shall comply with the Authority's notification.

27.23.5 Following the random sample of the Structural Reviews carried out by the Independent Bridge Inspector, the Service Provider shall procure that the Independent Bridge Inspector produces a written report to the Service Provider and the Authority within ten (10) Business Days of the end of April in the relevant Contract Year, setting out the outcome of the Independent Bridge Inspector's Structural Reviews and any areas of disagreement between the recommendations made by the Independent Bridge Inspector and by the Service Provider (the "**Structural Review Comparison Report**").

27.23.6 If a Structural Review indicates that a Structural Assessment is required the Service Provider shall ensure that a Structural Assessment is carried out by the Service Provider in accordance with the process recommended in section 7.5 of the Highways Structures Code within two (2) Months of the Structural Review being carried out.

27.23.7 The Service Provider shall:

27.23.7.1 notify the Independent Bridge Inspector and the Authority, within two (2) Business Days of the end of any Month in which the Service Provider has carried out any Structural Assessment, of the Structures (Type 1) in respect of which such Structural Assessment was carried out (the "**Structural Assessment Structures**"), and shall provide the Structural Assessment Report to the Independent Bridge Inspector and the Authority within five (5) Business Days of completion of the Structural Assessment Report; and

27.23.7.2 procure that the Independent Bridge Inspector shall carry out a Structural Assessment during the period from February to April of every Contract Year of a random ten (10) % sample of the Structural Assessment Structures from the previous Contract Year, such random sample to be determined by the Independent Bridge Inspector acting in its absolute discretion, except insofar as the Authority has notified the Independent Bridge Inspector of Structures (Type 1) that must or

must not be included within the sample prior to the commencement of the relevant Contract Year, in which case the Service Provider shall procure that the Independent Bridge Inspector shall comply with the Authority's notification.

27.23.8 Following the random sample of the Structural Assessments carried out by the Independent Bridge Inspector, the Service Provider shall procure that the Independent Bridge Inspector produces a written report to the Service Provider and the Authority within ten (10) Business Days of the end of April in the relevant Contract Year, setting out the outcome of the Independent Bridge Inspector's Structural Assessment and any areas of disagreement between the recommendations made by the Independent Bridge Inspector and the Structural Assessment Report (the "**Structural Assessment Comparison Report**")

27.23.9 The Service Provider shall ensure that a meeting is arranged to take place in June of each Contract Year, between the Service Provider, the Authority and the Independent Bridge Inspector, to discuss the Structural Review Comparison Report and the Structural Assessment Comparison Report. The Parties shall attend such meeting and the Service Provider shall procure the attendance of the Independent Bridge Inspector at such meeting. The Parties shall discuss and endeavour to agree (acting reasonably) any areas of disagreement between the Service Provider and the Independent Bridge Inspector as set out in the Structural Review Comparison Report and/or the Structural Assessment Comparison Report. Where, as a result of such meeting, the Independent Bridge Inspector:

27.23.9.1 does not agree with the decision of the Service Provider, as a result of a Structural Review, a Structural Assessment is not required, the Service Provider shall carry out a Structural Assessment in respect of such Structure (Type 1) identified, within two (2) Months of the meeting held pursuant to Clause 27.23;

27.23.9.2 does not agree with the decision of the Service Provider as a result of a Structural Assessment regarding the load carrying effects of the Structure (Type 1) pursuant to BD 21/01, the Service Provider shall adopt the Independent Bridge Inspector's recommendations as

to such load carrying effects in respect of such Structure (Type 1) identified; and

and where Clauses 27.23.9.1 and/or 27.23.9.2 have been invoked in a Contract Year in respect of more than 10% of the Structures (Type 1) inspected by the Independent Bridge Inspector in such Contract Year, the Service Provider shall produce an improvement plan, within twenty (20) Business Days of a request from the Authority, setting out (acting reasonably) how any general issues, including those relating to processes, quality of assessment and/or training (as applicable), identified in the meeting held pursuant to Clause 27.23 will be addressed by the Service Provider, and the Service Provider shall thereafter comply with such improvement plan within any timescales set out therein

27.23.10 The Service Provider shall ensure that all Structural Assessments undertaken from the commencement of Year 19 until the Expiry Date shall include an assessment of whether the Structures (Type 1) (to which the Structural Assessments relates) comply with Clause 79 (*Handback Procedure*) and the Service Provider shall provide to the Authority a written report detailing such assessments.

27.23.11 The Service Provider shall record promptly the results of a Structural Assessment in a report (the "**Structural Assessment Report**"), and in any event no later than forty (40) Business Days of the Structural Assessment being carried out, and shall ensure that the Structural Assessment Reports include (as a minimum) the information listed in section 7.6.1 of the Highways Structures Code, and shall provide a copy of such Structural Assessment Report to the Independent Bridge Inspector and the Authority. Where a Structural Assessment indicates that a relevant Structure (Type 1) to which Performance Requirement 3.20 applies will no longer continue to be capable of carrying the load effects in accordance with BD 21/01, the provisions of Performance Requirement 3.20 shall apply.

27.23.12 The Service Provider shall record all Structural Assessment Reports in the relevant Structure File.

27.24 Qualitative Review of Structure Inspection reports

27.24.1 The Parties hereby acknowledge and agree that:

27.24.1.1 the level of detail to be contained within the reports produced as a result of General Inspections or Milestone Rectification Works General Inspection (as the case may be) shall be agreed between the Authority and the Service Provider (acting reasonably) and the Independent Bridge Inspector (which the Service Provider shall procure is acting reasonably) prior to the Service Commencement Date, to take account of the required quality and quantity of the content of the reports and the method in which defects in a Structure are to be reported ("**General Inspection Report**");

27.24.1.2 the format of reports produced as a result of Principal Inspections or Milestone Rectification Works Principal Inspections shall be in the format set out at Part 1 of Schedule 37 (*Inspection and Certification Proformas*) ("**Principal Inspection Report**");

27.24.1.3 the format of reports produced as a result of Special Inspections or Milestone Rectification Works Special Inspections shall be agreed between the Authority and the Service Provider (acting reasonably) and the Independent Bridge Inspector (which the Service Provider shall procure is acting reasonably) prior to the Service Commencement Date ("**Special Inspection Report**"); and

27.24.1.4 Structural Assessment Reports shall be in the format set out at Part 3 of Schedule 37 (*Inspection and Certification Proformas*),

and the Service Provider shall ensure that the General Inspection Reports, Principal Inspection Reports, Special Inspection Reports and Structural Assessment Reports produced by the Service Provider are in the format and/or content pursuant to this Clause 27.24.1.

27.24.2 The Service Provider shall procure that:

27.24.2.1 where the Independent Bridge Inspector carries out a review of the General Inspection Data pursuant to Clause 27.18.7;

27.24.2.2 following receipt of any Principal Inspection Report by the Independent Bridge Inspector pursuant to Clause 27.19.7;

27.24.2.3 following receipt of any Special Inspection Report by the Independent Bridge Inspector pursuant to Clause 27.20.5;

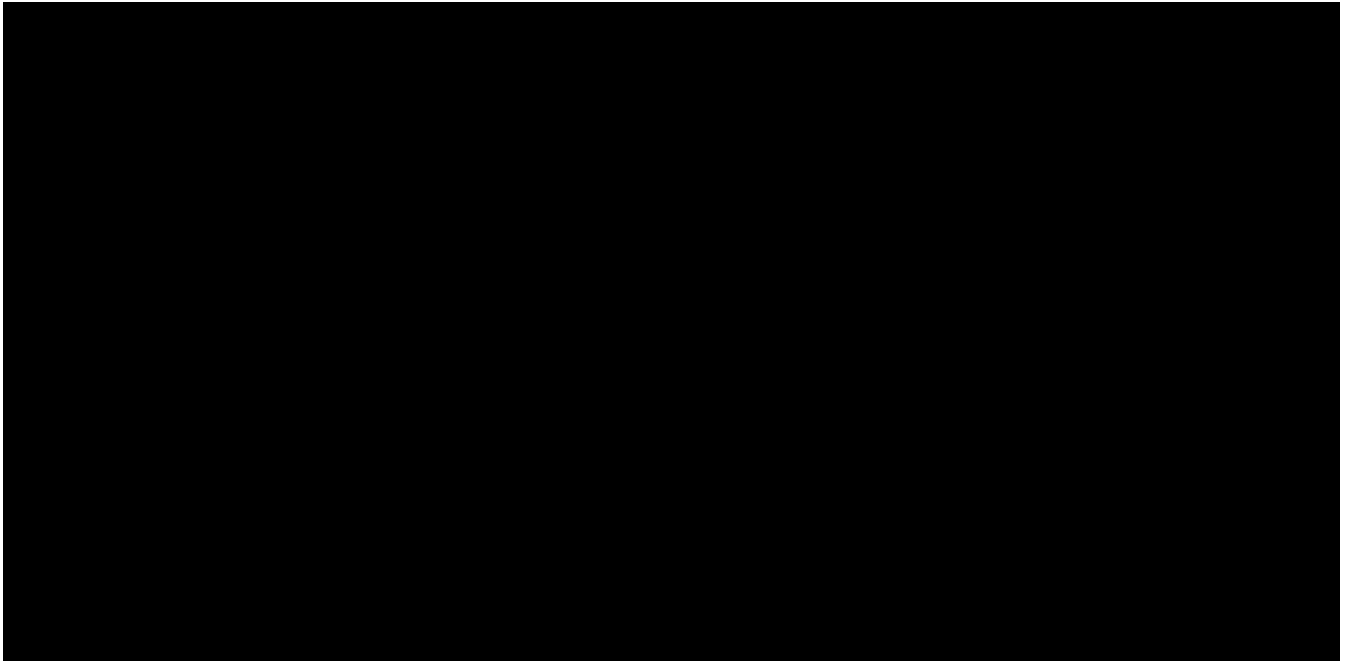
27.24.2.4 following receipt of any Structural Assessment Report by the Independent Bridge Inspector pursuant to Clause 27.23.11;

the Independent Bridge Inspector shall carry out a qualitative assessment of the General Inspection Reports, the Principal Inspection Reports, the Special Inspection Reports and the Structural Assessment Reports produced (as applicable) to determine the extent to which the Service Provider is complying with the obligations set out in Clause 27.24.1, and the Service Provider shall procure that the Independent Bridge Inspector produces a written report setting out the results of such qualitative assessment by the Independent Bridge Inspector carried out over the previous twelve (12) Months, by the 30th November in each Contract Year (the "**Qualitative Assessment Report**").

27.24.3 The Service Provider shall ensure that a meeting is arranged to take place in December of each Contract Year, between the Service Provider, the Authority and the Independent Bridge Inspector, to discuss the Qualitative Assessment Report. The Parties shall attend such meeting and the Service Provider shall procure the attendance of the Independent Bridge Inspector at such meeting. The Parties shall discuss and endeavour to agree (acting reasonably) whether there are qualitative issues arising from the General Inspection Reports, the Principal Inspection Reports, the Special Inspection Reports and/or the Structural Assessment Reports. Where, as a result of such meeting, it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that there are qualitative issues arising with the General Inspection Reports, the Principal Inspection Reports, the Special Inspection Reports and/or the Structural Assessment Reports, the Service Provider shall, where requested to do so by the Authority, produce an improvement plan (including details of any additional training to be undertaken by any Service Provider Party) within twenty (20) Business Days of a request from the Authority, setting out (acting reasonably) how the qualitative issues identified

will be addressed by the Service Provider and the Service Provider shall thereafter comply with such improvement plan within any timescales set out therein

Table 1



28. SERVICE PROVIDER SURVEYS AND INSPECTIONS

28.1 Safety Inspection Strategy and Safety Inspections

28.1.1 The Service Provider warrants that the Safety Inspection Strategy in respect of the first Contract Year is set out in Annexure 14 (*Inspection Strategies*) at the date of this Contract and has been prepared in accordance with the provisions of this Clause 28.1 (*Safety Inspection Strategy and Safety Inspections*).

28.1.2 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Safety Inspection Strategy pursuant to the Review Procedure and provide to the Authority a copy of any risk assessments used in the development of each revised Safety Inspection Strategy.

28.1.3 The Service Provider shall carry out all Safety Inspections in accordance with this Clause 28.1 (*Safety Inspection Strategy and Safety Inspections*) and the

Safety Inspection Strategy not less than once annually for the duration of the Term.

28.1.4 The Service Provider shall ensure that each Safety Inspection Strategy and all Safety Inspections shall comply with the recommendations of the Highways Maintenance Code, the Highways Structures Code, Highways Signals Code and the Highways Lighting Code (as appropriate).

28.1.5 The Service Provider shall ensure that each Safety Inspection Strategy shall include, in respect of each forthcoming Contract Year:

28.1.5.1 the methods and frequencies of all Safety Inspections to be carried out on all Carriageways and Footways, set out by Carriageway Hierarchical Type and Footway Hierarchical Type, including a justification for any variation to such methods and/or frequencies from the previous Safety Inspection Strategy; and

28.1.5.2 the level of resources to be deployed in carrying out the Safety Inspections, including identity of any Personnel which the Service Provider proposes to carry out such Safety Inspections as required under this Clause 28.1 (*Safety Inspection Strategy and Safety Inspections*), including their relevant qualifications and skills;

28.1.5.3 the methods and frequencies of all Safety Inspections to be carried out on all other Project Network Parts including a list of all Project Network Parts to be inspected;

28.1.5.4 the degree of deficiency in each type of Project Network Part which would constitute a safety defect and which would be recorded and rectified; and

28.1.5.5 the response times for the rectification of a deficiency identified pursuant to Clause 28.1.5.4 (including a risk based approach where appropriate).

28.2 **Service Inspections**

28.2.1 The Service Provider warrants that the Service Inspection Strategy in respect of the first Contract Year is set out in Annexure 14 (*Inspection Strategies*) at

the date of this Contract and has been prepared in accordance with the provisions of this Clause 28.2 (*Service Inspections*).

28.2.2 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, the Service Provider shall submit to the Authority a revised Service Inspection Strategy pursuant to the Review Procedure and provide to the Authority a copy of any risk assessments used in the development of each revised Service Inspection Strategy.

28.2.3 The Service Provider shall carry out Service Inspections of all Project Network Parts in accordance with this Clause 28.2 and the Service Inspection Strategy not less than once annually for the duration of the Term.

28.2.4 The Service Provider may carry out Service Inspections at the same time as Safety Inspections where appropriate.

28.2.5 The Service Provider shall ensure that each Service Inspection Strategy and all Service Inspections shall comply with the recommendations of the Highways Maintenance Code, Highways Signals Code and the Highways Lighting Code (as appropriate).

28.2.6 The Service Provider shall ensure that each Service Inspection Strategy shall include, in respect of each forthcoming Contract Year:

28.2.6.1 the methods and frequencies of all Service Inspections to be carried out on all Carriageways and Footways, set out by Carriageway Hierarchical Type and Footway Hierarchical Type, including a justification for any variation to such methods and/or frequencies from the previous Service Inspection Strategy; and

28.2.6.2 the level of resources to be deployed in carrying out the Service Inspections, including identity of any Personnel which the Service Provider proposes to carry out such Service Inspections as required under this Clause 28.2 (*Service Inspections*), including their relevant qualifications and skills;

28.2.6.3 the methods and frequencies of all Service Inspections to be carried out on all other Project Network Parts including a list of all Project Network Parts to be inspected;

28.2.6.4 the degree of deficiency in each type of Project Network Part which would constitute a service defect and which would be recorded and rectified; and

28.2.6.5 the response times for the rectification of a deficiency identified pursuant to Clause 28.2.6.4 (including a risk based approach where appropriate).

28.3 Electrical Safety Inspection and Testing

28.3.1 The Service Provider shall carry out electrical testing and inspection of all Powered Apparatus and associated electrical equipment and installations (including power supplies) in accordance with paragraph 4.6 and Appendix D of the Highways Lighting Code or paragraph 4.3 and Appendix F of the Highways Signals Code as appropriate and shall ensure that during such inspections the inspector shall carry out tests which check, and shall record any departures from the IEE Wiring Regulations in respect of the following:

28.3.1.1 continuity of protective conductors;

28.3.1.2 polarity;

28.3.1.3 earth loop fault impedance;

28.3.1.4 insulation resistance (which, in the case of Traffic Signal/Control Infrastructure, relates to new installations or when undertaking site acceptance testing (SAT));

28.3.1.5 operation of devices for isolation and switching;

28.3.1.6 operation of residual current device;

28.3.1.7 operation of circuit breakers;

28.3.1.8 earth electrode resistance (where applicable); and

28.3.1.9 voltage and voltage drop,

not less than once during every six (6) Contract Years or in accordance with the Highway Standards (whichever is the more frequent).

28.3.2 The Service Provider shall use all reasonable endeavours to ensure that the electrical testing and inspection carried out pursuant to Clause 28.3.1 is carried out in a way that minimises disruption to traffic (whether through loss of use of the relevant Powered Apparatus or otherwise), including by ensuring that such electrical testing and inspection is not carried out during any period of time which the Service Provider considers (acting reasonably) will be a peak traffic flow period.

28.3.3 The Service Provider shall not receive any Service Points for any failure of the Service Provider to comply with Performance Requirements 5.3 to 5.8 (inclusive) and Performance Requirement 5.13 for the period of time during which the Service Provider carries out such electrical testing and inspection, provided that:

28.3.3.1 the Service Provider has complied with the obligations set out in Clause 28.3.2; and

28.3.3.2 the Service Provider has acted reasonably and in accordance with Good Industry Practice as to the period of time taken to carry out such electrical testing and inspection.

28.3.4 The Service Provider shall procure that an inspection certificate is issued in respect of each item of Powered Apparatus in accordance with the provisions of the Highways Lighting Code or Highways Signals Code as appropriate and shall record the inspection certificate on the Management Information System.

28.4 Structural Inspection and Testing of Powered Apparatus

The Service Provider shall carry out structural testing of Powered Apparatus in accordance with section 4.7.3.3 of the Highways Lighting Code or section 4.3 of the Highways Signals Code as appropriate.

28.5 Monitoring for inoperative illuminated Powered Apparatus

The Service Provider shall monitor Powered Apparatus which should be illuminated, to identify any such Powered Apparatus which is inoperative, such monitoring to be in accordance with the Method Statements and Chapter 5 of the Highways Lighting Code or section 3.2 of the Highways Signals Code as appropriate and to comprise:

28.5.1 night time inspections of each item of Powered Apparatus which should be illuminated (excluding items of Traffic Signal / Control Infrastructure) on the Project Network every twenty-eight (28) days during the months of April to October (inclusive) and every fourteen (14) days for the remainder of the Contract Year; or

28.5.2 remote monitoring of Powered Apparatus which should be illuminated, with a device capable of recording and reporting the status and/or failure (or imminent failure) of the Powered Apparatus; or

28.5.3 a combination of Clauses 28.5.1 and 28.5.2,

to determine whether or not such Powered Apparatus is compliant with the relevant requirements of Schedule 2 (*Output Specification*). For the avoidance of doubt, the Service Provider shall inspect items of Traffic Signal/Control Infrastructure in accordance with Clause 28.4 (*Structural Inspection and Testing of Powered Apparatus*).

28.6 **Network Integrity Inspections**

The Service Provider shall carry out an annual Network Integrity Inspection and produce a Network Integrity Report in accordance with Service Standard 10 of Schedule 2 (*Output Specification*) and the Highway Maintenance Code.

28.7 **NOT USED**

28.8 **Sample Inspections**

The Service Provider shall carry out the sampling inspections of the Carriageways and Footways Service, Grounds Maintenance Services and the Street Cleaning Services pursuant to Service Standards 2, 6 and 8 of the Output Specification.

28.9 **Attachments Surveys**

28.9.1 The Service Provider shall, within the first six (6) Months of the date of this Contract, carry out a Survey of all Project Network Parts in order to determine the extent of the Existing Attachments (the "**Existing Attachments Survey**"), and shall notify the results to the Authority, in the

form of a database, within one (1) Month of the completion of the Existing Attachments Survey.

28.9.2 The Service Provider shall, in the course of carrying out the other surveys referred to in this Clause 28 (*Service Provider Surveys and Inspections*), carry out a survey of Attachments to determine:

28.9.2.1 whether any Authorised Attachments or Existing Attachments are missing (in the case of Attachments which are Project Network Parts), in which case the Service Provider shall notify the Authority within one (1) Business Day; and

28.9.2.2 whether there are any Unauthorised Attachments which have been attached to any Project Network Part since the last survey was undertaken (if any), in which case the provisions of Schedule 8 (*Attachments and Advertising*) shall apply.

28.10 Management Information System

The Service Provider shall input the results of all Service Provider Inspections into the relevant part of the Management Information System in accordance with Schedule 2 (*Output Specification*).

29. CERTIFICATION

29.1 Independent Certifier

On or prior to the date of this Contract the Authority and the Service Provider shall appoint the Independent Certifier using the Independent Certifier's Appointment. The Independent Certifier's Appointment shall set out the duties owed by the Independent Certifier to the Authority and the Service Provider and shall be for the duration of the Core Investment Period or, if Milestones in relation to Street Lighting and/or Traffic Signal/Control Infrastructure have not been completed by the Planned CIP Completion Date, until the Milestone Determination Date on which all Milestones in relation to Street Lighting and/or Traffic Signal/Control Infrastructure have been completed.

29.2 The Service Provider undertakes to exercise its rights and fulfil its obligations under the Independent Certifier's Appointment.

- 29.3 The Service Provider shall not terminate the Independent Certifier's Appointment except in accordance with the terms of the Independent Certifier's Appointment.
- 29.4 If pursuant to the Independent Certifier's Appointment, the Service Provider considers that the Independent Certifier's Appointment should be terminated, the following procedure will apply:
- 29.4.1 The Service Provider shall propose an alternative Independent Certifier to the Authority, including details of the relevant Independent Certifier's skills and experience;
- 29.4.2 The Authority shall, within ten (10) Business Days of receipt of a notification from the Service Provider pursuant to Clause 29.4.1 confirm to the Service Provider whether the proposed alternative Independent Certifier is acceptable to the Authority together with reasons for its decision.
- 29.4.3 Where the Authority has consented to the alternative Independent Certifier under Clause 29.4.2, the Authority and the Service Provider shall appoint the alternative Independent Certifier in accordance with the Independent Certifier's Appointment.
- 29.4.4 Where the Authority has not consented to the alternative Independent Certifier, either Party may refer the matter to the Dispute Resolution Procedure.

29.5 **Role of the Independent Certifier**

The Service Provider shall during the Term, or shall procure that the Independent Certifier shall (as appropriate) during the CIP (or such longer period as determined pursuant to Clause 29.1 upon which the Independent Certifier's Appointment can be terminated or expire), carry out all of the required tasks as detailed in this Clause 29 (*Certification*) and as set out in the Independent Certifier Appointment (where applicable), including:

- 29.5.1 Certification of the Lighting Schemes and Traffic Signal/Control Infrastructure Sites during the Core Investment Period in accordance with Clause 29.7 (*Certification of Removal*);

29.5.2 sample checking of the Certification of relevant percentage of Lighting Schemes in accordance with Clause 29.7 (*Certification of Removal*); and

29.5.3 providing the data about the sample checking of the relevant percentage of Certifications to the Service Provider and the Authority in accordance with Clause 29.7 and Paragraph 3.1 (o) of Schedule 12 (*Monitoring and Reporting*).

29.6 Access by the Certifier

The Service Provider shall ensure that the Independent Certifier is afforded sufficient rights of access to the Work Sites in order to carry out its obligations under its appointment and such access must as a minimum afford the Independent Certifier the same rights as the Authority under Clause 12 (*Authority Access*).

29.7 Certification of Removal

During the CIP, the Service Provider shall comply and shall procure that, the Independent Certifier shall comply with the following:

29.7.1 the Service Provider shall Certify Lighting Units on a street by street basis except where a street exceeds two hundred (200) metres in length, in which case Certificates of Compliance may be issued for Street Lighting on a Boundary Polygon basis as shown in the Mayrise GIS layer (a "**Lighting Scheme**");

29.7.2 the Service Provider shall procure that the Independent Certifier shall Certify items of Traffic Signal /Control Infrastructure on a Traffic Signal/Control Infrastructure Site basis;

29.7.3 the Service Provider shall instruct the Independent Certifier to inspect any CIP Certified TSCI or Replacement CIP Certified TSCI within five (5) Business Days of completion of any Traffic Signal/Control Infrastructure Site specifying a date for such inspections to be carried out (an "**Inspection Notice**"), such Inspection Notice to be served on the Independent Certifier no less than five (5) Business Days before the date on which the Service Provider proposes that such inspection shall take place;

29.7.4 at least five (5) Business Days before the Service Provider proposes to inspect any CIP Certified Street Lighting or Replacement CIP Certified Street Lighting, or require the Independent Certifier to inspect any CIP Certified TSCI or Replacement CIP Certified TSCI (as applicable), the Service Provider shall notify the Authority Representative accordingly specifying the relevant CIP Certified Apparatus or Replacement CIP Certified Apparatus (a "**Certification Notice**") to be inspected, including its location and the date and time for such inspection;

29.7.5 the Service Provider shall inspect the relevant CIP Certified Street Lighting or Replacement CIP Certified Street Lighting, or shall procure that the Independent Certifier inspect the CIP Certified TSCI or Replacement CIP Certified TSCI (as applicable) specified in the Certification Notice to determine whether or not such Replacement CIP Certified Apparatus has been installed and (if applicable) the CIP Certified Apparatus Removed in such a manner that a Certificate of Compliance can be issued in accordance with the provisions of this Contract. Such inspection shall occur on the date or dates specified by the Service Provider in the Certification Notice provided that such date or dates shall be a Business Day and the inspection shall not occur prior to the date which is five (5) Business Days after the date of the Certification Notice;

29.7.6 when the Service Provider in respect of CIP Certified Street Lighting or Replacement CIP Certified Street Lighting, or the Independent Certifier in respect of CIP Certified TSCI or Replacement CIP Certified TSCI (as applicable) is satisfied that the relevant Replacement CIP Certified Apparatus have been installed and (if applicable) the relevant CIP Certified Apparatus have been Removed in such a manner that a Certificate of Compliance can be issued in accordance with the provisions of this Contract, the Service Provider shall or shall procure that the Independent Certifier (as appropriate) shall issue a Certificate of Compliance together with a Snagging List (if applicable) to:

29.7.6.1 the Authority in respect of all CIP Certified Apparatus or Replacement CIP Certified Apparatus; and

29.7.6.2 the Independent Certifier in respect of CIP Certified Street Lighting or Replacement CIP Certified Street Lighting,

within two (2) Business Days of inspecting the relevant CIP Certified Apparatus or Replacement CIP Certified Apparatus;

29.7.7 the Independent Certifier shall be entitled to make any enquiry or test, or conduct any investigation he sees fit to satisfy himself that the Replacement CIP Certified TSCI satisfies all of the requirements of Schedule 2 (*Output Specification*) and the Method Statements and/or that the CIP Certified TSCI has been Removed; and

29.7.8 the Authority Representative and/or any Authority Party having the relevant technical expertise nominated by the Authority shall be entitled:

29.7.8.1 to attend any inspection, enquiry, test or investigation by the Service Provider or Independent Certifier (as applicable); and

29.7.8.2 to provide to the Service Provider or Independent Certifier (copied to the Service Provider) (as applicable) any information relevant to the certification process and such information shall be taken into account by the Service Provider or Independent Certifier (as applicable) in considering whether to issue a Certificate of Compliance,

29.7.9 within two (2) Business Days of the end of any Month in which the Service Provider has carried out any Certification of CIP Certified Street Lighting or Replacement CIP Certified Street Lighting in accordance with this Clause 29.7 (a "**Certifying Month**"), the Service Provider shall procure that:

29.7.9.1 within the Month following the Certifying Month (a "**Certification Sampling Month**"), the Independent Certifier shall inspect a random twenty (20) % sample of all CIP Certified Street Lighting or Replacement CIP Certified Street Lighting that had received a Certificate of Compliance within the relevant Certifying Month, such random sample to be determined by the Independent Certifier acting in its absolute discretion, except:

(a) insofar as the Authority has notified the Independent Certifier prior to the Certification Sampling Month of CIP

Certified Street Lighting or Replacement CIP Certified Street Lighting that must or must not be included within the sample, in which case the Service Provider shall procure that the Independent Certifier shall comply with the Authority's notification; and/or

- (b) where the Service Provider has previously withdrawn a Certification of Compliance in respect of CIP Certified Street Lighting or Replacement CIP Certified Street Lighting pursuant to Clause 29.7.11.1(a), the Service Provider shall procure that the Independent Certifier shall inspect such CIP Certified Street Lighting or Replacement CIP Certified Street Lighting in addition to the twenty (20) % sample in the Month following the Month in which such CIP Certified Street Lighting or Replacement CIP Certified Street Lighting receives a subsequent Certificate of Compliance; and

29.7.9.2 the Independent Certifier carries out a comparison of the Certificates of Compliance against the results produced by the Independent Certifier as a result of its own inspection (the "**Sample Results**");

29.7.10 the Independent Certifier shall be entitled to make any enquiry or test, or conduct any investigation he sees fit to satisfy himself that the Replacement CIP Certified Street Lighting has been installed and/or that the CIP Certified Apparatus has been Removed in such a manner that a Certificate of Compliance can be issued in accordance with the provisions of this Contract;

29.7.11 the Service Provider shall procure that the Independent Certifier produces a written report to the Service Provider and the Authority within five (5) Business Days of the end of the Certification Sampling Month, setting out the results of the comparison of the Certificates of Compliance against the Sample Results, and:

29.7.11.1 where the Service Provider has issued a Certificate of Compliance when the Sample Results demonstrate that a Certificate of Compliance should not have been issued:

- (a) the Service Provider shall withdraw the Certificate of Compliance; and
- (b) where in the relevant Certification Sampling Month the number of Certificates of Compliance wrongfully issued by the Service Provider in the relevant Certifying Month exceeds 5% of all Certificates of Compliance issued in such Certifying Month, the Service Provider shall procure that the percentage of sampling of the inspection of Certification being undertaken by the Independent Certifier pursuant to Clause 29.7.9.1 in the three (3) Months immediately following the relevant Certification Sampling Month (the "**Additional Certification Sampling Months**") shall be increased in accordance with Table 1A at the Service Provider's cost (provided that where Clause 29.7.11.2(b) applies in a way which increases the percentage of sampling to a greater extent than this Clause 29.7.11.1(b), the provisions of Clause 29.7.11.2(b) shall prevail);
- (c) following any relevant Additional Certification Sampling Months, the percentage of sampling of the inspection of Certifications carried out by the Independent Certifier pursuant to Clause 29.7.9.1 shall revert to twenty (20) %, unless within such three (3) Month period, Clause 29.7.11.1(b) is once again applied, in which case the provisions of that Clause shall prevail;
- (d) where the percentage of sampling has increased in accordance with Clause 29.7.11.1(b) to forty (40) % or more in any Month, the Service Provider shall, within ten (10) Business Days of the commencement of such Month, provide an improvement plan setting out how the Service Provider (acting reasonably) intends to resolve any issues identified by the Independent Certifier in respect of the Service Provider's inspection practices and to ensure that future Certificates of Compliances are not required to be withdrawn by the Service Provider, and the Service Provider shall thereafter comply

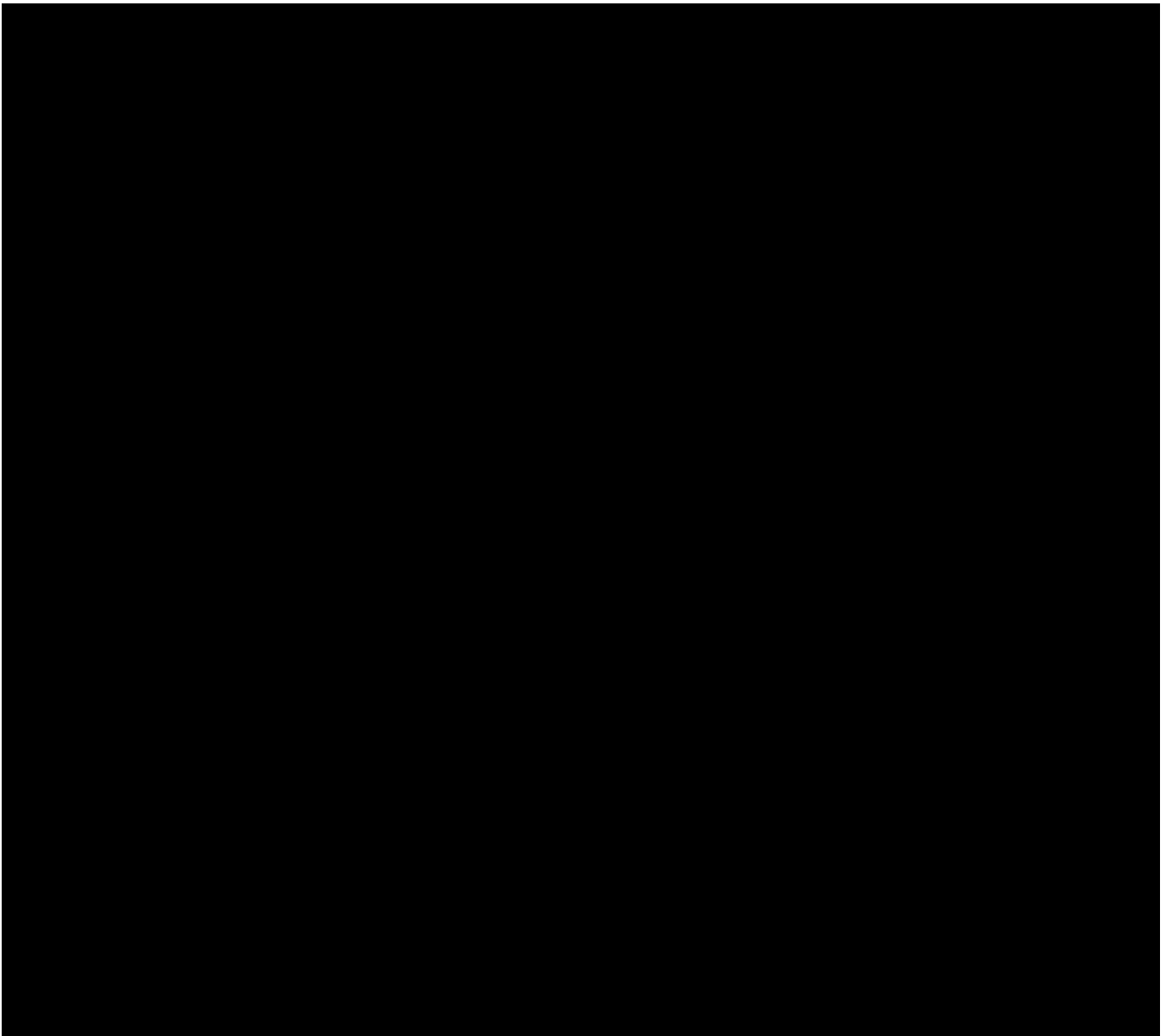
with such improvement plan within any timescales set out therein.

29.7.11.2 where there are Snagging Items which the Service Provider did not identify but are then identified by the Independent Certifier during the Certification Sampling Month:

- (a) the Snagging Items shall be added to the Snagging List (or where a Snagging List was not initially produced, the Service Provider shall issue a Snagging List comprising such Snagging Items that have been identified);
- (b) if the number of Snagging Items identified by the Independent Certifier divided by the number of Lighting Columns inspected by the Independent Certifier gives an average which is greater than or equal to 0.5 per item of Apparatus, the Service Provider shall procure that the percentage of sampling of the inspection of Certification being undertaken by the Independent Certifier pursuant to Clause 29.7.9.1 in the three (3) Months immediately following the relevant Certification Sampling Month (the "**Additional Certification Sampling Months**") shall be increased in accordance with Table 1A at the Service Provider's cost (provided that where Clause 29.7.11.1(b) applies in a way which increases the percentage of sampling to a greater extent than this Clause 29.7.11.2(b), the provisions of Clause 29.7.11.1(b) shall prevail);
- (c) following any relevant Additional Certification Sampling Months, the percentage of sampling of the inspection of Certifications carried out by the Independent Certifier pursuant to Clause 29.7.9.1 shall revert to twenty (20) %, unless within such three (3) Month period, Clause 29.7.11.2(b) is once again applied, in which case the provisions of that Clause shall prevail;
- (d) where the percentage of sampling has increased in accordance with Clause 29.7.11.2(b) to forty (40)% or more

in any Month, the Service Provider shall, within ten (10) Business Days of the commencement of such Month, provide an improvement plan setting out how the Service Provider (acting reasonably) intends to resolve any issues identified by the Independent Certifier in respect of the Service Provider's inspection practices and to ensure that future Snagging Items are properly recorded by the Service Provider, and the Service Provider shall thereafter comply with such improvement plan within any timescales set out therein.

Table 1A



29.8 Following the CIP (or such longer period as determined pursuant to Clause 29.1 upon which the Independent Certifier's Appointment can be terminated or expire), the Service Provider shall provide to the Authority following the completion of the Removal and/or installation of any Lighting Columns and/or Traffic Signal/Control Infrastructure as part of the next occurring Monthly Monitoring Report the following information:

29.8.1 whether such Project Network Parts are compliant with Schedule 2 (*Output Specification*) and the Method Statements; and

29.8.2 any Snagging Items outstanding at the date of completion of such Removal and/or installation including the details specified in Paragraph 3.1(p) of Schedule 12 (*Monitoring and Reporting*).

30. MONITORING OF SURVEYS AND INSPECTIONS

30.1 Authority Attendance at Surveys and Inspections

30.1.1 The Service Provider shall notify the Authority of the date, time and location of all Structure Inspections, Surveys, Service Provider Inspections, tests and assessments that it is obliged to carry out or procure to be carried out pursuant to Clause 27 (*Independent Surveys and Inspections*), Clause 28 (*Service Provider Surveys and Inspections*) and Clause 29 (*Certification*) together with the identity of the relevant inspector or surveyor (as the case may be) in accordance with the provisions of the relevant Clause or otherwise no later than two (2) Months prior to the date on which each such inspection, survey, test and/or assessment is to take place in accordance with Clause 27 (*Independent Surveys and Inspections*), Clause 28 (*Service Provider Surveys and Inspections*) or Clause 29 (*Certification*) (as applicable).

30.1.2 The Authority and/or any Authority Party nominated by the Authority shall have a right to attend at such Structure Inspections, Surveys, Service Provider Inspections, tests, and assessments as referred to in Clause 30.1.1 (*Authority Attendance at Surveys and Inspections*) and the Service Provider shall (or shall procure that) the relevant inspector or surveyor (as the case may be) shall provide all reasonable assistance to the Authority and/or the relevant Authority Party to allow it to ensure that all such Structure Inspections, Surveys, Service Provider Inspections, tests and assessments are being

carried out in accordance with Clause 27 (*Independent Surveys and Inspections*), Clause 28 (*Service Provider Surveys and Inspections*) or Clause 29 (*Certification*) (as applicable), including the use of the equipment of the Independent Surveyor, Independent Bridge Inspector and/or Independent Certifier as Service Provider Party Equipment in accordance with the provisions of Clause 12.3 (*Authority Access*) and Clause 12.4 (*Health & Safety*).

30.1.3 When attending at any Structure Inspection, Survey, Service Provider Inspection, test or assessment pursuant to Clause 27 (*Independent Surveys and Inspections*), Clause 28 (*Service Provider Surveys and Inspections*) or Clause 29 (*Certification*), the Authority and/or the relevant Authority Party shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider and shall comply with any reasonable instructions of the Service Provider in relation to health and safety matters.

30.2 **Breach of Survey and Inspection Obligations**

30.2.1 If:

30.2.1.1 the Service Provider is in breach of any of its obligations under Clause 27 (*Independent Surveys and Inspections*), Clause 28 (*Service Provider Surveys and Inspections*); and/or

30.2.1.2 the Service Provider has failed to commission and/or carry out the Surveys, Structure Inspections, Service Provider Inspections, tests and/or assessments in accordance with the relevant Survey Programme, Inspection Programmes or Inspection Strategy,

then the Authority may carry out (or procure to be carried out), such inspections, surveys, tests and/or assessments as the Service Provider has (in the Authority's reasonable opinion) failed to carry out pursuant to Clause 27 (*Independent Surveys and Inspections*) or Clause 28 (*Service Provider Surveys and Inspections*) (as applicable) provided that this right may not be exercised more often than the minimum frequency (if any) with which the Service Provider is obliged to carry out such Structure Inspections, Surveys, Service Provider Inspections, tests and/or assessments in accordance with

Clause 27 (*Independent Surveys and Inspections*) or Clause 28 (*Service Provider Surveys and Inspections*) (as applicable) and the Authority shall notify the Service Provider on any occasion when the Authority is exercising the right under this Clause 30.2.1 together with the date on which such inspections, surveys, tests and/or assessments shall be carried out.

- 30.2.2 The Authority shall consider in good faith any reasonable request by the Service Provider for the Structure Inspection, Survey, Service Provider Inspection, test and/or assessment to be carried out on a different date to that notified in accordance with Clause 30.2.1 (*Authority Attendance at Surveys and Inspections*) if such request is made at least fifteen (15) Business Days prior to such notified date.
- 30.2.3 If the Authority exercises its rights pursuant to this Clause 30.2 (*Breach of Survey and Inspection Obligations*), the Service Provider shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any such Structure Inspections, Surveys, Service Provider Inspections, tests and/or assessments.
- 30.2.4 If the Authority exercises its rights pursuant to this Clause 30.2 (*Breach of Survey and Inspection Obligations*), it shall be entitled to be reimbursed by the Service Provider for the cost of such Structure Inspections, Surveys, Service Provider Inspections, tests and/or assessments as are carried out by or on behalf of the Authority and such reimbursement shall be made by way of a Sundry Adjustment to the Monthly Payment in accordance with the provisions of Schedule 4 (*Payment Mechanism*).
- 30.2.5 Where the Authority carries out any Structure Inspection, Survey, Service Provider Inspection, test and/or assessment pursuant to this Clause 30.2 (*Breach of Survey and Inspection Obligations*), it shall do so, where the relevant inspection, test or assessment is within the relevant person's scope under Clause 27 (*Independent Surveys and Inspections*), through the Independent Surveyor or the Independent Bridge Inspector or the Independent Machine Surveyor as the case may be (save where the Authority's right under Clause 30.2.1 arises from a failure of the Independent Surveyor or the Independent Bridge Inspector or the Independent Machine Surveyor as the case may be), and it shall provide the Service Provider, as

soon as reasonably practicable, with all unprocessed data reports and results generated following such Structure Inspection, Survey, Service Provider Inspection, test and/or assessment and the Service Provider shall, within twenty (20) Business Days of receipt of any reports and results, prepare and submit to the Authority (at the Service Provider's own cost) such revised Investment Programmes as it considers necessary (having regard to its obligations in Clause 31 (*Obligation to Provide the Service and Performance Standards*)) in accordance with the relevant provisions of Clause 20 (*Investment Programmes*) and submit the same to the Authority pursuant to the Review Procedure.

30.2.6 In the event that the Service Provider fails to submit revised Investment Programmes in accordance with Clause 30.2.5 above the Authority may carry out any rectification and/or maintenance work that it deems necessary arising as a result of any Structure Inspection, Survey, Service Provider Inspection, test and/or assessment carried out pursuant to this Clause 30.2 (*Breach of Survey and Inspection Obligations*), and may recover the cost of such rectification and maintenance work from the Service Provider by way of a Sundry Adjustment to the Monthly Payment in accordance with the provisions of Schedule 4 (*Payment Mechanism*).

PART G – THE SERVICES

31. OBLIGATION TO PROVIDE THE SERVICE AND PERFORMANCE STANDARDS

31.1 Standard of Service

The Service Provider shall provide the Service continuously throughout the Term:

31.1.1 in accordance with Good Industry Practice;

31.1.2 in order to comply fully with Schedule 2 (*Output Specification*);

31.1.3 in accordance with Highway Standards;

31.1.4 in accordance with Schedule 3 (*Method Statements*);

31.1.5 in accordance with the Investment Programmes;

31.1.6 in accordance with the Programmed Works Protocol;

- 31.1.7 in accordance with all Necessary Consents;
 - 31.1.8 in accordance with all Laws and Codes of Practice relating to the carrying out of the Service;
 - 31.1.9 NOT USED;
 - 31.1.10 using reasonable endeavours not to cause any nuisance;
 - 31.1.11 without prejudice to Clauses 15.6 (Existing Project Network Parts), 15.7 (New Project Network Parts), 15.8 (Transfer of Risk to the Authority) and 91.6 (Service Provider Indemnity) making good any damage to any Authority Property, Project Network Parts or Apparatus as soon as reasonably practicable but only insofar as the same arises from or in connection with the Project; and
 - 31.1.12 in accordance with the other provisions of this Contract,
- and shall not carry out any Services of a type for which an Investment Programme is required unless in accordance with the provisions of this Contract.

31.2 **Maintenance**

From the Service Commencement Date, the Service Provider shall ensure, on a continuing basis, that at all times its maintenance and operating procedures are sufficient to ensure that:

- 31.2.1 the Service is continuously compliant with the relevant parts of Schedule 2 (*Output Specification*);
- 31.2.2 the design intention of the Project Network Parts to achieve their full working life is maintained; and
- 31.2.3 the Project Network Parts are handed back to the Authority on the Expiry Date in a condition complying with the requirements of Clause 31.3 (*Standard on Expiry*).

31.3 **Standard on Expiry**

The Service Provider shall perform the Service such that at the Expiry Date (or, if earlier, the Termination Date):

31.3.1 where the Termination Date is prior to the completion of the Core Investment Period, or at any time during the Term in respect of Project Network Parts for which Condition Indices do not apply all Project Network Parts shall comply with the relevant requirements of Schedule 2 (*Output Specification*); and

31.3.2 where the Termination Date is at or following the completion of the Core Investment Period, or at the Expiry Date, the latest measured Condition Indices meet or exceed the level for such Condition Indices required at the end of the Core Investment Period.

31.4 **Reporting of Incidents**

Without prejudice to the provisions of Clause 68 (*Administration of Highways Claims*), any incidents or occurrences which in the Service Provider's reasonable opinion may have a material impact upon the provision of any part of the Service and/or the compliance by the Service Provider with its obligations in this Clause 31 (*Obligation to Provide the Service and Performance Standards*) shall be notified to the Authority in writing by the Service Provider at the earliest opportunity.

31.5 **Project Network Discoveries**

31.5.1 As between the Parties, all Finds which are found on, over or under the Project Network are or shall become, upon discovery, the absolute property of the Authority.

31.5.2 Upon the discovery of any Find during the performance of the Services, the Service Provider shall:

31.5.2.1 immediately give notice to the Authority Representative of such discovery;

31.5.2.2 take all reasonably necessary steps to prevent the disturbance of the Find and, if necessary, cease the performance of the Services in so far

as the carrying out of such Services would endanger the Find or prevent or impede its excavation; and

31.5.2.3 take all reasonably necessary steps to preserve the Find in the same condition as that in which it was found.

31.5.3 The Authority shall procure that the Authority Representative promptly, and in any event within ten (10) Business Days, issues an instruction to the Service Provider specifying what action the Authority Representative requires to be taken in relation to such Find provided that if no instruction is forthcoming within such period the Service Provider may continue to carry out the Services from the expiry of such period.

31.5.4 The Service Provider shall promptly and diligently comply with any instruction issued by the Authority Representative referred to in Clause 31.5.3 at its own cost.

31.5.5 If directed by the Authority Representative, the Service Provider shall allow representatives of the Authority access to any Work Sites on the Project Network for the purposes of removal or disposal of such Find, provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plan for such Services from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Service Provider Representative from time to time.

31.5.6 If any instruction referred to in Clause 31.5.3 (*Project Network Discoveries*) includes a requirement for the Service Provider to suspend the carrying out of the Services and/or to carry out works (being any work of alteration, addition, demolition or extensions or variation on, over or under the Project Network) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, [REDACTED]

[REDACTED]

32. INCONSISTENCIES RELATING TO THE PROVISION OF SERVICE

32.1 Inconsistencies

The obligations in Clause 31.1 (*Standard of Service*) are independent obligations and:

32.1.1 the fact that the Service Provider has complied with Schedule 3 (*Method Statements*) shall not be a defence to an allegation that the Service Provider has not satisfied or complied with Schedule 2 (*Output Specification*); and

32.1.2 the fact that the Service Provider has satisfied and complied with Schedule 2 (*Output Specification*) shall not be a defence to an allegation that the Service Provider has failed to comply with Schedule 3 (*Method Statements*).

32.2 Rectification of Inconsistencies

32.2.1 If at any time it becomes apparent to either Party that there is an inconsistency within the terms of Schedule 2 (*Output Specification*), that Party shall promptly, on becoming aware of such inconsistency, notify the other Party. On becoming aware, or notified, of such inconsistency the Authority shall:

32.2.1.1 consider the minimum amendments that are necessary (acting reasonably) to make Schedule 2 (*Output Specification*) consistent;

32.2.1.2 inform the Service Provider in writing of its proposed amendments to remove the inconsistency; and

32.2.1.3 amend Schedule 2 (*Output Specification*) without any adjustment of the Unitary Charge;

32.2.2 subject to Clause 53 (*Change in Law*), if at any time it becomes apparent to either Party that there is an inconsistency between Schedule 2 (*Output Specification*) and any Legislation or Guidance in force at the date of this Contract that Party shall promptly on becoming aware of such inconsistency notify the other Party. On becoming aware, or notified, of such inconsistency the Authority shall:

32.2.2.1 consider the minimum amendments that are necessary (acting reasonably) to make Schedule 2 (*Output Specification*) consistent;

32.2.2.2 inform the Service Provider in writing of its proposed amendments to remove the inconsistency,

32.2.2.3 and the Service Provider shall not be entitled to any additional monies or adjustment of the Unitary Charge as a result of such inconsistency or its adjustment (and accordingly the risk of there being any such inconsistency shall be borne by the Service Provider), provided that where any amendment or rectification to Schedule 2 (*Output Specification*) proposed pursuant to this Clause 32.2.2 (*Rectification of Inconsistencies*) shall not be a Change except where it would result in a lower standard of Service to that set out in Schedule 2 (*Output Specification*) prior to its amendment or rectification, in which case such amendment or rectification shall be a Change;

32.2.3 if at any time it becomes apparent to either Party that any Method Statement does not satisfy Schedule 2 (*Output Specification*), that Party shall notify the other Party promptly on becoming aware of such inconsistency. On becoming aware, or notified, of such inconsistency:

32.2.3.1 the Authority shall require the Service Provider to propose such amendments are necessary to make the relevant Method Statement satisfy Schedule 2 (*Output Specification*); and

32.2.3.2 the Service Provider shall submit the revised Method Statement to the Authority for review in accordance with Clause 51 (*Amendments to the Method Statements*) and Schedule 21 (*Review Procedure*).

32.2.4 Pursuant to Clause 32.2.3.2, once the Method Statement is agreed pursuant to Schedule 21 (*Review Procedure*), the Service Provider shall, at the Service Provider's own expense and cost, rectify the Service or any part thereof which is affected, so that the Project Network Parts shall be of a standard which is at least equal to that set out in the Schedule 3 (*Method Statements*) following its amendment or rectification in accordance with the timescales set out in the Output Specification or if none are specified or applicable, as soon as is reasonably practicable.

33. REPRESENTATIVES

33.1 Service Provider Representative

The Service Provider shall employ the Service Provider Representative, the identity of whom will be subject to the prior approval of the Authority (such approval not to be unreasonably withheld or delayed), to act as the Service Provider's representative in connection with the Service Provider's obligations under this Contract. The contact details of the Service Provider Representative shall, at all times, be made known to the Authority by the Service Provider and shall include a telephone number on which the Service Provider Representative or his delegate (where appointed pursuant to Paragraph 2.5 of Schedule 12 (*Monitoring and Reporting*)) can be contacted twenty four (24) hours a day and three hundred and sixty five (365) (or, in the case of a leap year, three hundred and sixty six (366)) days a year. The Service Provider Representative shall have the appropriate training and skills to co-ordinate and ensure the Service Provider's proper discharge of its obligations under this Contract.

33.2 Authority of Service Provider Representative

The Service Provider Representative shall have full authority to act on behalf of the Service Provider for all purposes of this Contract (save where the Service Provider has notified the Authority that there are specific exemptions to such authority). The Authority and the Authority Representative shall be entitled to treat any act or omission of the Service Provider Representative in connection with this Contract as being expressly authorised by the Service Provider (save where the Service Provider has notified the Authority that there are specific exemptions to such authority) and the Authority shall not be required to determine whether any express authority has in fact been given.

33.3 Appointment of Successor

The Service Provider may at any time terminate the appointment of the Service Provider Representative and shall appoint a successor subject to the provisions of Clause 33.1 (*Service Provider Representative*).

33.4 Service Provider's Alternate Representatives

33.4.1 The Service Provider shall appoint two (2) alternate representatives (the "**Service Provider's First Alternate Representative**") and the "**Service**

Provider's Second Alternate Representative''), the identity of whom will be subject to the prior approval of the Authority (such approval not to be unreasonably withheld or delayed).

33.4.2 In the event that an Authority Party is unable to make immediate contact with the Service Provider Representative (provided that the Authority Party has used the relevant contact details) or the Service Provider Representative states that he is unable to deal with a matter and/or directs that either the Service Provider's First Alternate Representative or the Service Provider's Second Alternate Representative is contacted, the Authority shall be entitled to contact the Service Provider's First Alternate Representative and/or the Service Provider's Second Alternate Representative (as the case may be), and the provisions of this Contract dealing with the Service Provider Representative shall apply, mutatis mutandis, to the Service Provider's First Alternate Representative and/or the Service Provider's Second Alternate Representative (as the case may be).

33.5 **Authority Representative**

The Authority shall appoint (and may replace from time to time) an individual to be the Authority Representative in connection with the Authority's obligations under this Contract. The Authority Representative shall liaise with the Service Provider Representative, and shall keep the Service Provider informed of the identity and contact details from time to time of the Authority Representative.

33.6 **Authority of Authority Representative**

The Authority Representative shall have full authority to act on behalf of the Authority for all purposes of this Contract (save where the Authority has notified the Service Provider that there are specific exemptions to such authority). The Service Provider shall be entitled to treat any act of the Authority Representative in connection with this Contract as being expressly authorised by the Authority (save where the Authority has notified the Service Provider that there are specific exemptions to such authority) and the Service Provider shall not be required to determine whether any express authority has in fact been given.

33.7 **Authority's Alternate Representatives**

33.7.1 The Authority shall appoint two (2) alternate representatives (the "**Authority's First Alternate Representative**" and the "**Authority's Second Alternate Representative**").

33.7.2 In the event that the Service Provider is unable to make immediate contact with the Authority Representative (provided the Service Provider has used the relevant contact details) or the Authority Representative states that he is unable to deal with a matter and/or directs that either the Authority's First Alternate Representative or the Authority's Second Alternate Representative is contacted, the Service Provider shall be entitled to contact the Authority's First Alternate Representative and/or the Authority's Second Alternate Representative (as the case may be), and the provisions of this Contract dealing with the Authority Representative shall apply, mutatis mutandis, to the Authority's First Alternate Representative and/or the Authority's Second Alternate Representative (as the case may be).

33.8 **Notices**

33.8.1 Subject to Clause 101 (*Notices*) and Clause 33.8.2, any notice, information, instructions or public communication must be given in writing, and subject to:

33.8.1.1 any delegations of authority made by either Party pursuant to Paragraphs 2.2 or 2.4 of Schedule 12 (*Monitoring and Reporting*),

33.8.1.2 Paragraph 3 of Schedule 11 (Emergency Planning and Response);

shall only be valid and binding if given to or by (as applicable):

33.8.1.3 the Service Provider Representative, and it shall be deemed to have been given to or by (as applicable) the Service Provider; and

33.8.1.4 the Authority Representative, and it shall be deemed to have been given to or by (as applicable) the Authority.

33.8.2 Where the Authority has notified the Service Provider that there are exemptions to the Authority Representative's authority under Clause 33.6

(*Authority of Authority Representative*), notices, information, instructions or public communication in respect of such exempt matters shall only be valid if given by the Monitoring Officer of the Authority.

33.8.3 Subject to the provisions of Schedule 11 (*Emergency Planning and Response*), the Authority shall not be responsible for and the Service Provider shall not be entitled to rely on and shall not do so or claim relief, additional time, Losses, expenses, damages, costs or other liabilities should the Service Provider act on or fail to act on any notice, communication or other purported instruction given by a person whether or not such person is alleging to act for and on behalf of the Authority unless such person was the Authority Representative or as specified in Clause 33.8.2 above..

33.9 **Monthly Project Meetings**

The Authority and the Service Provider shall ensure that the Authority Representative and the Service Provider Representative attend the Service Operations Board Meetings in accordance with Schedule 12 (*Monitoring and Reporting*).

34. **DESIGN**

Design of Project Network Parts

34.1 The Service Provider shall ensure that all Project Network Parts are designed and installed in accordance with the provisions of this Contract (and the Service Provider's proposals as to how the Project Network Parts shall be installed and any plans for such installation) and the Service Provider shall be responsible for the safety of any design and for the adequacy, stability and safety of all site operations and methods of construction.

34.2 The Service Provider shall submit any Reviewable Design Data (and any amendments to such Reviewable Design Data) to the Authority for review in accordance with Schedule 21 (*Review Procedure*).

35. QUALITY MANAGEMENT

35.1 Quality management systems and the Service Quality Plan

The Service Provider shall ensure that:

35.1.1 all aspects of the provision of the Service are at all times the subject of quality management systems;

35.1.2 the quality management systems referred to in Clause 35.1.1 (*Quality management systems and the Service Quality Plan*) shall be reflected in appropriate quality plans, the standard of which shall be consistent with ISO 9000 or any equivalent standard which is generally recognised as having replaced it or as an equivalent thereto;

35.1.3 without limitation to the generality of Clause 35.1.1 (*Quality management systems and the Service Quality Plan*), there shall at all times be in existence in an agreed form:

35.1.3.1a Design Quality Plan; and

35.1.3.2a Service Quality Plan;

provided that the Design Quality Plan and the Service Quality Plan may be incorporated into one document, and the Service Provider warrants that the first Quality Plans have been submitted by it and are contained at Schedule 22 (*Workforce Policies, Health and Safety Manual and Quality Plans*);

35.1.4 upon any amendments to the Quality Plans, both of the Quality Plans shall be submitted to the Authority Representative in accordance with the Review Procedure; and

35.1.5 the quality management systems referred to in this Clause 35.1 are implemented and the Design Quality Plan and the Service Quality Plan are implemented, each of which shall be implemented in accordance with Good Industry Practice, and ensure that the Service is carried out in compliance with the Quality Plans.

35.2 In the event that any ambiguity, uncertainty, Dispute or discrepancy in relation to the application of any Quality Plan arises then so far as practicable, the provisions of this

Clause 35 (*Quality Management*) shall be interpreted and construed in such a manner as to resolve the apparent ambiguity, uncertainty, Dispute or discrepancy so that all the provisions of this Clause 35.1 may be given meaning and effect but, if such interpretation or construction is not possible, the provisions of this Clause 35.1 shall be given meaning and effect in the following order of precedence (in descending order):

35.2.1 the provisions and standards referred to in Clause 35.1.2 (*Quality management systems and the Service Quality Plan*);

35.2.2 the Quality Plans referred to in Clause 35.1.3 (Quality management systems and the Service Quality Plan); and

35.2.3 the Service Provider's and/or any relevant Key Sub-Contractor's quality manuals and procedures.

35.3 Sub-Contractors

Where any aspect of the Service is performed by a Key Sub-Contractor, then the provisions of this Clause 35 (*Quality Management*) (in so far as relevant or appropriate to the activities to be performed by such Key Sub-Contractor) shall apply in respect of each Key Sub-Contractor (and the Service Provider shall procure that such Key Sub-Contractor shall comply with the same), provided that this Clause 35 (*Quality Management*) shall not be construed as requiring a Key Sub-Contractor to have their own Quality Plans or to appoint a separate Quality Manager but only to comply with the relevant sections of the relevant Quality Plan.

35.4 Changes to the Quality Plans

The Service Provider shall make such changes to the Quality Plans as is required for the Quality Plans to continue to comply with the requirements contained in this Contract and such changes shall be made in accordance with the Review Procedure.

35.5 Quality Manuals and Procedures

If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts thereof shall be submitted at the same time that such Quality Plan (or part thereof) or change thereto is submitted pursuant to the Review Procedure, and the contents of such quality

manual or procedure shall be taken into account in the consideration of the relevant Quality Plan (or part thereof) or change thereto pursuant to the Review Procedure.

35.6 **Quality Manager**

The Service Provider shall appoint (or shall procure the appointment of) a person to act as a Quality Manager from the Service Commencement Date who shall not be involved in the day-to-day performance of the Services, to assist the Service Provider in the performance of its obligations under this Clause 35 (*Quality Management*) and:

35.6.1 the identity of the Quality Manager (and any replacement) shall be notified to the Authority Representative;

35.6.2 without limitation, the terms and conditions of the appointment of the Quality Manager shall require him to:

35.6.2.1 ensure the effective operation of the quality systems described in this Clause 35 (*Quality Management*);

35.6.2.2 audit the quality systems at regular intervals (not less frequently than annually) and report the findings of such audit to the Authority Representative;

35.6.2.3 review all quality systems (not less frequently than annually) with the Authority Representative to ensure their continued suitability and effectiveness and in particular to ensure the provisions of Clause 35.4 (*Changes to the Quality Plans*) are complied with;

35.6.2.4 liaise with the Authority Representative on all matters relating to quality management; and

35.6.2.5 report to the Service Provider on all matters relating to this Clause 35 (*Quality Management*).

36. **SERVICE PROVIDER'S PERSONNEL**

36.1 **Skills and Competencies**

The Service Provider shall procure that sufficient numbers of Personnel are, at all times, engaged in providing the Service and that such Personnel:

36.1.1 are appropriately skilled and competent;

36.1.2 receive such training and supervision as is necessary to ensure the proper performance of the Service; and

36.1.3 are appropriately qualified.

36.2 **Training Records**

From the Service Commencement Date the Service Provider shall keep evidence of all relevant training and instruction of all Personnel together with relevant certificates and qualifications, (and update the same) and copies shall be provided to the Authority on request.

36.3 **Provision of Information**

Without prejudice to any other obligations of the Service Provider in this Contract, and to the extent permitted by Legislation, the Service Provider shall, within ten (10) Business Days of any request by the Authority, provide to the Authority all information (including any documents) reasonably requested by the Authority relating to Personnel including information (and any documents) regarding the training, skills and competency of each Personnel, the numbers of Personnel employed or engaged in provision of the Service and the terms and conditions of employment or engagement of such Personnel.

36.4 **Workforce Policies and Procedures**

The Service Provider warrants that the Workforce Policies have been submitted by it and are contained at Schedule 22 (*Workforce Policies, Health and Safety Manual and Quality Plans*) including the following:

36.4.1 a Diversity and Equality Policy, to comply with the requirements set out in Clause 36.8 (*Diversity and Equality Policy*);

36.4.2 a Recruitment and Selection Policy, to comply with the requirements set out in Clause 36.9 (*Recruitment and Selection Policy*);

36.4.3 a Training and Development Policy, to comply with the requirements set out in Clause 36.10 (*Training and Development Policy*); and

36.4.4 a Human Resources Policy, to comply with the requirements set out in Clause 36.11 (*Human Resources Policy*),

and the Service Provider shall comply with its Workforce Policies.

36.5 The Service Provider shall procure that all Key Sub-Contractors are subject to the Workforce Policies and that such Workforce Policies are complied with by the Service Provider and Key Sub-Contractors.

36.6 Upon amendment by the Service Provider of any of the Workforce Policies, the Service Provider shall submit to the Authority revised Workforce Policies (or any of them) pursuant to the Review Procedure.

36.7 The Service Provider shall procure that the terms and implementation of all Workforce Policies comply with Legislation and Good Industry Practice.

36.8 **Diversity and Equality Policy**

The Service Provider's Diversity and Equality Policy shall:

36.8.1 set out how the Service Provider will comply with its requirements in Clause 97 (*Discrimination*);

36.8.2 set out how the Service Provider will achieve the following:

36.8.2.1 promotion of equality of opportunity for employees;

36.8.2.2 elimination of harassment and unlawful discrimination;

36.8.3 set out the Service Provider's commitment to procuring that equal opportunities and diversity is promoted by each Key Sub-Contractor, including by ensuring that the equal opportunities policy of each shall be set out in relevant documentation available to its staff and others, and in other relevant literature and instructions to staff concerned with recruitment, training and promotion; and

36.8.4 ensure that recruitment advertisements will state that the Service Provider and each Key Sub-Contractor is "striving to be an equal opportunities employer"; and

36.8.5 set out procedures to ensure that the data required under Clause 36.12 (*Monitoring Information*) is captured,

and the Service Provider shall, within ten (10) Business Days of receipt of notice in writing, provide to the Authority copies of such instructions, documents, advertisements and other literature referred to in Clause 36.8.3.

36.9 **Recruitment and Selection Policy**

The Service Provider's Recruitment and Selection Policy shall:

36.9.1 set out the Service Provider's approach to achieving best practice in its recruitment and selection practices, including:

36.9.1.1 improving management practices;

36.9.1.2 achieving a balanced workforce, eliminating discrimination and promoting equal opportunities, including proposals for ensuring that its recruitment practices are fair and equal, and comply with all requirements set out within this Contract relating to the promotion of diversity, equality and non-discrimination;

36.9.1.3 dismantling barriers to the recruitment of under-represented groups through the use of positive action, including the use of recruitment within the local communities of the City of Sheffield, and especially within the hard-to-reach communities and groups, and the Service Provider shall provide for advertising of posts within the JobCentre Plus; and

36.9.1.4 ensuring that appointments are made on merit;

36.9.1.5 set out procedures to ensure that the data required under Clause 36.12 (*Monitoring Information*) is captured.

36.10 Training and Development Policy

The Service Provider's Training and Development Policy shall:

36.10.1 set out the method in which the Service Provider will ensure compliance with its obligations under Clause 36.1 (*Skills and Competencies*), including setting out its approach to:

36.10.1.1 ensuring that employees are fully conversant and kept up to date with all relevant Legislation, guidance, Good Industry Practice and required policies, practices, standards and procedures;

36.10.1.2 proposing mechanisms for the continuous assessment of the training and development needs of all employees;

36.10.1.3 producing an annual training and development plan detailing the training and development initiatives planned for its employees for the forthcoming year, taking into account the assessment activities undertaken under Clause 36.10.1.2 above, and the Service Provider shall include a completed copy of the forecasting proforma for the forthcoming year as set out at Part 1 to Schedule 38 (*Training and Development Proformas*);

36.10.1.4 ensuring that new starters undergo thorough training and development and general induction as required;

36.10.1.5 reviewing and evaluating the effectiveness of training and development activities undertaken by its staff; and

36.10.1.6 demonstrating the application of an effective appraisal system linking training and development activity to performance delivery outcomes;

36.10.2 set out the Service Provider's approach to offering apprenticeships and traineeships, and in particular, ensuring engagement with young people (aged 14 to 19 years) and hard-to-reach groups in any apprenticeship or traineeship schemes; and

36.10.3 set out the Service Provider's approach to supporting the Relevant Employees with sufficient management resource, capability and capacity to ensure that all Relevant Employees meet the standards set out in Clause 36.1 (*Skills and Competencies*) above.

36.11 Human Resources Policy

The Service Provider's Human Resources Policy shall:

36.11.1 set out the Service Provider's approach to dignity and respect at work, disciplinary, grievance, disputes, appraisals, attendance and capability, work-life balance and managing change, in compliance with all applicable Legislation and any applicable Authority Policies (where appropriate or where required by Legislation, including TUPE); and

36.11.2 set out the Service Provider's approach to recognising and engaging with relevant Trades Unions and other relevant employees' bodies.

36.12 Monitoring Information

The Service Provider shall ensure that information is captured annually in respect of Personnel corresponding with the information captured by the Authority in relation to its employees in any workforce census applying from time to time and notified to the Service Provider by the Authority, and shall, within one (1) Month of the end of every Contract Year, provide to the Authority such anonymised information in a database.

36.13 The Service Provider shall also provide the following information to the Authority within one (1) Month of the end of every Contract Year:

36.13.1 the training and development plan produced by the Service Provider under Clause 36.10.1.3 (*Training and Development Policy*), and a report containing details of how the Service Provider has implemented its Training and Development Policy throughout the previous Contract Year, including the number of trainees and apprentices engaged by the Service Provider and details of such apprenticeships/traineeships, and the Service Provider shall include a completed copy of the monitoring proforma for the previous year as set out at Part 2 to Schedule 38 (*Training and Development Proformas*); and

36.13.2 a report containing details of how the Service Provider has implemented its Recruitment and Selection Policy throughout the previous Contract Year.

36.14 Convictions

Notwithstanding any other provision of this Clause 36 (*Service Provider's Personnel*), the Service Provider shall:

36.14.1 procure that all Personnel and potential Personnel (other than Relevant Employees) are required to disclose any Convictions; and

36.14.2 procure that, where any Personnel discloses any Convictions, or is found to have any Convictions, the same shall be immediately notified to the Authority; and

36.14.3 immediately notify the Authority in writing upon the Service Provider becoming aware of any Personnel who, subsequent to his/her commencement of employment by the Service Provider or any Key Sub-Contractor in the provision of the Service, receives a Conviction or whose previous Convictions become known to the Service Provider (or any Service Provider Party involved in the provision of the Service);

36.14.4 if reasonably requested by the Authority, provide copies of the records of any unspent Convictions of any Personnel.

36.15 Unsuitable Persons not to be engaged in the Service

The Authority may, if it, in its sole discretion, believes that any Personnel or potential Personnel is or would be an Unsuitable Person, serve written notice on the Service Provider requiring the Service Provider to procure (at the Service Provider's own cost and expense) that such Unsuitable Person is not engaged or employed directly or indirectly in, or in connection with, the provision of the Service or any part of the Service by the Service Provider or any Key Sub-Contractor. The Service Provider shall comply forthwith with the terms of such notice provided that the Service Provider shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this Clause 36.15 (*Unsuitable Persons not to be engaged in the Service*).

36.16 **Service Provider's Responsibility**

Save as expressly provided in this Contract, the Service Provider shall be entirely responsible for the employment and conditions of service of its Personnel and shall procure that any Key Sub-Contractor is likewise responsible for its Personnel. The Service Provider shall carry out such checks as may be required in order to comply with sections 8 of the Asylum and Immigration Act 1996.

37. HEALTH AND SAFETY

37.1 **Health and Safety**

The Service Provider warrants that the Service Provider Health and Safety Manual has been submitted by it and is contained at Schedule 22 (*Workforce Policies, Health and Safety Manual and Quality Plans*) and the Service Provider shall comply with and shall procure that all Service Provider Parties shall comply with:

37.1.1 all applicable health and safety precautions necessary (whether required by Legislation, Codes of Practice or Guidance) for the protection of itself and all Service Provider Parties;

37.1.2 all applicable rules, regulations and requirements of statutory or regulatory authorities concerning works and fire prevention;

37.1.3 the Authority Health & Safety Policy; and

37.1.4 the Service Provider Health and Safety Manual,

provided that in the event of a conflict between the Authority Health & Safety Policy and the Service Provider Health and Safety Manual, the Authority Health & Safety Policy shall take precedence unless otherwise notified by the Authority.

37.2 When on a Work Site for the purposes of the Services,, the Service Provider shall ensure that it and all relevant Service Provider Parties are aware of and comply with the health and safety policy applicable to that Work Site.

37.3 **Reporting of Accidents and Unsafe Events**

The Service Provider shall:

- 37.3.1 ensure that all accidents to Personnel and/or members of the public which ordinarily require reporting or notification in accordance with the Health and Safety at Work Act 1974 and/or under RIDDOR shall also be reported, as soon as practicable, to the Authority where such relates in any way to the Service;
- 37.3.2 promptly, upon it becoming so aware, provide the Authority with full details of any significant unsafe event which relates in any way to the Service including without limitation any dangerous occurrences to be reported under RIDDOR; and.
- 37.3.3 shall, within ten (10) days of the relevant incident, event, accident, notification or dangerous occurrence, provide to the Authority a copy of any completed RIDDOR notification or report forms that relate to the same and/or a copy of any reports produced by the Service Provider pursuant to the Service Provider's Health and Safety Manual from time to time and/or the Authority Health and Safety Policy.

37.4 **Reasonable Instructions**

The Service Provider shall comply with, and shall procure that each Service Provider Party shall comply with:

- 37.4.1 (subject to Clause 37.5) all reasonable instructions given to it by the Authority; and
- 37.4.2 all instructions given to it by the Emergency Services,

concerning matters arising out of or connected to the Service and representing a danger to persons or property.

37.5 **Compliance with Instructions**

The Service Provider shall:

37.5.1 not be obliged to comply with any instruction of the Authority given pursuant to Clause 37.4.1 (*Reasonable Instructions*), if it is likely, in the reasonable opinion of the Service Provider, to give rise to a breach of Clause 37.1 (*Health and Safety*); and

37.5.2 immediately provide the Authority with full details of why such breach would occur together with details of the Service Provider's proposals for carrying out the Authority's instruction in an alternative way which, in the Service Provider's reasonable opinion, would not give rise to a breach of Clause 37.1 (*Health and Safety*);

37.6 **Health and Safety Documentation**

The Service Provider shall, and shall procure that all Sub-contractors shall, retain certificates, approvals, records, performance reports, report systems, controls and/or any other relevant documents relating to health and safety at work relating to or arising from the provision of the Services and in particular the performance of this Clause 37 (*Health and Safety*) and any reporting requirements under RIDDOR and shall, if reasonably requested by the Authority, provide copies to the Authority of all such certificates, approvals, records, reports, systems, controls and/or other documents.

37.7 **Monitoring Health and Safety Performance**

The Service Provider shall, and shall procure that all Sub-contractors shall, ensure that its general health and safety performance on all Work Sites is monitored and audited (either using the Service Provider's own resources or an independent third party, at the discretion of the Service Provider) and a report of such monitoring is made available to the Authority on a regular basis in accordance with the provisions paragraph 3.1(j) of Schedule 12 (*Monitoring and Reporting*).

37.8 **Authority's Obligations**

The Authority shall be responsible for the observance by itself and all Authority Parties of all applicable health and safety precautions necessary (whether required by Legislation or not) for the protection of the Authority and all Authority Parties.

37.9 **Authority**

If the Authority is of the opinion that the Service Provider is in breach of the requirements of this Clause 37 (*Health and Safety*) it may take such steps as it deems fit, including without limitation, providing information to the Executive.

38. **CDM REGULATIONS**

38.1 **CDM Regulations - Service Provider to act as Client**

In respect of the CDM Regulations:

38.1.1 in this Clause 38 (*CDM Regulations*), "**Client**", "**Health and Safety File**" and "**Principal Designer**" have the same meanings as in the CDM Regulations;

38.1.2 the Parties hereby agree that for the purposes of the CDM Regulations the Service Provider shall be treated as the only Client in respect of the Project pursuant to Regulation 4(8) of the CDM Regulations;

38.1.3 the Service Provider shall ensure that all Sub-contractors are aware of such agreement and warrants to the Authority that it is competent and has capacity to perform the duties imposed on a Client by the CDM Regulations and shall not at any time terminate, withdraw or derogate in any manner from its declaration or its acceptance of its responsibilities as Client; and

38.1.4 the Service Provider shall within five (5) Business Days of receipt from any Principal Designer appointed pursuant to the CDM Regulations deliver to the Authority the Health and Safety File.

38.2 **Compliance with CDM Regulations**

The Service Provider shall observe, perform and discharge or shall procure the observance, performance and discharge of:

- 38.2.1 all the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Project (subject to Clause 38.2.3);
- 38.2.2 any obligations incumbent on the Client under any Code of Practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work Act 1974 issued in connection with the CDM Regulations; and
- 38.2.3 notwithstanding the agreement made under Clause 38.1.2 (*CDM Regulations Service Provider to act as Client*) the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 4(8) of the CDM Regulations, to remain with the Authority and in particular Regulations 4(4), 8(4), and 8(6).

39. EMERGENCY PLANNING AND RESPONSE

39.1 The Parties shall comply with the provisions of Schedule 11 (*Emergency Planning and Response*).

39.2 Business Continuity Plan

The Service Provider shall have in place a comprehensive business continuity plan (the "**Business Continuity Plan**") throughout the Term, which shall address the following issues:

- 39.2.1 any risks that the Service Provider is able to identify which may affect the provision of the Services and/or the operations of the Service Provider, and the likelihood of the occurrence of such risks;
- 39.2.2 the potential impact on the Services and/or the operations of the Service Provider should the risks identified pursuant to Clause 39.2.1 arise;
- 39.2.3 the ongoing and reactive measures that the Service Provider shall put in place to reduce the likelihood of the occurrence of each of the risks identified pursuant to Clause 39.2.1, and/or to mitigate the impact on the Services and/or the operations of the Service Provider should such risks arise, including clear procedures and protocols for the carrying out of such measures and any necessary communication with stakeholders;

39.2.4 the resources that the Service Provider has identified to carry out the measures referred to in Clause 39.2.3

39.2.5 the procedure that the Service Provider shall carry out for the ongoing review, maintenance and refreshment of the Business Continuity Plan; and

39.2.6 plans for the resumption of Services and/or the operations of the Service Provider where these have been interrupted,

and the Service Provider warrants that the first Business Continuity Plan is set out in Schedule 39 (*Business Continuity Plan*) at the date of this Contract and has been prepared in accordance with the provisions of this Clause 39 (*Emergency planning and response*).

39.3 No later than four (4) Months prior to the commencement of each Contract Year following the first Contract Year, or, if required prior to this date within a Contract Year pursuant to the provisions of this Clause 39 (*Emergency planning and response*)), the Service Provider shall update the Business Continuity Plan in accordance with the provisions of this Clause 39 (*Emergency planning and response*) and submit the same to the Authority pursuant to the Review Procedure.

39.4 The Service Provider shall ensure that the Business Continuity Plan is co-ordinated (where appropriate) with the Authority's Business Continuity Plan, and supports as appropriate the Authority's duties pursuant to the Civil Contingencies Act 2004.

39.5 The Service Provider shall ensure that all relevant Personnel are familiar with the Business Continuity Plan, and shall carry out regular tests of the Business Continuity Plan. The Service Provider shall notify the Authority of the date and time that it will be carrying out any tests of the Business Continuity Plan no less than five (5) Business Days in advance of such tests being carried out, and the Authority shall be entitled to attend at such tests, and the Service Provider shall give comply with all reasonable requests from the Authority regarding any information or assistance that the Authority requires when attending at such tests. The Service Provider shall ensure that any such tests of the Business Continuity Plan shall not disrupt the provision of the Services nor disrupt the Authority's own operations or staff, unless Authority Approval for such disruption has been obtained.

- 39.6 The Service Provider shall update its Business Continuity Plan in accordance with the procedure identified by it pursuant to Clause 39.2.5 or, if earlier, when it becomes aware of any additional material risks or mitigation measures that ought to be addressed within its Business Continuity Plan, or where any inadequacies in the operation of the Business Continuity Plan are discovered during any tests of the Business Continuity Plan or when it has been invoked. In addition, the Service Provider shall consider and take reasonable steps to include within the Service Provider's Business Continuity Plan any additional risks or mitigation measures which have been identified by the Authority and notified to the Service Provider.
- 39.7 At the request of the Authority, the Service Provider shall provide to the Authority a copy of the Business Continuity Plan in effect at the time of the Authority's request, and written details of the results of any tests carried out.
- 39.8 The Service Provider shall allow the Authority to carry out any tests it wishes to carry out of the Business Continuity Plan or the Authority Business Continuity Plan where such tests require the involvement of the Service Provider, and shall provide all reasonable assistance to the Authority in relation to such test, provided that the Authority gives reasonable notice of its requirement to carry out such tests. In the event that the Authority and/or the Service Provider's Business Continuity Plan is invoked, the Service Provider shall provide all reasonable assistance to the Authority in the implementation of the Authority Business Continuity Plan or the Service Provider's Business Continuity Plan.
- 39.9 Where the Service Provider has invoked the Business Continuity Plan, the Service Provider shall notify the Authority as soon as reasonably practicable after such invocation, and shall include the following details:
- 39.9.1 details of the risk that has arisen or which the Service Provider considers is likely to arise, which has given rise to the Business Continuity Plan being invoked;
- 39.9.2 the measures that have been taken so far and which are to be taken by the Service Provider to reduce the likelihood of the risk occurring and/or mitigate the effects of such risk should it occur; and
- 39.9.3 the resources that have been or will be utilised by the Service Provider in taking the measures pursuant to Clause 39.9.2 above.

40. THIRD PARTY AGREEMENTS

40.1 Authority subcontracts Third Party Agreements to Service Provider

With effect from the Service Commencement Date, the Authority hereby subcontracts to the Service Provider the obligation to observe and perform all obligations of the Authority under those Third Party Agreements which contain obligations which are additional to the Services set out in the Output Specification, whether relating to areas outside of the Project Network or otherwise, (in which case the Project Network shall be amended to include those areas for the purposes of this Clause 40 (*Third Party Agreements*) only) (other than the Retained Obligations) arising after the Service Commencement Date and the Service Provider shall observe and perform the same and indemnify and (subject to Clause 66.2 (*Limitation of Liability*)) hold the Authority harmless from and against:

40.1.1 all Indemnified Liabilities arising out of or in relation to the Delegated Obligations or the performance, defective performance or failure to perform the Delegated Obligations to the extent due for performance after the Service Commencement Date; and

40.1.2 any additional costs, Claim, demands, Loss, liabilities or expenses incurred by the Authority as a result of:

40.1.2.1 the defective performance of the Service Provider or the failure of the Service Provider to observe or perform the Delegated Obligations including the Authority's internal costs of satisfying the Delegated Obligations in place of the Service Provider (where, following such failure or defective performance and in its absolute discretion it elects to do so) and a fair apportionment of the cost of any employees or other resources committed to so doing; and

40.1.2.2 the inability of the Authority to observe or perform the Retained Obligations or to exercise the Retained Rights, or any increase in the costs or expenses incurred in observing or performing the Retained Obligations, to the extent arising from the failure of the Service Provider to observe and perform the Delegated Obligations in accordance with their terms.

40.2 **Assignment of benefit of Delegated Rights to the Service Provider**

The Authority hereby assigns to the Service Provider the benefit of the Delegated Rights to the extent necessary for the Service Provider to carry out its obligations under Clause 40.1, and the Service Provider shall, if requested by the Authority perform the Delegated Rights, and the Service Provider shall observe the proper exercise of the same and indemnify and, subject to Clause 66.2 (*Limitation of Liability*) hold the Authority harmless from and against:

40.2.1 all Indemnified Liabilities arising out of or in relation to improper exercise or a failure to exercise the Delegated Rights; and

40.2.2 any additional costs, Claim, demands, Loss, liabilities or expenses incurred by the Authority as a result of:

40.2.2.1 the exercise by the Service Provider of the Delegated Rights; and

40.2.2.2 the inability of the Authority to observe or perform the Retained Obligations or to exercise the Retained Rights, or any increase in the costs or expenses incurred in observing or performing the Retained Obligations, to the extent arising from the failure of the Service Provider to exercise the Delegated Obligations in accordance with their terms and having due regard to the respective rights and obligations of the Parties under this Contract.

40.3 **Retained Obligations and Retained Rights**

The Authority shall observe and perform the Retained Obligations and shall properly exercise the Retained Rights so far as they relate to the delivery of the Services and nothing in this Contract shall have the effect of removing or otherwise prejudicing the exercise of the Retained Rights.

40.4 **Informing other parties**

The Authority shall, within fifteen (15) Business Days of the Service Commencement Date, inform each of the other parties to the Third Party Agreements in writing that the Service Provider is the assignee of the Delegated Rights and is to perform the Delegated Obligations on behalf of the Authority.

40.5 **Performance of Delegated Obligations**

The Service Provider may observe and perform the Delegated Obligations through such employees, agents or Sub-Contractors as it reasonably considers appropriate to secure the observance and performance of the same but shall not thereby be released from any obligation to the Authority under this Clause 40 (*Third Party Agreements*) or to any other party to the Third Party Agreements.

40.6 **Consistency of exercise**

Each Party shall exercise all of its rights and obligations under this Contract, whether related to the Delegated Obligations, the Delegated Rights, the Retained Obligations, the Retained Rights or otherwise, in a manner consistent with the observance and performance of the Delegated Obligations and the Retained Obligations (as appropriate) and so as not to prejudice the performance of the Delegated Rights and Retained Rights and to avoid putting the other Party in breach of either of the same.

40.7 **Authority passing on benefits of Third Party Agreements**

With effect from the Service Commencement Date, the Authority hereby passes on the benefit of the Reduced Obligations in relation to those Project Network Parts which have reduced obligations as compared to the Services set out in the Output Specification (the "**Reduced Obligation Project Network Parts**") due to the operation of those Third Party Agreements containing such reduced obligations (the "**Reduced Obligation Agreements**") from the Service Commencement Date and the Service Provider agrees to:

40.7.1 observe and perform the Reduced Obligations, and where applicable carry out such Reduced Obligations in accordance with the requirements of this Contract;

40.7.2 where the Reduced Obligation comprises an agreement for the Authority to share the cost of carrying out the obligation with a Third Party, the Service Provider shall notify the Authority within twenty (20) Business Days of carrying out such obligation (as often as such obligation is carried out) of the cost to the Service Provider (such cost to be reasonably and properly incurred by the Service Provider) of performing the obligation, with evidence of the calculation of such cost; and

40.7.3 (save where Performance Requirement 1.11(a) applies), notify the Authority and the relevant Third Party promptly (and in any event, within one (1) Business Day, except in the case of an Urgent Defect, Category 1 Defect or Urgent Fault, in which case the Service Provider must notify the relevant Third Party within one (1) hour) of any issue affecting a Reduced Obligation Project Network Part which may impact on the users of the Reduced Obligation Project Network Part or which indicates that the Third Party having obligations in relation to such Reduced Obligation Project Network Part has not carried out such obligations,

provided that the Service Provider shall never have reduced obligations in respect of the Reduced Obligation Project Network Parts in relation to:

40.7.4 traffic management;

40.7.5 Winter Maintenance Services;

40.7.6 the carrying out of Surveys, Structure Inspections and Service Provider Inspections; or

40.7.7 the obligations set out in the Output Specification in relation to the making safe of Urgent Defects,

and any other Services which are not expressly subject to a Reduced Obligation, in which case the provisions of the Output Specification shall apply.

40.8 **Carrying out work on behalf of Third Party**

Where there is an issue which the Service Provider is obliged to notify pursuant to Clause 40.7.3, and this issue remains unrectified by the Third Party within the timescale specified in the Reduced Obligation Agreement:

40.8.1 the Authority may instruct the Service Provider to rectify such issue; and

40.8.2 the Service Provider shall carry out such rectification within one (1) hour of receiving such instruction from the Authority and shall be entitled to recharge the Authority for such action in accordance with the Day Works Rates set out in Appendix 1 Part D to Schedule 7 (*Non-Core Services*).

40.9 **Termination, release, variation etc of Third Party Agreements**

Where the Authority takes any action to vary, terminate, repudiate, discharge, release, waive, settle, extend, renew or re-let any Third Party Agreement,40 or compromise or otherwise prejudice or vary any right or claim under any Third Party Agreement or purports or agrees to do any of the same, such action shall be treated as a Change, provided that where a Third Party Agreement is due to expire (whether by effluxion of time or otherwise), and where such expiry would give rise to greater or fewer obligations on the Service Provider, this shall not give rise to any Change and the Service Provider shall be required to carry out all of the relevant Services to the Project Network Part(s) that were the subject of the Third Party Agreement as are required in the Output Specification in accordance with the Method Statements.

40.10 **New Third Party Agreements**

The Service Provider shall not, without the prior written consent of the Authority, enter into with any Third Party any commitment to provide or procure for the benefit of land or buildings or for such Third Party, the provision or procurement of any works relating to the Project Network and the Service Provider shall only be permitted to seek to enter into agreements that are required in order to provide or are incidental to the Services.

40.11 **Enforcement of Third Party Agreements**

The Authority shall:

40.11.1 (subject to Clause 40.11.3) at the request of the Service Provider take such steps as the Service Provider may reasonably request to enforce the Authority's rights and powers under the Third Party Agreements to the extent reasonably required by the Service Provider to perform its obligations under this Contract;

40.11.2 permit the Service Provider, subject to the Authority's prior written consent (not to be unreasonably withheld or delayed) to engage in such negotiations and conduct such disputes with any other party to the Third Party Agreements as the Service Provider reasonably requires to perform its obligations under this Contract including by conducting such court, arbitration or other

proceedings as the Service Provider may reasonably consider necessary for such purpose; and

40.11.3 be indemnified and secured to its reasonable satisfaction by the Service Provider against all Indemnified Liabilities incurred by virtue of or in relation to such matters as are referred to in Clauses 40.11.1 and 40.11.2 above, and the Service Provider shall keep the Authority informed of the progress of any such enforcement action, negotiations, disputes or proceedings as are referred to in Clause 40.11.2,

and both Parties shall provide reasonable assistance to one another in relation to the enforcement of any rights or obligations under any Third Party Agreements.

40.12 Other Third Party Arrangements

In relation to the Third Party Arrangements set out in Part 3 of Schedule 23 (*Third Party Agreements*):

40.12.1 the Service Provider shall carry out any additional services specified therein and, to the extent that such services are outside the Project Network, the Project Network shall be amended to include those areas for the purposes of this Clause 40.11.1 only; and

40.12.2 the Service Provider shall not be required to carry out such of the Services as is specified therein to such Project Network Parts as are indicated in the Third Party Arrangements, provided that the provisions of Clauses 40.7.2, 40.7.4, 40.7.5 and 40.8 shall apply *mutatis mutandis* to the Third Party Arrangements.

41. NON-CORE SERVICES

The Service Provider shall carry out the Non-Core Services in accordance with the provisions of Schedule 7 (*Non-Core Services*) and Schedule 2 (*Output Specification*).

42. MARKET TESTING

42.1 Market Testing

At least forty (40) weeks before each Market Testing Date, the Parties shall meet together as often as may be necessary in respect of all Market Tested Services to be market tested on that date:

42.1.1 to consider any changes required to the relevant Market Tested Services;

42.1.2 to discuss and seek to agree the appropriate manner of advertising the Market Tested Services required and the means of identifying prospective tenderers;

42.1.3 to discuss and seek to agree the tender requirements which must include:

42.1.3.1 a statement of the tender validity period;

42.1.3.2 details of the tender evaluation criteria;

42.1.3.3 the terms and conditions under which the Market Tested Services will be contracted;

42.1.3.4 information relating to employees and their conditions of employment;

42.1.3.5 the information that tenderers are required to provide;

42.1.3.6 how many tenders are required for the market testing to be valid; and

42.1.3.7 whether or not an independent tender manager needs to be appointed by the Service Provider to manage the tender process (provided that, where the Service Provider or any Affiliate of the Service Provider or of Holdco will or is likely to submit a tender, the Service Provider must appoint an independent tender manager).

42.2 Grouping of Services

Unless the Service Provider can demonstrate to the Authority that best value for money is likely to be achieved for the Service Provider if the Market Tested Services are tendered separately or in particular groupings, or if any Market Tested Service is divided into separate parts, the grouping of any Market Tested Services shall be left

to the discretion of tenderers on the basis that the tender requirements shall specify that:

42.2.1 tenderers may submit tenders for all or any of the Market Tested Services; and

42.2.2 if a tenderer submits a tender for a group or groups of Market Tested Services, then it may be required to provide all or any of the services in such group or groups.

42.3 **Procurement Process and Selection of Tenderers**

The Service Provider shall carry out the procurement for the Market Tested Services in accordance with all relevant Legislation including the Public Contracts Regulations 2006 (SI 2006/5) (as such is amended, updated or replaced from time to time).

42.4 The Service Provider shall be responsible for compiling the list of prospective tenderers and selecting the tenderers from the list of prospective tenderers on the basis of their:

42.4.1 financial standing; and

42.4.2 technical and managerial experience and ability (taking into account any relevant references).

42.5 The Authority shall have a right to prevent the selection of any person as a prospective tenderer if it reasonably believes that such person does not (or could not reasonably be considered to) comply with any of the criteria referred to in Clause 42.1.3 (*Market Testing*) above.

42.6 The Authority shall, in its absolute discretion, have the right to prevent the selection of any person as a tenderer on the grounds that the prospective tenderer has committed a Prohibited Act.

42.7 The Authority shall have a right to review the list of prospective tenderers. The Service Provider shall provide the Authority with an explanation of the reasons behind the non-inclusion on the list of prospective tenderers of any person identified as suitable by the Authority, if so requested by the Authority.

- 42.8 The Service Provider shall provide any prospective tenderer which is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.
- 42.9 The Authority shall have the right to prevent the selection of a winning tenderer by the Service Provider where only one (1) tender which complies with the criteria referred to in 42.1.3 (*Market Testing*) has been received in respect of the whole or any part of the Market Tested Services, in which case any and all existing sub-contracts relating to the relevant Market Tested Services shall continue on their terms for a period specified by the Authority (not to exceed two (2) years), and a date specified by the Authority during such continuation period shall become the new Market Testing Date (and all future Market Testing Dates shall be altered so that they occur every five (5) years thereafter).
- 42.10 Subject to Clause 42.9, the Service Provider shall determine which compliant tender in respect of any Market Tested Service represents the most economically advantageous tender, by reference to the tender evaluation criteria agreed between the Parties under Clause 42.1.3 (*Market Testing*). On making this determination, the Service Provider shall supply to the Authority a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation to enable the Authority to analyse and understand the basis for the Service Provider's determination. If the Authority does not agree with the Service Provider's determination, the Authority may, within fifteen (15) Business Days of being provided with the tender evaluation, Dispute such determination and, if the Parties do not resolve such Dispute within a further fifteen (15) Business Days, the Dispute shall be dealt with pursuant to the Dispute Resolution Procedure. The Service Provider shall not notify any winning tenderer of their selection until such Dispute has been resolved pursuant to the Dispute Resolution Procedure.
- 42.11 On selection, the winning tenderer will take over the provision of the Service and the Unitary Charge should be adjusted on the basis specified in Clause 64 (*Financial Adjustments*). The Service Provider indemnifies the Authority against any Claim brought against it by any party, including any losing tenderer, as a result of any market testing carried out by the Service Provider.

42.12 **Electricity Market Testing**

The Service Provider shall undertake the Electricity Market Test in accordance with Clause 57 (*Electricity Procurement*) and Schedule 9 (*Electricity Market Test*).

42.13 The provisions of Clauses 42.1 to 42.11 (inclusive) shall not have effect unless and until agreed by the Parties in writing.

43. BEST VALUE AND CONTINUOUS VALUE FOR MONEY

The provisions of Schedule 33 (*Best Value*) shall apply in relation to Best Value.

PART H - MONITORING AND REPORTING

44. OBLIGATION TO MONITOR AND REPORT

44.1 **Compliance with Schedule 12**

The Service shall be monitored in accordance with the provisions of Schedule 12 (*Monitoring and Reporting*). The Parties shall establish a Service Operations Board and a Management Board which shall be operated in accordance with the provisions of Schedule 12 (*Monitoring and Reporting*).

44.2 **Rights of Access**

The Authority or a representative of the Authority may:

44.2.1 enter upon any property used by the Service Provider to perform the Service, to inspect the manufacture, installation, operation and maintenance of the Project Network Parts and to monitor compliance by the Service Provider with its obligations;

44.2.2 at all times enter upon any property used by the Service Provider as training or workshop facilities and places where work is being prepared or materials being obtained for the Project, and

44.2.3 the Authority and its representatives shall at all times comply with any health and safety requirements when exercising its rights under this Clause 44.2 (*Rights of Access*).

44.3 **Service Provider Co-Operation**

44.3.1 The Service Provider shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of Clause 44.2 (*Rights of Access*) above, subject to the manufacturing, installation or operational requirements of the Service Provider and any relevant First Tier Sub-Contractor not being adversely affected and the reimbursement of any reasonable costs or expenses of the Service Provider or First Tier Sub-Contractor;

44.3.2 If the Authority or its representative causes material damage to any Asset in exercising any right under Clauses 44.2 (*Rights of Access*) or 44.3 (*Service Provider Co-Operation*), then the Authority shall be liable to the Service Provider for the reasonable costs directly caused by such damage.

45. STRATEGIC BOARD

The Parties shall establish a Strategic Board which shall be operated in accordance with the provisions of Schedule 32 (*Strategic Board*).

PART I - SUPERVENING EVENTS

46. RELIEF EVENTS

46.1 Relief Events

If and to the extent that a Relief Event:

46.1.1 is the direct cause of a delay in the achievement of the Planned Service Commencement Date or, following the Planned Service Commencement Date, delay in achieving Service commencement by the Long Stop Date, or a Milestone by a Planned Milestone Determination Date, the Planned CIP Completion Date and/or the CIP Long Stop Date; and/or

46.1.2 adversely affects the ability of the Service Provider to perform any of its obligations under this Contract,

then the Service Provider is entitled to apply for relief from any rights of the Authority arising under Clause 73 (*Service Provider Default*).

46.2 Procedure - Relief Events

To obtain relief, the Service Provider must:

- 46.2.1 as soon as practicable, and in any event within ten (10) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its other obligations, give to the Authority a notice of its Claim for relief from its obligations under the Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- 46.2.2 within five (5) Business Days of receipt by the Authority of the notice referred to in Clause 46.2.1 (*Procedure - Relief Events*) above, give full details of the relief claimed; and
- 46.2.3 demonstrate to the reasonable satisfaction of the Authority that:
 - 46.2.3.1 the Service Provider and/or any Service Provider Party could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - 46.2.3.2 the Relief Event directly caused the delay to the achievement of the Planned Service Commencement Date or, following the Planned Service Commencement Date, delay in achieving Service commencement by the Long Stop Date, or a Milestone by a Planned Milestone Determination Date, the Planned CIP Completion Date and/or the CIP Long Stop Date;
 - 46.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - 46.2.3.4 the Service Provider is using reasonable endeavours to perform its obligations under the Contract.

46.3 **Effect of a Relief Event**

In the event that the Service Provider has complied with its obligations under Clause 46.2 (*Procedure - Relief Events*) above, then:

- 46.3.1 the Planned Service Commencement Date or, following the Planned Service Commencement Date, the Long Stop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
- 46.3.2 the Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 73 (*Service Provider Default*);
- 46.3.3 nothing in these Clauses 46.1 (*Relief Events*) to 46.3 (*Effect of a Relief Event*) shall affect any entitlement of the Authority to make an Adjustment in accordance with Schedule 4 (*Payment Mechanism*) during the period in which the Relief Event is subsisting;
- 46.3.4 in the event that information required by Clause 46.2.1 (*Procedure - Relief Events*) is provided after the dates referred to in that Clause, then the Service Provider shall not be entitled to any relief during the period for which the information is delayed;
- 46.3.5 the Service Provider shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading;
- 46.3.6 if the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Service Provider is entitled to any extension to the Planned Service Commencement Date and/or the Long Stop Date, the Parties shall resolve the matter pursuant to the Dispute Resolution Procedure.

47. COMPENSATION EVENTS

47.1 Compensation Events

If, as a direct result of the occurrence of a Compensation Event:

47.1.1 the Service Provider is unable to achieve the Planned Service Commencement Date or, following the Planned Service Commencement Date, delay in achieving Service commencement by the Long Stop Date, or a Milestone by a Planned Milestone Determination Date, the Planned CIP Completion Date and/or the CIP Long Stop Date;

47.1.2 the Service Provider is unable to comply with its obligations under this Contract; and/or

47.1.3 the Service Provider incurs costs or loses revenue,

then the Service Provider is entitled to apply for relief from its obligations and/or claim compensation under this Contract.

47.2 Procedure - Compensation Events

Subject to Clause 47.3.7 (*Effect of Compensation Event*), to obtain relief and/or claim compensation the Service Provider must:

47.2.1 as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Service Provider to incur costs or lose revenue, give to the Authority a notice of its Claim:

47.2.1.1 for an extension of time to the Planned Service Commencement Date and/or or, following the Planned Service Commencement Date, the Long Stop Date; and/or

47.2.1.2 payment of compensation; and/or

47.2.1.3 relief from its obligations under the Contract;

47.2.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in Clause 47.2.1 (*Procedure - Compensation Events*), give full details of the Compensation Event and the extension of time and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and

47.2.3 demonstrate to the reasonable satisfaction of the Authority that:

47.2.3.1 the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in the achievement of the Planned Service Commencement Date or, following the Planned Service Commencement Date, the Long Stop Date, the relevant Planned Milestone Determination Date, the Planned CIP Completion Date and/or the CIP Long Stop Date and/or breach of the Service Provider's obligations under this Contract; and

47.2.3.2 the Estimated Change in Project Costs and/or loss of revenue, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice.

47.3 **Effect of Compensation Event**

In the event that the Service Provider has complied with its obligations under Clause 47.2 (*Procedure - Compensation Events*):

47.3.1 in the case of a delay, the Planned Service Commencement Date or, following the Planned Service Commencement Date, the Long Stop Date, shall be postponed by such time as is reasonable for such a Compensation Event, taking into account the likely effect of the delay;

47.3.2 subject to Clause 47.3.3A, in the case of an additional cost being incurred or revenue being lost by the Service Provider as a result of Capital Expenditure being incurred by the Service Provider at any time, the Authority shall compensate the Service Provider for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated), within twenty (20) Business Days of receipt of a written demand by the Service Provider supported by all relevant

information and, in such case, the Authority shall be entitled, at its option, to pay such Capital Expenditure either as a lump sum or by way of a revision of the Unitary Charge in accordance with Clause 47.3.10 below;

47.3.3 subject to Clause 47.3.3.A, in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue that does not result in Capital Expenditure being incurred by the Service Provider but which reflects a change in the costs being incurred by the Service Provider after the Service Commencement Date or relevant Planned Milestone Determination Date, the Authority shall compensate the Service Provider in accordance with Clause 47.3.10 below by an adjustment to the Unitary Charge;

47.3.3A [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

47.3.4 the Authority shall give the Service Provider such relief from its obligations under this Contract as is reasonable for such a Compensation Event, provided always that the Service Provider shall never be entitled to relief from its obligations in respect of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

47.3.5 the Authority shall not be entitled to exercise its rights to terminate this Contract under Clause 73 (*Service Provider Default*) as a result of the Compensation Event;

- 47.3.6 the Service Provider shall not incur Milestone Default Termination Points if no Milestone Default Termination Points would have been awarded but for the occurrence of the Compensation Event;
- 47.3.7 in the event that information is provided after the dates referred to in Clause 47.2.2 (*Procedure - Compensation Events*), then the Service Provider shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the information is delayed;
- 47.3.8 if the Parties cannot agree the extent of any compensation, delay incurred, relief from the Service Provider's obligations under this Contract or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Service Provider is entitled to any relief under this Clause 47.3 (*Effect of Compensation Event*), the Parties shall resolve the matter pursuant to the Dispute Resolution Procedure;
- 47.3.9 without prejudice to Clause 67 (*Insurance*), the Service Provider shall not be entitled to any payment which would not have been due under this Contract but for this Clause 47 (*Compensation Events*) to the extent that the Service Provider is or should be able to recover under any policy of insurance required to be maintained by the Service Provider or any Service Provider Party in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Service Provider (or any Service Provider Party) including non-disclosure or under-insurance) or any policy of insurance which the Service Provider has taken out and maintained;
- 47.3.10 any payment of compensation referred to in Clauses 47.3.2 or 47.3.3 (*Effect of Compensation Event*) (as applicable) above shall be calculated in accordance with Schedule 5 (*Base Case*).

48. EXCUSING CAUSES

48.1 Excusing Causes

- 48.1.1 If as a direct result of an Excusing Cause:

48.1.1.1 the Service Provider is unable to achieve the Planned Service Commencement Date or, following the Planned Service Commencement Date, delay in achieving Service commencement by the Long Stop Date, or a Milestone by a Planned Milestone Determination Date, the Planned CIP Completion Date and/or the CIP Long Stop Date; and/or

48.1.1.2 the Service Provider is unable to comply with its obligations under this Contract,

48.1.1.3 the Service Provider shall be entitled:

- (a) save (in relation to Excusing Cause limbs (a) to (h) and (j) to (q)) where the Excusing Cause has been caused by any act or omission of the Service Provider or any Service Provider Party; and
- (b) save (in relation to Excusing Cause limb (i)) where the Excusing Cause has been caused by a deliberate or negligent act or deliberate or negligent omission of the Service Provider,

to apply for relief from its obligations and from Adjustments being made to the Unitary Charge under this Contract.

48.1.2 In the event that the Service Provider or a Service Provider Party has contributed to the Excusing Cause, the Service Provider's entitlement to relief shall be reduced by an amount proportional to such contribution to the Excusing Cause.

48.2 Procedure - Excusing Causes

Subject to Clause 48.3 (*Effect of Excusing Cause*), to obtain relief the Service Provider shall:

48.2.1 as soon as practicable, and in any event not later than ten (10) Business Days after it became aware that the Excusing Cause has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its obligations under this Contract, give to the Authority a notice of its Claim:

48.2.1.1 for relief against Adjustments as appropriate and/or relief from its obligations under this Contract; and/or

48.2.1.2 for an extension of time to the Planned Service Commencement Date and/or or, following the Planned Service Commencement Date, the Long Stop Date;

48.2.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in Clause 48.2.1 (*Procedure - Excusing Causes*), give full details of the Excusing Cause and the extensions of time and/or any relief claimed;:

48.2.3 demonstrate to the reasonable satisfaction of the Authority that:

48.2.3.1 the Service Provider and/or any Service Provider Party could not have avoided such occurrence or consequences by steps which they must reasonably be expected to have taken without incurring material additional cost; and

48.2.3.2 the Excusing Cause was the direct cause of the Service Provider being unable to perform the Services or any of its other obligations under this Contract without incurring material additional cost; and

48.2.3.3 the time lost and/or relief from the obligations under this Contract claimed sought could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice; and

48.2.3.4 the Service Provider is using reasonable endeavours to perform its obligations under this Contract.

48.3 **Effect of Excusing Cause**

In the event that the Service Provider has complied with its obligations under Clause 48.2 (*Procedure - Excusing Causes*):

48.3.1 the Planned Service Commencement Date or, following the Planned Service Commencement Date, the Long Stop Date, shall be postponed by such time as is reasonable for such an Excusing Cause, taking into account the likely effect of the delay;

48.3.2 the Authority shall not be entitled to exercise its rights to terminate this Contract under Clause 73 (*Service Provider Default*) as a result of the Excusing Cause;

48.3.3 (subject to Clause 48.3.5) the Authority shall not be entitled to make Adjustments which will reduce the Monthly Unitary Charge under Schedule 4 (*Payment Mechanism*) arising as a result of the Excusing Cause for the period during which the Excusing Cause is subsisting;

48.3.4 the Authority shall make Adjustments which will increase the Monthly Unitary Charge which would have been due under Schedule 4 (*Payment Mechanism*) had the Excusing Cause not been in subsistence for the period during which the Excusing Cause is subsisting;

48.3.5 the Service Provider shall not incur Milestone Default Termination Points if no Milestone Default Termination Points would have been awarded but for the occurrence of the Excusing Cause;

48.3.6 the Authority shall give the Service Provider such relief as is reasonable for the relevant Excusing Cause provided always that the Service Provider shall never be entitled to relief from its obligations in respect of:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

48.4 In the event that information is provided after the dates required by Clause 48.2 (*Procedure - Excusing Causes*), then the Service Provider shall not be entitled to any extension of time or relief from its obligations or Adjustments and the Authority will not be obliged to make any Adjustments which will increase the Unitary Charge in respect of the period for which the information is delayed.

- 48.5 If the Parties cannot agree:
- 48.5.1 the extent of any delay incurred;
 - 48.5.2 the relief from the Service Provider's obligations under this Contract;
 - 48.5.3 the relief from any Adjustments which should be made under Schedule 4 (*Payment Mechanism*); or
 - 48.5.4 whether an Excusing Cause has occurred;
 - 48.5.5 that the Service Provider is entitled to any relief under this Clause 48.3 (*Effect of Excusing Cause*),
- the matter shall be determined pursuant to the Dispute Resolution Procedure.

48.6 Without prejudice to 67 (*Insurance*) and notwithstanding the provisions of Clause 48.3 (*Effect of Excusing Cause*) the Authority shall be entitled to:

- 48.6.1 grant no relief to the Service Provider pursuant to Clause 48.3 (other than relief granted to the Service Provider pursuant to Clause 48.3.2); and/or
- 48.6.2 make Adjustments under Schedule 4 (*Payment Mechanism*) arising as a result of the Excusing Cause,

where and to the extent that the Service Provider is or should be able to recover the loss occasioned to it by such failure to grant relief and/or such Adjustment (as the case may be) under any policy of insurance required to be maintained by the Service Provider or any Service Provider Party in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Service Provider (or any Service Provider Party), including non-disclosure or under-insurance) or any other policy of insurance which the Service Provider has taken out and maintained.

49. HIGHWAYS WORKS AUTHORITY

49.1 Major HWA Works, Standard HWA Works and Small HWA Works

- 49.1.1 Within ten (10) Business Days of the Authority completing any Small HWA Works, Standard HWA Works or Major HWA Works (as the case may be) on

the Project Network, the Authority shall serve an Authority Notice of Accrual or De-Accrual (as applicable) on the Service Provider and thereafter the provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) shall apply.

49.1.2 Where the carrying out of any Major HWA Works, Standard HWA Works or Small HWA Works affects the provision of the Services by the Service Provider in accordance with the requirements of this Contract, [REDACTED]

PART J - CHANGE

50. ACCRUAL AND DE-ACCRUAL OF PROJECT NETWORK PARTS

- 50.1 The provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) shall apply in relation to the Accrual and De-Accrual of Project Network Parts. The Parties acknowledge and agree that the Authority is not obliged to invoke the provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) and may, if it requires (at its sole discretion) Accrue or De-Accrue Project Network Parts pursuant to Schedule 18 (*Change Protocol*).
- 50.2 The Authority shall not be permitted to invoke the provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) in respect of matters that fall within the definition of High Value Change.
- 50.3 The Parties agree and acknowledge that the addition or removal of any Project Network Parts by the Service Provider as a result of the carrying out of the Services shall not constitute an Accrual or De-Accrual for the purposes of this Contract and shall not be subject to the provisions of Schedule 19 (*Accrual and De-Accrual of Project Network Parts*), save where such addition or removal has been carried out as a Non-Core Service, in which case the Authority may Accrue or De-Accrue any relevant Project Network Parts pursuant to Schedule 19 (*Accrual and De-Accrual of Project Network Parts*).

51. AMENDMENTS TO THE METHOD STATEMENTS

Amendments

51.1 The provisions of the Review Procedure shall apply to the amendment of all or any of Schedule 3 (*Method Statements*).

51.2 Where an amendment is made to a Method Statement (whether by addition, modification, deletion or otherwise) which causes or will cause the Service Provider's costs or those of a Key Sub-Contractor to decrease and/or will result in a reduction in maintenance costs (such costs being net of any increase in income and aggregated in respect of any relevant Service Provider Party affected by such amendment):

[REDACTED]

[REDACTED]

51.3 Where an amendment is made to a Method Statement (whether by addition, modification, deletion or otherwise) which causes or will cause the Service Provider's costs or those of a Key Sub-Contractor to increase and/or will result in an increase in maintenance costs:

51.3.1 where such amendment is proposed by the Service Provider or where Clause 51.3.2 does not apply, there shall be no adjustment to the Unitary Charge; and

51.3.2 where such amendment is proposed by the Authority and the increase in costs is of a material nature, the amendment shall be dealt with as a Change and the provisions of Schedule 18 (*Change Protocol*) shall apply.

52. CHANGES TO THE SERVICE

52.1 Change

Subject to Clause 41 (*Non-Core Services*) and Clause 50 (*Accrual and De-Accrual of Project Network Parts*), either Party may request a Change in accordance with the provisions of Schedule 18 (*Change Protocol*).

53. CHANGE IN LAW

53.1 Occurrence of Change in Law

The Service Provider shall take all steps necessary to ensure that the Service is performed in accordance with the terms of this Contract following any Change in Law.

53.2 Qualifying Change in Law - Notification Procedure

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects and as soon as practicable thereafter the Service Provider shall, in writing, give written details of its opinion of:

53.2.1 any necessary change in Service;

53.2.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

53.2.3 whether relief from compliance with obligations is required, including the obligation of the Service Provider to achieve the Planned Service Commencement Date and/or any Planned Milestone Determination Date and/or meet the provisions of Schedule 2 (*Output Specification*) during the implementation of any relevant Qualifying Change in Law;

53.2.4 any loss of revenue that will result from the relevant Qualifying Change in Law;

53.2.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and

53.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Term,

in each case giving in full detail the procedure for implementing the change in Service. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with Clauses 53.3 (*Parties to Discuss*) to 53.6 (*Cost Sharing Schedule*) (inclusive).

53.3 **Parties to Discuss**

As soon as practicable after receipt of the notice from either Party pursuant to Clause 53.2 (*Qualifying Change in Law - Notification Procedure*), the Parties shall discuss and agree the issues referred to in Clause 53.2 (*Qualifying Change in Law - Notification Procedure*), and any ways in which the Service Provider can mitigate the effect of the Qualifying Change in Law, including:

- 53.3.1 providing evidence that the Service Provider has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige the Key Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 53.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Service Provider;
- 53.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
- 53.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain the Project Network Parts that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 53.2.5 (*Qualifying Change in Law - Notification Procedure*) and/or 53.2.6 (*Qualifying Change in Law - Notification Procedure*).

53.4 **Change Agreed**

53.4.1 If the Parties agree or it is determined pursuant to the Dispute Resolution Procedure that the Service Provider is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Service Provider's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this Clause 53 (*Change in Law*)), then the Service Provider shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Lenders.

53.4.2 The Service Provider's Share shall be solely for the account of the Service Provider and shall be calculated in accordance with Clause 53.6 (*Cost Sharing Schedule*).

53.5 **Financing**

53.5.1 If the Service Provider has used reasonable endeavours to obtain funding for Capital Expenditure referred to in Clause 53.4 (*Change Agreed*) but has been unable to do so within forty (40) Business Days of the date of that agreement or determination in Clause 53.4 (*Change Agreed*) occurred, then the Authority shall pay to the Service Provider an amount equal to that Capital Expenditure on or before the date falling twenty (20) Business Days after the Capital Expenditure has been incurred.

53.5.2 Any compensation payable under this Clause 53 (*Change in Law*) by means of an adjustment to or reduction in the Unitary Charge shall be determined and made in accordance with Schedule 5 (*Base Case*).

53.6 **Cost Sharing Schedule**

All additional Capital Expenditure incurred in implementing a change to the Service which has been agreed or determined to be necessary pursuant to Clause 53.3 (*Parties to Discuss*) following a Qualifying Change in Law under paragraph (c) of the definition of Qualifying Change in Law shall be addressed in accordance with Table 2. The Authority shall have responsibility for and bear the amounts in the column headed *Cumulative Capital Expenditure* which do not fall to the account of the Service Provider as part of the Service Provider's Share.

Table 2



and for the avoidance of doubt, this Clause 53.6 (*Cost Sharing Schedule*) and Table 2 do not apply (and the Authority shall not be obliged to bear the cost of) to any Cumulative Capital Expenditure if the General Change in Law is a foreseeable Change in Law.

54. CHANGE IN HIGHWAY STANDARDS

54.1 Either Party may notify the other Party of a Change in Highway Standards that does not constitute a Change in Law and following such notification the Service Provider shall provide to the Authority within a reasonable time specified by the Authority (acting reasonably) (where the Authority gives the notification referred to above) or specified by the Service Provider (acting reasonably) (where the Service Provider gives the notification referred to above) (at the Service Provider's cost) a notice setting out:

54.1.1 what the Change in Highway Standards comprises:

54.1.2 a plan of how the Service Provider would implement the proposed Change in Highway Standards including any changes to Schedule 3 (*Method Statements*), provided always that the Service Provider is under an obligation to propose only such changes to Schedule 3 (*Method Statements*) as are necessary and would not give rise to one of the limbs of rejection set out in Paragraph 3 of Schedule 21 (*Review Procedure*);

54.1.3 the cost and/or savings of implementing the proposed Change in Highway Standards including proposals as to how to minimise any cost and/or maximise any savings of implementation;

54.1.4 the best estimate of the net cost (being the cost of implementation less the savings identified pursuant to Clause 54.1.3 above) of implementing the proposed Change in Highway Standards;

54.1.5 the earliest practical date by which the proposed change in Highway Standards could be implemented or the best estimated date thereof (the ‘Proposed Implementation Date’);

54.1.6 whether or not (in the Service Provider's opinion (acting reasonably)):

54.1.6.1 the best estimate of the net cost of implementing the proposed Change in Highway Standards [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and/or

54.1.6.2 the best estimate of the net cost of implementing such proposed Change in Highway Standards would result in the Service Provider incurring an aggregate net cost of implementing proposed Changes in Highway Standards [REDACTED]

[REDACTED]

[REDACTED]

54.2 Where it is identified in the notice referred to in Clause 54.1 (*Change in Highway Standards*) that the best estimate of the net cost of implementing the proposed Change in Highway Standards does not exceed each of the financial thresholds identified in Clause 54.1.6 (*Change in Highway Standards*) then, within thirty (30) Business Days of the receipt of such notice, the Authority shall notify the Service Provider of whether it requires the Service Provider to implement the proposed Change in Highway Standards and the date from which the Authority requires the Service Provider to implement the proposed Change in Highway Standards (which shall be no earlier than the Proposed Implementation Date).

54.3 If the Authority notifies the Service Provider that it requires the Service Provider to implement the proposed Change in Highway Standards pursuant to Clause 54.2 (*Change in Highway Standards*), the Service Provider shall implement such Change in Highway Standards from the date specified by the Authority in Clause 54.2 and at no additional cost to the Authority.

54.4 Where it is identified in the notice referred to in Clause 54.1 (*Change in Highway Standards*) that the best estimate of the net cost of implementing the Change in Highway Standards exceeds either one of the financial thresholds identified in

Clause 54.1.6 (*Change in Highway Standards*), then within thirty (30) Business Days of the date of receipt by the Authority of such notice, the Authority shall notify the Service Provider of whether it requires the Service Provider to implement the proposed Change in Highway Standards and the date from which the Authority requires the Service Provider to implement the proposed Change in Highway Standards (which shall be no earlier than the Proposed Implementation Date).

54.5 If the Authority notifies the Service Provider that it requires the Service Provider to implement the proposed Change in Highway Standards pursuant to Clause 54.4 (*Change in Highway Standards*), the Authority shall issue an Authority Change Notice within twenty (20) Business Days of the date of receipt of the notice referred to in Clause 54.4 (*Change in Highway Standards*) and the provisions of Schedule 18 (*Change Protocol*) shall apply.

54.6 If the Authority determines that it does not require the Service Provider to implement a proposed Change in Highway Standards (whether pursuant to Clause 54.2 (*Change in Highway Standards*) or Clause 54.4, such proposed Change in Highway Standards shall not be deemed to be a Change in Highway Standards (for the purposes of this Contract) and the Service Provider shall continue to comply with the Highway Standards as if such proposed Change in Highway Standards had not occurred.

54.7 Notwithstanding any other provision of this Contract, any increased costs incurred as a result of changes in burning hours which result from a change from EAC to PECU as the measurement of usage shall be paid for by the Service Provider and shall not be a Qualifying Change in Law.

54.8 **Change in BSCP 520**

In the event of any change in the Balancing and Settlement Code Procedure 520 or the rates shown in such code, the Service Provider shall prepare and submit to the Authority a plan setting out its proposals to mitigate any related costs to the Authority under this Contract. If the Authority requires the Service Provider to make any changes in the provision of the Service and/or there is an effect on the Adjusted Forecast Electricity, such changes and/or effects shall be deemed to be an Authority Change and the provisions of Schedule 18 (*Change Protocol*) shall apply.

55. CHANGE IN AUTHORITY POLICIES

55.1 Authority Policies

Any change to the Authority Policies which requires a change to the Service shall be treated as an Authority Change pursuant to Schedule 18 (*Change Protocol*) except where a change to the Authority Policies arises as a result of:

55.1.1 a Change in Law (in which case the provisions of Clause 53 (*Change in Law*) shall apply); or

55.1.2 a change to Good Industry Practice (in which case any required change to the Services shall be implemented by the Service Provider without any adjustment to the Unitary Charge).

PART K - FINANCIAL

56. PAYMENT AND FINANCIAL MATTERS

56.1 Calculating the Monthly Payment

The Authority shall, from the Service Commencement Date, as consideration for the performance of the Service, pay the Service Provider in accordance with the provisions of this Clause 56 (*Payment and Financial Matters*).

56.2 Payment

For each Month (subject to the provisions of Clause 56.13 (*Payment for the final Month of the Term*)), the Authority shall pay the Service Provider or the Service Provider shall pay the Authority the Monthly Payment, such payment to be made in accordance with Clauses 56.3 (*No Additional Payment*) to 56.15 (*Interest on Late Payments*) (inclusive).

56.3 No Additional Payment

Save as expressly set out in this Contract the Service Provider shall have no entitlement to receive any payment from the Authority, and shall not make any claim against the Authority, in respect of reimbursement of any costs or expenses suffered or to be suffered or incurred by the Service Provider.

56.4 **Draft Monthly Payment Report**

No more than five (5) Business Days before the first day of each Month, the Service Provider shall deliver to the Authority a Draft Monthly Payment Report containing the information required for the purposes of the calculation (as set out in Paragraph 3.1 of Schedule 4 (*Payment Mechanism*)) of the Monthly Payment in respect of that Month. The Service Provider shall ensure that pursuant to paragraph 3.6 of Schedule 12 the Draft Monthly Payment Report reflects the content of the Monthly Monitoring Report provided to the Authority in the previous Month or as amended by the Service Operations Board Meeting minutes pursuant to paragraph 3.7 of Schedule 12.

56.5 **Response to Payment Report**

The Authority shall respond to each Draft Monthly Payment Report no later than five (5) Business Days after the date of receipt by the Authority of such Draft Monthly Payment Report. The Parties shall discuss the contents of the Authority's response and to discuss (as appropriate) any Disputes, including any Disputed Amounts relating to the calculation or payment of the Monthly Payment as contained within the Draft Monthly Payment Report at the Management Board Meeting held pursuant to Paragraph 4.1 of Schedule 12 (*Monitoring and Reporting*) which shall be held no later than five (5) Business Days after receipt of the Authority's response under this Clause, and:

56.5.1 where, as a result of the Management Board Meeting, the Parties resolve and agree that the Disputed Amounts in relation to the Monthly Payment being discussed were erroneous and should be corrected by an addition or subtraction (as appropriate) from the following Month's invoice (a "**Correction**"), the Service Provider shall include an addition or subtraction (as appropriate) pertaining to each Correction for an amount representing each Correction as agreed between the Parties in the Actual Monthly Payment Report pursuant to Clause 56.6 (*Actual Monthly Payment Report*);
or

56.5.2 in the event that the Parties have not reached a resolution as to the status of the Disputed Amounts, the Disputed Amounts shall remain outstanding and the Service Provider shall subtract from the Actual Monthly Payment Report pursuant to Clause 56.6 (*Actual Monthly Payment Report*); an amount representing each outstanding Disputed Amount.

56.6 **Actual Monthly Payment Report**

No later than five (5) Business Days after the Management Board Meeting, the Service Provider shall send the Actual Monthly Payment Report, such report to be in the form and containing the content agreed by the Parties, and which shall include:

56.6.1 any amounts which have been agreed or determined as being Corrections pursuant to Clause 56.5.1 (*Response to Payment Report*) from the Draft Monthly Payment Report; and

56.6.2 the subtraction of any Disputed Amounts which had been raised but which remained unresolved prior to the Actual Monthly Payment Report in accordance with Clause 56.5.2 (*Response to Payment Report*), which shall not be included in any invoice until the inclusion of such Disputed Amounts has been agreed or determined pursuant to Clauses 56.8 to 56.10 inclusive,

and either:

56.6.3 the Service Provider shall send an invoice to the Authority with the Actual Monthly Payment Report which shall be for the amount contained within the Actual Monthly Payment Report; or

56.6.4 the Authority shall send an invoice to the Service Provider within five (5) Business Days of receipt of the Actual Monthly Payment Report from the Service Provider for the amount contained in that Report,

as shall be applicable, in each case such invoice shall be for the amount due in respect of the Month to which the Actual Monthly Payment Report relates.

56.7 **Invoice**

Any sum set out in the invoice issued by either Party pursuant to Clause 56.6 (*Actual Monthly Payment Report*) shall become due and payable by the receiving Party by the later of ten (10) Business Days from the date of receipt of the invoice or the last Business Day of the Month to which the invoice relates.

56.8 **Disputed Amounts**

If either Party, in good faith, disputes any amounts which are the subject of a report provided pursuant to Clause 56.4 (*Draft Monthly Payment Report*) (the "**Disputed**

Amounts") the relevant Party shall notify the other Party of such Disputed Amounts pursuant to Clause 5 (*Response to Payment Report*) and the relevant Dispute shall be resolved in accordance with the provisions of Clause 5 (*Response to Payment Report*) and Clause 56.9 (Dispute Resolution).

56.9 **Dispute Resolution**

Without prejudice to either Party's rights under the Dispute Resolution Procedure the Parties shall use all reasonable endeavours to reach agreement in respect of any Disputed Amount, including by the performance of the procedure set out in Clause 56.5 (*Response to Payment Report*). Unless agreed otherwise by both Parties, if agreement has not been reached in relation to the Disputed Amount, either Party may refer the Disputed Amount to be considered at the Second Management Level of the process set out in Clause 83 (*Informal Resolution of Disputes*). If the Second Management Level is unable to resolve the Disputed Amount within five (10) Business Days of such referral, then either Party may refer the Disputed Amount to be considered at the Third Management Level of the process set out in Clause 83 (*Informal Resolution of Disputes*). If the Third Management Level is unable to resolve the Disputed Amount within ten (10) Business Days of any such referral then the Dispute shall be referred to the Dispute Resolution Procedure.

56.10 **Adjustment of Monthly Payment**

Any Disputed Amount which is agreed or determined to be payable under Clause 56.9 (*Dispute Resolution*) shall be included in the next Draft Monthly Payment Report following such agreement or determination (or earlier as the paying Party may in its discretion decide).

56.11 **Amounts overpaid, underpaid or wrongfully paid by a Party**

In respect of any amounts overpaid, underpaid or wrongfully paid or wrongfully deducted by a Party which are not Disputed Amounts:

56.11.1 either Party may at any time recover from the other Party or deduct from or add to a future Monthly Payment any amount agreed or determined by the Parties to have been overpaid, underpaid, wrongfully paid or wrongfully deducted for any reason including mistake of law or of fact;

56.11.2 each Party shall notify, in writing, the other Party of any payment which it considers to have been overpaid, underpaid, wrongfully paid, or wrongfully deducted, providing reasonable details of all relevant amounts and an explanation of why that Party considers that such amounts have been overpaid, underpaid, wrongfully paid or deducted. If the other Party does not dispute all or any of such amount within thirty (30) Business Days of being notified in accordance with this Clause 56.11 (*Amounts overpaid, underpaid or wrongfully paid by a Party*), such amount shall be included in the calculation of the next Monthly Payment, (and be paid in accordance with Clauses 56.4 (*Draft Monthly Payment Report*) to 56.6 (*Actual Monthly Payment Report*) (inclusive)) or paid earlier at the paying Party's discretion;

56.11.3 where all or any amounts referred to in Clauses 56.11.1 (*Amounts overpaid, underpaid or wrongfully paid by a Party*) and 56.11.2 are disputed and the Parties (acting in good faith) are unable to agree, such Dispute shall be resolved pursuant to the Dispute Resolution Procedure and following determination, the relevant sum shall be included in the calculation of the following Monthly Payment (and be paid in accordance with Clauses 56.4 (*Draft Monthly Payment Report*) to 56.6 (*Actual Monthly Payment Report*) (inclusive)) or paid earlier at the paying Party's discretion;

56.11.4 interest shall be payable (by the paying Party) at the Prescribed Rate on any amount agreed or resolved to be payable pursuant to this Clause 56.11 (*Amounts overpaid, underpaid or wrongfully paid by a Party*) from the date on which the paying Party first had the benefit of such amount up to and including the due date for payment of the agreed or determined sum or the date paid, if earlier than the due date. If the paying Party does not pay any amount agreed or determined to be payable pursuant to this Clause 56.11 (*Amounts overpaid, underpaid or wrongfully paid by a Party*) by the relevant date referred to in Clause 56.11.2 (*Amounts overpaid, underpaid or wrongfully paid by a Party*), interest shall be payable in accordance with Clause 56.15 (*Interest on Late Payments*).

56.12 **Set off**

The Service Provider shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the

Service Provider under this Contract which has fallen due and payable against any amount due to the Service Provider under this Contract or paid by the Authority on the Service Provider's behalf pursuant to any Project Document or Ancillary Document, provided that:

56.12.1 if the payment or deduction of any amount referred to above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure;

56.12.2 except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Clause 67.4 (*Uninsurable Risks*), Clause 72 (*Voluntary Termination by the Authority*), Clause 73.6 (*Termination by the Authority for Breach of the Refinancing Provisions*), Clause 75 (*Termination for Corrupt Gifts and Fraud*), Clause 76 (*Termination Following a Force Majeure Event*) (as calculated in accordance with Clause 80 (*Compensation on Termination*) save to the extent that after such an amount has been set off, the Authority Default Termination Sum or the Termination Sum would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

56.13 **Payment for the final Month of the Term**

The following provisions shall apply to payment of the Monthly Payment for the final Month of the Term:

56.13.1 the Draft Monthly Payment Report which includes the Monthly Unitary Charge for the final Month of the Term (as calculated in accordance with Schedule 4 (*Payment Mechanism*)) shall be produced by the Service Provider and made available to the Authority as soon as possible (but no later than two (2) Months) after the end of the Term. The Draft Monthly Payment Report will include all information identified in Schedule 4 (*Payment Mechanism*) for both the final and penultimate Months of the Term;

56.13.2 the Parties shall meet to discuss the Draft Monthly Payment Report within five (5) Business Day of receipt of the Draft Monthly Payment Report, and shall discuss any Disputed Amounts that have been raised by either Party.

Where, as a result of the meeting held pursuant to this Clause 56.13.2, the Parties resolve and agree that the Disputed Amounts in relation to the Draft Monthly Payment Report being discussed were erroneous and should be corrected by an addition or subtraction (as appropriate) from the Actual Monthly Payment Report, the Service Provider shall include such addition or subtraction as agreed between the Parties in the Actual Monthly Payment Report issued pursuant to Clause 56.13.3. In the event that the Parties do not reach a resolution as to the status of the Disputed Amounts, the Disputed Amounts shall remain outstanding and the Service Provider shall subtract from the Actual Monthly Payment Report issued pursuant to Clause 56.13.3 an amount representing each outstanding Disputed Amount;

56.13.3 the Service Provider shall send an Actual Monthly Payment Report to the Authority within ten (10) Business Days of the meeting referred to in Clause 56.13.2, and either:

56.13.3.1 the Service Provider shall send an invoice to the Authority with the Actual Monthly Payment Report; or

56.13.3.2 the Authority shall send an invoice to the Service Provider within five (5) Business Days of receipt of the Actual Monthly Payment Report,

as shall be applicable, in each case such invoice shall be for the amount due in respect of the Month to which the Actual Monthly Payment Report relates and shall note as subtractions any Disputed Amounts which remain outstanding pursuant to Clause 56.13.2;

56.13.4 any amount which is agreed or determined to be payable in respect of any Disputed Amount related to the Actual Monthly Payment Report and/or the invoice referred to in this Clause 56.13 (*Payment for the final Month of the Term*) shall become due and payable twenty (20) Business Days from the date of agreement or determination pursuant to Clauses 56.8 to 56.10 (inclusive).

56.14 **Invoice**

Any sum set out in the invoice issued by either Party pursuant to Clause 56.13.2

(Payment for the final Month of the Term) shall become due and payable by the receiving Party fifteen (15) Business Days from the date of receipt of the invoice.

56.15 Interest on Late Payments

56.15.1 Save where otherwise specifically provided where any payment or sum of money due from the Service Provider to the Authority or from the Authority to the Service Provider under any provision of this Contract is not paid within five (5) Business Days of the due date it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract relating to the payment of compensation on termination of this Contract following the occurrence of an Authority Default provide the Service Provider with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

56.15.2 It is hereby agreed that where any payment or sum of money due under Clause 80.7.7 (*Method of Payment*) is not paid on the due date for payment it shall bear interest at the Prescribed Rate from the due date for payment of such sum (whether before or after any judgement) until actual payment.

56.16 Payment of Sub-contractors

Where the Service Provider enters into a Sub-contract with a Sub-contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such Sub-contract which requires payment to be made of all sums due by the Service Provider to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice for such sums from such Sub-contractor.

57. ELECTRICITY PROCUREMENT

The Service Provider shall, subject to and in accordance with the provisions of Schedule 9 (*Electricity Market Test*):

57.1 enter into the Electricity Contract; and

57.2 carry out an Electricity Market Test.

58. REVENUE SHARING

58.1 Revenue Sharing

Within one (1) Month of the end of each Contract Year the Service Provider shall, in writing, inform the Authority what the Revenue Sharing Equity IRR figure was for the period starting on the Service Commencement Date and ending on the final day of the previous Contract Year. [REDACTED]

[REDACTED] The total of the excess amounts to which the Authority is entitled in accordance with this Clause 58.1 (*Revenue Sharing*) shall be known as the "**Authority Revenue Share**".

58.2 Payment of Authority Revenue Share

The Service Provider shall pay to the Authority the Authority Revenue Share at the same time as it makes any Distribution of any profits on the basis of which the Authority Revenue Share was calculated. Where the Service Provider fails to pay the Authority Revenue Share at the same time as it makes the relevant Distribution, interest shall be payable in accordance with Clause 56.15 (*Interest on Late Payments*).

58.3 No Double Counting

There shall be no double counting in calculating the amount due to the Authority pursuant to Clause 58.1 (*Revenue Sharing*), and in particular the calculation of Revenue Sharing Equity IRR shall exclude:

58.3.1 any amounts received by the Service Provider in respect of third party income and shared with the Authority pursuant to Clause 58.4 (*Additional Income*);

58.3.2 the Service Provider's share of any savings in Electricity Costs generated under Clause 57 (*Electricity Procurement*);

58.3.3 the Service Provider's share of any savings generated by a Connections Review under Schedule 17 (*Original Non-Contestable Works Prices*);

58.3.4 the Service Provider's share of any savings generated following a Service Provider Change pursuant to Schedule 18 (*Change Protocol*);

58.3.5 the Service Provider's share of any savings generated following any amendments to the Method Statements pursuant to Clause 51.2,

and the Authority agrees and acknowledges that, subject to it receiving its share of any Refinancing Gain in accordance with Clause 105 (*Refinancing*), it shall have no entitlement under Clause 58.4 (*Additional Income*) in respect of a Refinancing.

58.4 **Additional Income**

The Service Provider shall not, and shall procure that all Service Provider Parties shall not, make, or seek to make, any additional income from, or in any way connected to, the Project or the use of the Project Network Parts or any part thereof ("**Additional Income**"), or the provision of the Services, without the express written consent of the Authority. The Authority may, in its absolute discretion, refuse consent to the making of any Additional Income by the Service Provider or grant conditions on such consent as the Authority in its absolute discretion determines, which conditions may include provisions relating to the sharing of Additional Income with the Authority (the "**Additional Income Sharing Amount**").

58.5 **Payment**

Within one (1) Month following any Contract Year in which the Service Provider has received any Additional Income, the Service Provider shall pay to the Authority any Additional Income Sharing Amount that has been specified by the Authority pursuant to Clause 58.4 (*Additional Income*). The Additional Income Sharing Amount shall be included in the next occurring Draft Monthly Payment Report following the end of the relevant Contract Year (together with supporting documentation) and the relevant Actual Monthly Payment Report).

58.6 **Provision of Information**

The Service Provider shall, as and when reasonably requested to do so, make available to the Authority and its advisers for inspection, any information in its possession or control which relates to the generation of Additional Income.

59. **CONNECTIONS REVIEW**

59.1 Within ten (10) Business Days of each anniversary of the Service Commencement Date which falls within the Core Investment Period, the Service Provider shall

complete a review of the terms upon which it receives the Original Non-Contestable Works (a "**Connections Review**").

59.2 Written report on Connections Review

The Service Provider shall submit a written report to the Authority no later than five (5) Business Days after the completion of each Connections Review undertaken in accordance with Clause 59.1 (*Connections Review*). The report shall contain details and comment on the outcome of the Connections Review, having due regard to issues of quality, health and safety, operational resources and capabilities and including the most economically advantageous terms to the Authority upon which the Service Provider would be able to procure or provide the Original Non-Contestable Works to the next succeeding Connections Review or (if earlier) for the remainder of the Core Investment Period.

59.3 Alteration of terms upon which Service Provider receives any Original Non-Contestable Works

The Service Provider shall not be obliged to alter the terms upon which it receives any Original Non-Contestable Works but if the Service Provider does choose to alter the terms upon which it receives such Original Non-Contestable Works during the provision of the Core Investment Period, the provisions of Clauses 59.4 to 59.7 inclusive shall apply.

59.4 If, in accordance with Clause 59.3 (*Alteration of terms upon which Service Provider receives any Original Non-Contestable Works*) or otherwise, the Service Provider changes the terms upon which it receives the Original Non-Contestable Works such that the price of the Original Non-Contestable Works is less than the relevant amount set out in Schedule 17 (*Original Non-Contestable Works Prices*) the Service Provider shall (unless the Authority agrees otherwise in writing that such changes are de minimis), adjust the Financial Model in accordance with Clause 64 (*Financial Adjustments*) to reflect such changes. Such adjustment shall take effect on the date the revised terms come into effect.

59.5 To the extent that the adjustment to the Financial Model referred to in Clause 59.4 identifies a reduction to the costs as shown in the Financial Model resulting from the changes to the terms upon which the Original Non-Contestable Works are received, the Authority shall be entitled to receive [REDACTED]

██████████ ("Non-Contestable Works Saving") and the Unitary Charge shall be adjusted accordingly to take into account such Non-Contestable Works Saving.

59.6 The Service Provider shall provide such information as the Authority reasonably requires to substantiate any calculations made in accordance with Clauses 59.4 to 59.5 inclusive.

59.7 Notwithstanding any of the matters set out in this Clause 59 (*Connections Review*), in no circumstances shall the Unitary Charge be increased because of any Connections Review.

60. TAX

60.1 Adjustment of payments after taking a Relevant Tax Liability into account

Where either:

60.1.1 a payment (a "**Termination Payment**") is to be made to the Service Provider pursuant to Clause 80.1, Clause 80.2 or Clause 80.3 (but not otherwise); or

60.1.2 a payment (an "**Indemnity Payment**") is to be made to the Authority under any other provision of this Contract,

then the amount of a Termination Payment or, where applicable, an Indemnity Payment shall be adjusted so as to ensure that the Party receiving the Termination Payment or Indemnity Payment is in the same position after account is taken of any Relevant Tax Liability which that Party incurs as a result of such Termination Payment, Indemnity Payment or additional payment under this Clause 60 (*Tax*) as it would have been in had it not been for such Relevant Tax Liability. Without prejudice to the generality of this Clause 60.1 (*Tax*), if and to the extent that any sum (an "**Authority Indemnity Sum**") constituting (directly or indirectly) an indemnity or reimbursement to the Authority but paid by the Service Provider to any person other than the Authority, shall be treated as taxable in the hands of the Authority, the Service Provider shall promptly pay to the Authority such sum ("**Compensating Sum**") as (after taking into account any Tax suffered by the Authority on the Compensating Sum) shall reimburse the Authority for any Tax suffered by it in respect of the Authority Indemnity Sum after taking into account any deduction for

Tax purposes obtained by the Authority in respect of the payment of, or the matter giving rise to, the Authority Indemnity Sum and the time at which the benefit of such deduction is obtained.

60.2 **Determination of Relevant Tax Liability**

In determining whether the Service Provider has a Relevant Tax Liability by reason of the Termination Payment, or whether the Authority has a Relevant Tax Liability by reason of the Indemnity Payment it should be assumed that any Relevant Relief which is available to the Party receiving such payment (or would have been so available but for a surrender by such Party of such Relevant Relief by way of group or consortium relief or their utilisation to reduce or eliminate any liability for tax other than a liability for tax arising in respect of the receipt or accrual of the Unitary Charge) for offset against a Termination Payment, or Indemnity Payment (as appropriate) or against Tax in relation to the same, have been so offset to the maximum extent possible.

60.3 **Negotiations with HMRC in relation to any Relevant Tax Liability**

The Parties shall keep each other fully informed of all negotiations with Revenue & Customs in relation to any Relevant Tax Liability. The Party that has incurred the Relevant Tax Liability (the "**First Party**") shall not agree, accept or compromise any Claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of the other Party (the "**Second Party**"), which shall not be unreasonably withheld or delayed. The Second Party may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct the First Party to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of a Termination Payment or Indemnity Payment, provided that the cost of any such dispute (including any interest or penalties incurred as a direct result of such action) shall be at the Second Party's expense. However, if the First Party obtains professional advice from an independent person with relevant expertise that any resistance, appeal, defence or other mode of dispute is not likely to result in any more beneficial position in relation to the Relevant Tax Liability, the First Party shall be entitled not to continue with such resistance, appeal, defence or other mode of dispute. Where any resistance, appeal, defence or other mode of dispute results in a more beneficial position in relation to the Relevant Tax Liability, an adjustment will be made to the amount payable under this Clause 60 (*Tax*) to reflect such outcome.

60.4 **Repayment**

If:

60.4.1 the Authority makes or is obliged to make a Termination Payment or the Service Provider makes or is obliged to make an Indemnity Payment, which, in either case, gives rise to a Relevant Tax Liability; and

60.4.2 the Party receiving the Termination Payment or Indemnity Payment (the "**Receiving Party**") subsequently obtains and uses (or would have obtained and used, had it taken all reasonable steps to do so) a Relevant Relief,

then the Receiving Party shall repay to the other Party such amount as will leave the Receiving Party (after that payment and on the basis that the Receiving Party obtained and used that Relief) in no better or worse position than it would have been in if no Relevant Tax Liability had arisen.

60.5 For the purposes of Clause 60.4 (*Repayment*) any Relevant Relief obtained and used (or which would have been obtained and used had all reasonable steps been taken to do so) by any person associated or connected with the Receiving Party for any Tax purpose shall be treated as if it had been obtained and used by the Receiving Party and the Receiving Party shall procure at the request and expense of the other Party that the Receiving Party's auditors at the time of the request certify to the other Party whether any such Relief has been obtained and used by the Receiving Party or any such person (or, in their reasonable opinion, acting as experts and not as arbitrators, whether any such Relief would have been obtained and used by the Receiving Party or any such person had all reasonable steps been taken to do so) and, if so, its amount.

60.6 **Payment of increase in amount of Termination Payment**

Any increase in the amount of a Termination Payment or Indemnity Payment which is payable under this Clause 60 (*Tax*) shall be paid on the later of five (5) Business Days after a demand therefor (together with whatever evidence is then available concerning the Relevant Tax Liability and its calculation) is made by the Party requiring the payment pursuant to this Clause 60 (*Tax*) and:

60.6.1 in the case of an Actual Liability, five (5) Business Days before the date on which the relevant Tax must be paid to the tax authority in order to avoid incurring interest and penalties; and

60.6.2 in the case of a Deemed Liability, five (5) Business Days before the date on which Tax which would not have been payable but for the utilisation of the relevant Relief must be paid in order to avoid incurring interest or penalties (whether by the Party concerned or otherwise).

61. NO DEDUCTIONS OR WITHHOLDINGS

61.1 Subject to Clause 63.4, all payments due to either Party under this Contract and any other Project Document shall be calculated and made free and clear of and without deduction for, or on account of, any Taxes, unless such deduction or withholding is required by law. The Party making the relevant payment under this Contract shall account on a timely basis to the appropriate authority in respect of any such deduction or withholding which is so required.

61.2 Deductions or withholdings required by law

If such deduction or withholding is required by law in respect of a payment under this Contract, the paying Party shall, subject to Clause 61.3 (*Economic benefit from deduction or withholding*) increase the payments to the receiving Party so that the net amount received and retained by the receiving Party after such deduction or withholding (and after taking account of any further deduction or withholding which is required to be made which arises as a consequence of the increase) shall be equal to the full amount which the receiving Party would have received and retained if no such deduction or withholding had applied.

61.3 Economic benefit from deduction or withholding

To the extent that the receiving Party actually derives an economic benefit from a deduction or withholding of an increased payment under Clause 61.2 (*Deductions or withholdings required by law*), the receiving Party shall make such payment as it in its absolute discretion certifies will transfer that economic benefit to the paying Party and will leave the receiving Party in no better and no worse position than it would have been in had no such benefit been derived. Any payments so made by the receiving Party shall be refundable to the receiving Party to the extent that the relevant benefit is ultimately not actually derived.

62. VALUE ADDED TAX

62.1 All amounts due under this Contract are exclusive of VAT.

- 62.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply ("**Recipient**") shall in addition pay the person making the supply ("**Supplier**") the amount of that VAT subject to receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 62.3 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.
- 62.4 The Service Provider shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Authority to the Service Provider.
- 62.5 The Authority shall pay to the Service Provider from time to time as the same is incurred by the Service Provider sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the Service Provider to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed.

63. SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY SCHEME

- 63.1 This Clause 63 (*Sub-Contractors in the Construction Industry Scheme*) relates to the Construction Industry Scheme the framework of which is contained in the Finance Act 2004 with the operational details contained in the Income Tax (Construction Industry Scheme) Regulations 2005 SI 2005/2045 ("**2005 Regulations**") and which commenced on 6 April 2007 ("**CIS Scheme**").
- 63.2 All payments made under this Contract will be paid in accordance with this Clause 63 (*Sub-Contractors in the Construction Industry Scheme*).
- 63.3 The Parties believe that all payments made under this Contract will be exempt from the CIS Scheme under Regulation 23 of the 2005 Regulations (Arrangements involving public bodies).
- 63.4 If and to the extent that payments are not exempt from the CIS Scheme by virtue of Regulation 23 of the 2005 Regulations, the Parties agree to operate the CIS Scheme in accordance with the 2005 Regulations, the Finance Act 2004 or any other statute or

subordinate legislation ("**Relevant Legislation**") relating to the CIS Scheme as from time to time modified or replaced whether before or after the date of this Contract and in particular the Authority shall be entitled to make the statutory deduction from any payment due to the Service Provider in accordance with the 2005 Regulations and/or the Relevant Legislation.

63.5 If compliance with this Clause 63 (*Sub-Contractors in the Construction Industry Scheme*) involves the Authority or the Service Provider in not complying with any other of the terms of this Contract (save for the Parties' obligations to comply with all laws), then the provisions of this Clause 63 (*Sub-Contractors in the Construction Industry Scheme*) shall prevail.

64. FINANCIAL ADJUSTMENTS

64.1 Custody Arrangements for the Base Case

64.1.1 The Service Provider shall, no later than ten (10) Business Days after the date of this Contract, deliver two (2) electronic copies on CD-Rom in Microsoft Excel 2003 (or any media/software that replaces this, at the Authority's request) of the Base Case to the Custodian and one (1) copy to the Authority (for the Authority to hold on its own behalf).

64.1.2 The Service Provider shall lodge with the Authority one (1) electronic copy on CD-Rom in Microsoft Excel 2003 (or any media/software that replaces this, at the Authority's request) of each Base Case (in each case becoming the Base Case for the purposes of this Contract) as may be revised from time to time pursuant to this Clause 64 (*Financial Adjustments*) no later than ten (10) Business Days after any revisions have been effected and agreed with the Authority.

64.1.3 Any amendments to the Base Case shall reflect, be consistent with and be made only in accordance with the provisions of this Contract.

64.1.4 Either Party shall have the right to inspect and audit the Base Case at its own cost at all reasonable times.

64.1.5 Save as expressly provided in this Contract the costs of the custody arrangements with the Custodian shall be met by the Service Provider.

64.2 Revisions to the Base Case

64.2.1 Where the Parties agree that the financial consequences of any Relevant Event are best dealt with without a revision to the Base Case, they shall agree to make such revision to the Unitary Charge as necessary on a one off or recurrent basis. Such change shall, on the next occasion that there is a revision to the Base Case in accordance with this Clause 64 (*Financial Adjustments*), be consolidated as an update to the Unitary Charge and Base Case.

64.2.2 Prior to making any changes to the Base Case (subject to any express provision of this Contract to the contrary), the Parties shall agree the date on which the change shall take effect (the "**Effective Date**") and the basis of the revision to the Base Case.

64.2.3 Except for revisions due to:

64.2.3.1a Qualifying Refinancing (in which case the provisions of Clause 105 (*Refinancing*) shall apply);

64.2.3.2a Connections Review in accordance with Schedule 17 (*Original Non-Contestable Works Prices*) (in respect of the Service Provider's share of savings); or

64.2.3.3a Service Provider Change with results in costs savings (and such costs savings are shared in accordance with Schedule 18 (*Change Protocol*);

the Unitary Charge shall be revised so as to ensure that the Service Provider is in no better and no worse position (as defined by Clause 64.3.3) (*Principles of Adjustment*) than it was prior to the Effective Date and the event which gave rise to the need for the revision. In no circumstances shall any revision provide compensation to the Service Provider for any deviation in performance from that predicted in the latest Base Case as agreed between the Parties or determined in accordance with the Dispute Resolution Procedure.

64.2.4 The Service Provider shall take all reasonable and appropriate steps to mitigate the effects of any revision including, in particular, mitigating any adverse impact upon the Authority.

64.2.5 If the Base Case is to be revised, then the Service Provider shall make appropriate electronic amendments to it to effect such revisions made in accordance with this Clause 64 (*Financial Adjustments*).

64.2.6 Where a revision to the Unitary Charge is required, the Service Provider shall, at its own cost, save as otherwise expressly provided, revise the Base Case and submit to the Authority a revised Base Case reflecting such adjustments.

64.3 **Principles of Adjustment**

64.3.1 The following guidelines shall be followed in revising the Base Case:

64.3.1.1 wherever possible the revision shall be carried out without altering the logic, formulae, inputs and assumptions incorporated in the Base Case in any way whatsoever and only data such as costs incurred by the Service Provider and the timing and amounts of drawdowns of funding shall be changed;

64.3.1.2 where it is necessary to amend the logic, formulae, inputs and assumptions incorporated in the Base Case to permit revisions to be made, this shall be carried out to the minimum extent necessary and in accordance with generally accepted accounting principles;

64.3.1.3 where any amendment is made to the logic, formulae, inputs and assumptions incorporated in the Base Case, the Base Case, as amended, shall first be run with the data included in the Base Case immediately prior to amendment to ensure that the Key Ratios in the Base Case are maintained at no lower or no higher levels from the Key Ratios immediately after the amendment and the real pre-tax Project IRR after and immediately prior to amendment does not differ by more than 0.5 basis points, being 0.005%;

64.3.1.4 the Parties may only agree changes or additions to the guidelines set out in this Clause 64.3 (*Principles of Adjustment*) where they are

required in relation to circumstances not dealt with by the assumptions in the Base Case; and

64.3.1.5 unless otherwise agreed by the Parties, any adjustment to the Unitary Charge shall take effect from the date of the Relevant Event.

64.3.2 Any amendment to the logic, formulae, inputs and assumptions incorporated in the Base Case shall be fully recorded so that the manner in which the revised Unitary Charge is calculated can be readily verified.

64.3.3 Any reference in this Contract to "no better and no worse" and to leaving the Service Provider being in a "no better and no worse position" shall be construed by reference to the Service Provider's:

64.3.3.1 rights, duties and liabilities under or arising pursuant to performance of this Contract, the Senior Financing Agreements and the Key Sub-Contracts; and

64.3.3.2 ability to perform its obligations and exercise its rights under this Contract, the Senior Financing Agreements and the Key Sub-Contracts,

so as to ensure that the Service Provider is left in a position which is no better and no worse in relation to the Key Financial Indicators by reference to the version of the Base Case applicable immediately prior to the Relevant Event had the Relevant Event not occurred which (for the avoidance of doubt) shall mean:

- (a) in respect of each six (6) Month accounting period in the Base Case after the date of the Relevant Event each of the Key Ratios is maintained at the same level (calculated to three decimal places) immediately after the Relevant Event as the level set out in respect of the relevant period in Schedule 34 (*Key Financial Indicators*); and
- (b) the difference in the value of the Key Financial Indicator specified at limb (d) of the definition of that term immediately prior to the amendment and immediately after

the Relevant Event is not more than 0.5 basis points (being 0.005% as shown in the resulting figure); and

- (c) the ability of the Service Provider to comply with this Contract is not adversely affected or improved as a consequence of the Relevant Event.

64.4 Disputes

64.4.1 Where the Service Provider and the Authority are unable to agree the revisions to the Base Case (including the actual version of the Base Case to be used prior to the required changes being made) within twenty (20) Business Days of submission of the revised Base Case by the Service Provider to the Authority (or such other time period as is agreed between the Parties), then the matter shall be determined in accordance with the Dispute Resolution Procedure.

64.4.2 Without prejudice to Clause 64.4.1 (*Disputes*), where the Parties are unable to agree any matter arising under Clause 64 (*Financial Adjustments*), either Party may refer matters for determination pursuant to the Dispute Resolution Procedure.

PART L - WARRANTIES AND INDEMNITIES

65. WARRANTIES AND UNDERTAKINGS

65.1 Service Provider's Warranties

The Service Provider warrants and represents to the Authority on the terms set out in this Clause 65.1 (*Service Provider's Warranties*) that:

65.1.1 the Service Provider and Holdco is duly:

65.1.1.1 incorporated under the law of England and Wales; and

65.1.1.2 has the corporate power to own its assets and to carry on its business as it is now being conducted;

65.1.2 the Service Provider:

65.1.2.1 has the power to enter into and to exercise its rights and perform its obligations under this Contract and the Project Documents and Ancillary Documents to which it is a party; and

65.1.2.2 has taken all necessary action to authorise the execution of and the performance of its obligations under this Contract and the Project Documents and Ancillary Documents to which it is a party (or, in the case of any Project Documents and Ancillary Documents executed after the date of this Contract, such action will be taken before such execution);

65.1.3 the Service Provider is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under this Contract or any Project Document or Ancillary Document to which it is a party;

65.1.4 the obligations expressed to be assumed by the Service Provider under this Contract and each Project Document and Ancillary Document to which it is a party constitute, or will when executed constitute, legal, valid, binding and enforceable obligations on the Service Provider to the extent permitted by law and each Project Document and Ancillary Document will be in the proper form for enforcement in England and Wales;

65.1.5 the execution, delivery and performance by the Service Provider of this Contract and the Project Documents and Ancillary Documents does not contravene any provision of:

65.1.5.1 any existing Legislation either in force, or enacted but not yet in force, binding on the Service Provider;

65.1.5.2 its memorandum and articles of association;

65.1.5.3 any order or decree of any court or arbitrator; or

65.1.5.4 any obligation which is binding upon the Service Provider or upon any of its assets or revenues;

- 65.1.6 the copies of each Project Document and Ancillary Documents which the Service Provider delivers to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any such Project Document and Ancillary Document which would materially affect their interpretation or application;
- 65.1.7 the Service Provider and Holdco has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006 (as amended);
- 65.1.8 there are no material facts or circumstances in relation to the financial position or operational constitution of the Service Provider the First Tier Sub-contractors and each of their respective Affiliates or the Shareholders which have not been fully and fairly disclosed in writing to the Authority and which if disclosed might reasonably have been expected to affect the decision of the Authority to enter into this Contract;
- 65.1.9 the Service Provider has conducted its own analysis and review of the Disclosed Information in accordance with this Contract;
- 65.1.10 the Financial Terms are the basis on which the Service Provider will finance the Project;
- 65.1.11 no Claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Service Provider, pending or threatened against the Service Provider or Holdco or any of its assets which will or may have a material adverse effect on the ability of the Service Provider to perform its obligations under this Contract and/or any Project Document and/or Ancillary Document;
- 65.1.12 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Service Provider threatened) for the winding-up or dissolution of the Service Provider or Holdco or for the appointment of a receiver, manager, or administrator on behalf of a creditor, or similar officer in relation to any of its assets or revenues;

65.1.13 no Service Provider Default has occurred and no event or circumstance has occurred or arisen which, with the giving of notice, lapse of time, determination of materiality or satisfaction of any other condition may become a Service Provider Default;

65.1.14 no transfer, stamp or registration or similar taxes or charges are payable by the Service Provider pursuant to the laws of the United Kingdom or any part thereof in connection with the execution, delivery, performance or enforcement of this Contract or any of the Project Documents or Ancillary Documents or any transaction contemplated thereby;

65.1.15 all information, representations and other matters of fact committed in writing to the Authority by or on behalf of the Service Provider or its agents or employees in connection with or arising out of its tender including in the course of the subsequent negotiations is or are true, complete and accurate in all material respects in the context of the Project.

65.1.16 the information concerning the share capital of the Service Provider set out in the Shareholders Agreement is true and accurate as at the date of this Contract and, save to the extent provided in the Shareholders Agreement and/or Financing Agreements in respect of the subscription obligations of the Shareholders, there is not outstanding at the date of this Contract any offer or other arrangement whereby any person, firm or company is at the date of this Contract or at any future time entitled to or obliged to subscribe for or take by means of transfer or by conversion of any other form of investment or bond, any share capital for the Service Provider (including any such entitlement or obligation that may arise in exercise of an option enforceable by or against the Service Provider or any Shareholder);

65.1.17 The Service Provider undertakes and warrants to the Authority:

65.1.17.1 that the materials licensed or assigned under Clause 84 (*Intellectual Property Rights*) are or will be (as the case may be) original works or, if they are not original works, that the same has a licence which can be sub-licensed or assigned to the Authority under the provisions of Clause 84 (*Intellectual Property Rights*);

65.1.17.2 no person not a party to this Contract owns or will own or otherwise be entitled to any of the Intellectual Property Rights licensed or assigned under Clause 84 (*Intellectual Property Rights*) or any interest therein save as agreed between the Parties in respect of data, materials and/or information validly licensed to the Service Provider from a person not a party to this Contract; and

65.1.17.3 it has the right to grant the licences and assign the rights under Clause 84 (*Intellectual Property Rights*).

65.2 The Service Provider shall ensure that in entering this Contract neither it nor any of its agents, contractors, Sub-contractors or the employees of any of them or anyone acting on the Service Provider's behalf has committed any Prohibited Act.

65.3 The Parties hereby acknowledge that the Authority relies upon the warranties and representations.

65.4 The Service Provider hereby acknowledges and agrees that compliance by it with the warranties and representations (or any of them) referred to in Clause 65.1 (*Service Provider's Warranties*) shall not itself constitute performance of any of its other obligations under this Contract.

65.5 **Service Provider's Undertakings**

The Service Provider hereby undertakes with the Authority that for so long as this Contract remains in force (subject to Clause 93 (*Continuing Obligations*)):

65.5.1 it shall upon becoming aware that the same is or may be threatened or pending, and again immediately after the commencement thereof, give the Authority notice of all litigation or arbitration or administrative or adjudication or mediation or similar proceedings before or of any court, arbitrator or governmental authority which would or may materially adversely affect the Service Provider's ability to perform its obligations under this Contract and shall, for so long as such proceedings subsist, keep the Authority reasonably informed of the same;

65.5.2 it shall not, without the prior written consent of the Authority, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of giving

security) the whole or any part of its business or assets which would or may materially affect the ability of the Service Provider to perform its obligations under this Contract;

65.5.3 it shall not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;

65.5.4 it shall not undertake the performance of its obligations under this Contract for the provision of the Service otherwise than through itself or a Key Sub-Contractor appointed in accordance with the obligations set out in this Contract;

65.5.5 it shall not without the written consent of the Authority (not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Service;

65.5.6 it shall not without the written consent of the Authority (not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to, or for the benefit of, any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of its business; and

65.5.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.

65.6 **Disclosed Information**

The Authority has provided the Disclosed Information but:

65.6.1 the Authority does not give any warranty or undertaking as to the completeness, accuracy or fitness for any purpose of any of the Disclosed Information; and

65.6.2 neither the Authority nor any of its agents or servants shall be liable to the Service Provider in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

65.6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Information; or

65.6.2.2 any failure to make available to the Service Provider any materials, documents, drawings, plans or other information relating to the Project,

provided that nothing in this Contract shall affect the liability of the Authority for any fraudulent misrepresentation in relation to the Disclosed Information.

65.7 Status of Warranties

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Service Provider in this Contract are cumulative and none shall be given a limited construction by reference to any other.

65.8 Exclusions from Warranty

The Service Provider shall, subject to Clause 7, (*Condition of the Project Network*), Clause 31.5 (*Project Network Discoveries*) and any other provisions within this Contract relating to the condition of the Project Network be deemed to have:

65.8.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and

65.8.2 gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including:

65.8.2.1 information as to the nature, location and condition of the Project Network (including hydrological, geological, geo-technical and sub-surface conditions);

65.8.2.2 information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures;

65.8.2.3 information concerning any consents or planning permissions which are or may be required and any third party rights, interests or property (includes property interests affected).

65.8.3 The Service Provider shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

66. INDEMNITY

66.1 Matters indemnified by the Service Provider

The Service Provider shall, subject to Clause 66.2 (*Limitation of Liability*), be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against, all liability for and any losses incurred due to:

66.1.1 death or personal injury;

66.1.2 loss of or damage to Authority Property (excluding any Project Networks Parts);

66.1.3 breach of statutory duty; and

66.1.4 third party actions, Claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of:

66.1.5 the design, (subject to Clause 8 (*Latent Defects*)), installation, operation or maintenance of the Project Network Parts;

66.1.6 the performance or non-performance by the Service Provider of its obligations under this Contract; or

66.1.7 the presence on the Authority Property or on any of the Work Sites of the Service Provider or a Service Provider Party in each case in relation to the provision of the Service or the discharge of obligations under this Contract.

66.2 Limitation of Liability

66.2.1 The Service Provider shall not be responsible or be obliged to indemnify the Authority to the extent that:

66.2.1.1 any of the matters referred to in Clauses 66.1.1 to 66.1.4 (*Matters indemnified by the Service Provider*) arises as a direct result of the Service Provider acting on the instruction of the Authority; or

66.2.1.2 any injury, loss, damage, cost and expense is caused by the negligence or wilful misconduct of the Authority its employees, agents or contractors or by the breach by the Authority of its obligations under or in connection with this Contract; or

66.2.1.3 there are any Third Party Claims where the incident giving rise to the Third Party Claim arose before the Service Commencement Date; or

66.2.1.4 there are any costs related to managing and/or rectifying and/or mitigating the occurrence of a Latent Defect in a Clause 8 Structure in excess of the Latent Defect Cap or Additional Latent Defect Action Cap; or

66.2.1.5 any of the matters referred to in Clauses 66.1.1 to 66.1.4 (inclusive) (*Matters Indemnified by the Service Provider*) arises as a result of works undertaken by or on behalf of the Authority as Highways Works Authority; or

66.2.1.6 any of the matters referred to in Clause 66.1.1 arises as a result of any act or omission of the Authority or any Authority Party.

66.2.2 The Service Provider shall not be responsible or obliged to indemnify the Authority for:

66.2.2.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

66.3 Indemnities

The indemnities in favour of the Authority contained in this Clause 66 (*Indemnity*):

66.3.1 shall extend to any liability and/or losses incurred by or due to the actions of any Service Provider Party; and

66.3.2 shall be without limitation to any indemnity by the Service Provider under any other provision of this Contract and each limb of the indemnity given pursuant to Clause 66.1 shall be construed separately from any other limb of such indemnity.

66.4 Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities

This Clause 66.4 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) shall apply to the conduct by a party giving an indemnity under this Contract ("**Indemnifier**") in respect of any Claim made by a third person against a party having (or claiming to have) the benefit of the indemnity ("**Beneficiary**"), unless otherwise agreed by the Parties in writing.

66.4.1 If the Beneficiary receives any notice, demand, letter or other document concerning any Claim from which it appears that the Beneficiary is, or may become entitled to, indemnification under this Contract or any of the Project Documents, the Beneficiary shall give notice to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of such document and shall supply a copy of the relevant document to the Indemnifier.

66.4.2 Subject to the provisions of this Clause 66.4 (Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities) (and in particular Clause 66.4.5 (Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities)), following the service of a notice by a Beneficiary pursuant to Clause 66.4.1 (Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities), where it appears that the Beneficiary is, or may become, entitled to indemnification from the Indemnifier in respect of all (but not part only, in which case the provisions of Clause 66.4.5 shall apply)) of the liability arising out of the Claim, the Indemnifier shall (subject to indemnifying the Beneficiary to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to:

66.4.2.1 dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense; and

66.4.2.2 take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations,

and the Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance (including, where necessary, attendance at court hearings) for the purposes of considering and resisting such Claim.

66.4.3 With respect to any Claim conducted by the Indemnifier pursuant to Clause 66.4.2 (Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities):

66.4.3.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

66.4.3.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;

66.4.3.3 notwithstanding the value of any Claim, in conducting or deciding to settle any Claim the Indemnifier shall take account of any precedent which may be set whether relating to the Beneficiary itself or as a member of a class of parties; and

66.4.3.4the Indemnifier shall not pay, settle or compromise such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed.

66.4.4 The Beneficiary shall (without prejudice to its duty to mitigate) be free to pay or settle any Claim on such terms as it may in its absolute discretion think fit and without prejudice to its rights and remedies under this Contract if:

66.4.4.1the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 66.4.2 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*);

66.4.4.2the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within twenty (20) Business Days of the notice from the Beneficiary under Clause 66.4.1 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) or notifies the Beneficiary that it does not intend to take conduct of the Claim; or

66.4.4.3the Indemnifier fails to comply in any material respect with the provisions of Clause 66.4.3 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) within twenty (20) Business Days of notice from the Beneficiary of such failure.

66.4.5 Where in respect of any claim, both of the Parties are entitled to indemnification from each other or are otherwise both responsible in respect of parts of any liability arising out of the Claim, the Parties (acting reasonably) shall together decide who shall be responsible for the conduct of the Claim and thereafter:

66.4.5.1where the Parties have agreed that one Party shall conduct the Claim on behalf of both Parties, the provisions of Clauses 66.4.2 to 66.4.4 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) shall apply to the Party responsible for conducting the Claim; or

66.4.5.2 where the Parties have agreed that both of the Parties shall be responsible for conducting the Claim, the Parties shall cooperate and provide such reasonable assistance to each other as shall be required for the expedient conduct of the Claim, and the provisions of Clauses 66.4.2 to 66.4.3 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) shall apply to both Parties equally.

66.4.6 The Beneficiary shall be entitled at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim (or of any incidental negotiations) to which Clause 66.4.2 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance, (including where necessary, attendance at court hearings) for the purposes of considering and resisting such Claim. If the Beneficiary gives any notice pursuant to this Clause 66.4.6 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*), then the Indemnifier shall be released from any liability under its indemnity under Clause 66.1 (*Matters indemnified by the Service Provider*) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 66.4.2 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) in respect of such claim.

66.4.7 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

66.4.7.1 an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses reasonably and properly incurred by the Beneficiary in recovering the same; and

66.4.7.2the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue such recovery and further provided that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits (whether direct or indirect) which may be excluded by this Contract from being recovered from the Indemnifier).

66.4.8 Any person taking any of the steps contemplated by Clauses 66.4.2 to 66.4.7 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*) (inclusive) shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

PART M - INSURANCE

67. INSURANCE

67.1 Insurance

67.1.1 The Service Provider shall, prior to the Service Commencement Date, take out and maintain or procure the maintenance of the Required Insurances and any other insurances as may be required by Legislation. The Service Provider shall ensure that such insurances are, in each case, effective not later than the date on which the relevant risk commences and the following provisions shall apply:

67.1.1.1neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person;

67.1.1.2the Required Insurances shall:

- (a) subject to Clause 67.1.1.2(e) (*Insurance*), name the Service Provider as co-insured with any other party maintaining the insurance;
- (b) provide for non-vitiating protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in Part 2 of Schedule 6 (*Insurance*);
- (c) contain a Clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 2 in Part 2 of Schedule 6 (*Insurance*);
- (d) provide for thirty (30) days prior written notice of their cancellation, non renewal or amendment to be given to the Authority in accordance with Endorsement 1 in Part 2 of Schedule 6 (*Insurance*); and
- (e) wherever possible, name the Authority as a co-insured for its separate interest;

67.1.1.3the Service Provider shall provide to the Authority:

- (a) copies on request of all Required Insurance policies (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
- (b) evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 67.1 (*Insurance*) and Schedule 6 (*Insurance*);

67.1.1.4renewal certificates in relation to the Required Insurances shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date;

67.1.1.5if the Service Provider fails to take out and maintain (or procure the maintenance of) the Required Insurances, the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Service Provider on written demand;

67.1.1.6the Service Provider shall give the Authority notification within thirty (30) days after any claim in excess of fifty thousand pounds (£50,000) (Indexed) on any of the Required Insurances policies accompanied by full details of the incident giving rise to the claim;

67.1.1.7neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Service Provider of its liabilities and obligations under this Contract;

67.1.1.8the insurance premiums in respect of the Required Insurances and any other insurances required by Legislation shall be the responsibility of the Service Provider; and

67.1.1.9the Required Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

67.2 Reinstatement

67.2.1 Where damage to a Project Network Part or Project Network Parts occurs as a result of a single event (or a series of related events) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

67.2.1.1the Service Provider shall deliver as soon as practicable and in any event within twenty (20) Business Days after the Relevant Incident a plan prepared by the Service Provider for the carrying out of the works or replacement necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the Project

Network Part(s) which are the subject of the Relevant Incident in accordance with Clause 67.2.4 (*Reinstatement*). The Reinstatement Plan shall set out:

- (a) the identity of the person(s) proposed to effect the Reinstatement Works, which, if not the Service Provider or a Key Sub-Contractor, shall be subject to the prior written approval of the Authority; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project Network Part(s) will become fully compliant with the Output Specification), which shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably delayed;
- (c) the Reinstatement Works Direct Costs (including details of any Reinstatement Works Direct Costs that are unascertainable by the Service Provider (acting reasonably) at the date of the Reinstatement Plan) and an explanation as to why such parts of the Reinstatement Works Direct Costs are unascertainable);
- (d) a summary of any civil law actions or claims for the recovery of any amounts against any Third Parties to be undertaken by the Service Provider or any Service Provider Party ("**Third Party Insurance Claims**"), including an estimate of the likely amounts to be claimed from Third Parties and the justification for such estimate, a summary of the anticipated costs to be expended in recovery of such amounts and the likelihood of recovery of such costs from any Third Party, with an overall estimate by the Service Provider (acting reasonably) of the net amounts to be recovered (the "**Third Party Claims Estimate**");
- (e) an estimate of any amounts recoverable by the Service Provider under any Required Insurances; and

- (f) details of the cause of the Relevant Incident, setting out, where applicable, the extent to which the Relevant Incident was caused by or contributed to by any deliberate or negligent act or omission of the Service Provider or any Service Provider Party,

and the Authority shall thereafter notify the Service Provider in writing that either Clause 67.2.1.2 or 67.2.1.3 shall apply;

[REDACTED]

67.2.1.2 Provided that the Authority notifies the Service Provider in writing that it is satisfied that the Reinstatement Plan will enable the Service Provider to comply with Clause 67.2 (*Reinstatement*) within a reasonable timescale and is also satisfied with the Reinstatement Works Direct Costs and the Third Party Claims Estimate:

- (a) (subject to Clause 67.2.2) the Reinstatement Plan will be adopted upon receipt by the Service Provider of the Authority's written notice;
- (b) if applicable, the Service Provider shall enter into contractual arrangements to effect the Reinstatement Works with any person(s) identified in the Reinstatement Plan, as approved by the Authority;
- (c) subject to, and in accordance with, Clause 67.2.5, the Service Provider shall use all reasonable endeavours to pursue claims against those Third Parties notified to the Authority as part of the Third Party Claims Estimate for the recovery of the costs

of the Reinstatement Works and to recover any sums due under any Required Insurances;

- (d) the Authority agrees and undertakes that, subject to compliance by the Service Provider with its obligations under this Clause 67.2 (*Reinstatement*), and provided that the Service Provider procures that the Reinstatement Works are carried out and completed in accordance with the Reinstatement Plan and (if applicable) the contractual arrangements referred to in Clause 67.2.1.2(b), it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the Relevant Incident;
- (e) the Authority undertakes to use reasonable endeavours to assist the Service Provider in the carrying out of the Reinstatement Plan; and
- (f) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with this Clause 67.2 (*Reinstatement*) the Authority shall issue a written statement to the Service Provider to that effect;

67.2.1.3if the Authority disagrees that the Reinstatement Plan will enable the Service Provider to comply with the requirements of this Contract (including the Output Specification) upon completion of the Reinstatement Plan, and/or within a reasonable timescale and/or is dissatisfied with the Reinstatement Works Direct Costs or the Third Party Claims Estimate or as to the extent to which (if any), the Relevant Incident was caused by or contributed to by the deliberate or negligent act or omission of the Service Provider or a Service Provider Party, it shall notify the Service Provider in writing and the Parties shall as soon as practicable thereafter meet to endeavour to agree an amended Reinstatement Plan and/or amended Reinstatement Works Direct Costs and/or Third Party Costs Estimate. If the Parties are unable to reach an agreement either Party may refer the matter to the Dispute Resolution Procedure, and following the agreement or

determination of a Reinstatement Plan, the Reinstatement Plan shall be adopted and the provisions of Clause 67.2.1.2(b) to (f) shall apply;

67.2.1.4 where a Relevant Incident and/or the carrying out of any Reinstatement Works affects the provision of the Services by the Service Provider, the Service Provider shall be entitled to an Excusing Cause from the date of the Relevant Incident until the completion of the Reinstatement Works or until the implementation of the De-Accrual or Change pursuant to Clause 67.2.2.2, provided always that the Service Provider is complying with the provisions of this Clause 67.2 in relation to the carrying out of the Reinstatement Works.

67.2.1.5 As and when any Reinstatement Works Direct Costs that were unascertainable at the date of the Reinstatement Plan have been ascertained ("**Ascertained Reinstatement Works Direct Costs**") the Service Provider shall notify the Authority of the same.

67.2.1.6 If the Authority is satisfied with the Ascertained Reinstatement Works Direct Costs it shall notify the Service Provider to the effect and the Ascertained Reinstatement Works Direct Costs shall be deemed to be Reinstatement Works Direct Costs.

67.2.1.7 If the Authority disagrees with the Ascertained Reinstatement Works Direct Costs it shall notify the Service Provider in writing and the Parties shall as soon as practicable thereafter meet to endeavour to agree amended Ascertained Reinstatement Works Direct Costs. If the Parties are unable to reach an agreement either Party may refer the matter to the Dispute Resolution Procedure, and following the agreement or determination of the Ascertained Reinstatement Works Direct Costs the same shall be deemed to be Reinstatement Works Direct Costs.

67.2.2 Where the Reinstatement Works Direct Costs in relation to a Relevant Incident agreed between the Parties pursuant to Clause 67.2.1.2 and/or clause 67.2.1.5 or determined pursuant to Clause 67.2.1.3 and/or Clause 67.2.1.6 less any amounts recoverable pursuant to any Required Insurance (provided always that the Service Provider shall be solely responsible for the payment

of any deductible due in accordance with the terms of such Required Insurances) (the "Net Reinstatement Works Cost") [REDACTED] (the "Material Damage Limit"), (and provided that the Material Damage Limit in respect of a Relevant Incident shall be increased [REDACTED] in proportion to the extent to which (if any) the Relevant Incident is caused by or contributed to by the deliberate or negligent act or omission of the Service Provider or a Service Provider Party), the Service Provider shall not be responsible for funding the Reinstatement Works in excess of the Material Damage Limit, [REDACTED]

the Authority shall notify the Service Provider of its decision as to which of the following options shall apply:

67.2.2.1 the Authority shall fund the Net Reinstatement Works Costs which are in excess of the Material Damage Limit; or

67.2.2.2 the Service Provider is not required to carry out the Reinstatement Plan and the Authority shall use the procedure set out Schedule 18 (*Change Protocol*) or, where applicable (in accordance with Clause 50 (*Accrual and De-Accrual of Project Network Parts*)), the procedure set out in Schedule 19 (*Accrual and De-Accrual of Project Network Parts*) to implement a Change (as applicable) to remove from the scope of the Project or to De-Accrue the Project Network Part(s) affected by the Relevant Incident,

and the Service Provider shall not implement the Reinstatement Plan until the Authority has notified the Service Provider of its decision pursuant to this Clause.

67.2.3 Where the Authority has opted to fund the Net Reinstatement Works Costs in excess of the Material Damage Limit pursuant to Clause 67.2.2.1, the following provisions shall apply:

67.2.3.1 the Service Provider shall carry out the Reinstatement Works in accordance with the Reinstatement Plan up to the Material Damage Limit and shall notify the Authority when the Service Provider has expended funds at the level of the Material Damage Limit;

67.2.3.2 in any Month following the notification pursuant to Clause 67.2.3.1, the Service Provider shall include with the Draft Monthly Payment Report pursuant to Clause 56.4 (*Draft Monthly Payment Report*) amounts equivalent to the amounts expended by the Service Provider in that Month in carrying out the Reinstatement Plan and shall provide with any such Draft Monthly Payment Report evidence of the amounts expended by the Service Provider and also evidence that such amounts have been paid by the Service Provider,

provided that the Authority's liability to pay pursuant to this Clause 67.2.3 shall never exceed the difference between the Material Damage Limit and the Net Reinstatement Works Cost.

67.2.4 The Service Provider shall carry out any work relating to the repair, reinstatement or replacement of any Project Network Part(s), in accordance with Schedule 2 (*Output Specification*) so that on completion of the work, the provisions of this Contract are complied with.

67.2.5 Conduct of Third Party Insurance Claims

67.2.5.1 Subject to the prior consent of insurers, the Authority may elect (at its cost), in its sole discretion, to take conduct of any Third Party Insurance Claim upon twenty (20) Business Days notice to the Service Provider provided that, if the Authority takes or fails to take any action as a direct result of which insurers' liability is increased then the liability of insurers to provide an indemnity shall be reduced to such an extent and, the Authority shall be responsible, as between the Authority and the Service Provider for the same.

67.2.5.2 Subject to Clause 67.2.5.1, and provided that (in the opinion of the Service Provider (acting reasonably)) the Third Party Insurance Claim has a reasonable chance of success, the Service Provider shall use all reasonable endeavours to pursue any Third Party Insurance Claims.

67.2.5.3 Each Party shall give:

- (a) notice to the other Party of any notice, demand, letter or other document concerning any Third Party Insurance Claim it serves or receives together with a copy of the relevant document as soon as reasonably practicably and in any event within ten (10) Business Days of such service or receipt; and
- (b) the other Party all reasonable co-operation, access and assistance for the purposes of considering and pursuing any Third Party Insurance Claim, including:
 - (i) the provision of any documents, data, or other information held by that Party to which the other Party has no reasonable means of access; and
 - (ii) access to, and the release from normal duties for such period as is required by the other Party (acting reasonably) of, any employee required to provide information or act as a witness for the other Party.

67.2.5.4 The Service Provider shall, in respect of any Third Party Insurance Claim conducted by it:

- (a) keep the Authority fully informed and consult with the Authority about all material elements of any Third Party Insurance Claim;
- (b) not bring the name of the Authority into disrepute; and
- (c) not settle or compromise any Third Party Insurance Claim without the prior consent of the Authority, such consent not to be unreasonably withheld or delayed.

67.2.5.5 The proceeds of any Third Party Insurance Claim (regardless of which Party conducted the Claim) less any out-of-pocket costs and expenses reasonably and properly incurred by the Party who conducted the Third Party Insurance Claim in recovering the same (the "**Third Party Claims Proceeds**") shall be applied as follows:

- (a) where, pursuant to Clause 67.2.2.2, the Authority has implemented a Change or a De-Accrual to remove the affected Project Network Part(s) from the scope of the Project, the Authority shall retain or the Service Provider shall pay to the Authority (as applicable) the full amount of the Third Party Claims Proceeds (but in the case of a Change, only to the extent such Third Party Claims Proceeds, or amounts equivalent thereto, have not been taken into account as part of such Change);
- (b) where pursuant to Clause 67.2.2.1, the Authority has funded the Net Reinstatement Works Costs which are in excess of the Material Damage Limit, the Authority shall retain or the Service Provider shall pay to the Authority (as applicable) an amount of the Third Party Claims Proceeds up to or equalling the amount funded by the Authority pursuant to Clause 67.2.2.1 provided that the Third Party Claim Proceeds from more than one Third Party Insurance Claim shall be aggregated until the amount funded by the Authority pursuant to Clause 67.2.2.1 has been recovered by the Authority;
- (c) where, pursuant to Clause 67.2.5.5(b), the Authority has recovered the amount funded by the Authority pursuant to Clause 67.2.2.1, the Service Provider shall retain or the Authority shall pay to the Service Provider (as applicable) an amount equalling the remainder of the Third Party Claims Proceeds following payment to the Authority pursuant to Clause 67.2.5.4(a); or
- (d) where the Net Reinstatement Works Costs do not exceed the Material Damage Limit, the Service Provider shall retain or the Authority shall pay to the Service Provider (as applicable) the full amount of the Third Party Claims Proceeds,

and, if either Party (the "**Recovering Party**") recovers (whether by payment, discount, credit, saving, relief or other benefit), following payment by the other Party (the "**Paying Party**") to the Recovering Party of Third Party Claims Proceeds pursuant to this Clause 67.2.5.5, a sum which is directly referable to the same fact, matter, event or circumstances giving rise to such payment, the Recovering Party shall repay to the Paying Party the lesser of:

- (e) the Third Party Claims Proceeds; or
- (f) the amount paid by the Paying Party to the Recovering Party.

67.2.5.6 Where the Authority elects to take conduct of an Third Party Insurance Claim pursuant to Clause 67.2.5.1 and the Net Reinstatement Works Cost is less than the Material Damage Limit, the Authority shall:

- (a) keep the Service Provider fully informed and consult with the Service Provider about all material elements of any Third Party Insurance Claim; and
- (b) not settle or compromise any Third Party Insurance Claim without the prior consent of the Service Provider, such consent not to be unreasonably withheld or delayed.

67.3 **No Obligation to insure Uninsurable Risks**

Nothing in this Clause 67 (*Insurance*) shall oblige the Service Provider to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is by act(s) or omission(s) of the Service Provider or Service Provider Party.

67.4 **Uninsurable Risks**

67.4.1 If a risk usually covered by the Required Insurances or statutory insurances becomes Uninsurable then:

- 67.4.1.1 the Service Provider shall notify the Authority within five (5) Business Days of the risk becoming Uninsurable; and

67.4.1.2if both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure that the risk is Uninsurable and that:

- (a) the risk being Uninsurable is not caused by the actions of the Service Provider or any Sub-contractor; and
- (b) the Service Provider has demonstrated to the Authority that the Service Provider and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Service Provider would in similar circumstances (in the absence of the type of relief envisaged by this Clause 67.4 (*Uninsurable Risks*)), be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

67.4.2 If the requirements of Clause 67.4.1 (*Uninsurable Risks*) are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:

67.4.2.1in respect of such third party liability insurance only the Authority shall (at the Authority's option) either serve a Termination Notice on the Service Provider and pay to the Service Provider an amount equal to the amount calculated in accordance with Clause 80.3 (*Compensation following a Force Majeure Event or Uninsurability*) and this Contract shall terminate, or elect to allow this Contract to continue and Clause 67.4.2.2 (*Uninsurable Risks*) shall thereafter apply in respect of such risk;

67.4.2.2 in respect of the Required Insurances (but not the statutory insurances) (if the Authority elects to allow the Contract to continue in accordance with Clause 67.4.2.1 (*Uninsurable Risks*)), the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Service Provider an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the Contract will continue, or serve a Termination Notice on the Service Provider and pay to the Service Provider an amount equal to the amount calculated in accordance with Clause 80.3 (*Compensation following a Force Majeure Event or Uninsurability*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate;

67.4.2.3 where pursuant to Clause 67.4.2.1 and/or 67.4.2.2 (*Uninsurable Risks*) this Contract continues then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Service Provider in respect of the relevant risk in the year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro rated to the number of Months for which the risk is Uninsurable; and

67.4.2.4 where pursuant to Clause 67.4.2.1 and/or 67.4.2.2 (*Uninsurable Risks*) this Contract continues the Service Provider shall approach the insurance market at least every four (4) Months to establish whether the risk remains Uninsurable. As soon as the Service Provider is aware that the risk is no longer Uninsurable, the Service Provider shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract.

67.4.3 If, pursuant to Clause 67.4.2.2 (*Uninsurable Risks*), the Authority elects to make payment to the Service Provider (such that the Contract will terminate)

(the "**Relevant Payment**"), the Service Provider shall have the option (exercisable in writing within twenty (20) Business Days of the date of such election by the Authority (the "**Option Period**")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Contract will continue (and the Relevant Payment will not be made by the Authority), and the Service Provider's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

67.5 **Terms and Conditions that become Unavailable**

67.5.1 If, upon the renewal of any Required Insurance or statutory insurance:

67.5.1.1 any Insurance Term is not available to the Service Provider in the worldwide insurance market with reputable insurers of good standing; and/or

67.5.1.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Service Provider and/or any Sub-contractor of the Service Provider) then Clause 67.6 (*Waiver*) shall apply.

67.6 **Waiver**

If it is agreed or determined that Clause 67.5 (*Terms and Conditions that become Unavailable*) applies then the Authority shall waive the Service Provider's obligations in Clause 67.1 (*Insurance*) and/or Schedule 6 (*Insurance*) in respect of that particular Insurance Term and the Service Provider shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term for so

long as the relevant circumstances described in Clause 67.5 (*Terms and Conditions that become Unavailable*) continue to apply to such Insurance Term.

67.7 **Availability of Alternative Insurance**

To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Service Provider in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Service Provider's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Service Provider shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part 4 of Schedule 6 (*Insurance*).

67.8 **Adjusted Amount**

Where the Authority has exercised the waiver pursuant to Clause 67.6 (*Waiver*), it shall be entitled to deduct from the Unitary Charge an amount equal to the amount paid for the particular Insurance Term in the preceding year (using a reasonable estimate of such amount where a precise figure is not available) less any annual amount paid or payable by the Service Provider to maintain and/or procure the maintenance of any (whether full or partial) alternative or replacement insurance in respect of such Insurance Term pursuant to Clause 67.7 (*Availability of Alternative Insurance*) (the "**Adjusted Amount**").

67.9 **Unitary Charge**

While Clause 67.5 (*Terms and Conditions that become Unavailable*) applies, the Unitary Charge shall be reduced each Contract Year by the Adjusted Amount, (Indexed) from the date that the particular Insurance Term is no longer available.

67.10 **Provision of Information**

The Service Provider shall notify the Authority as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware that Clause 67.5.1.1 and/or Clause 67.5.1.2 (*Terms and Conditions that become Unavailable*) are likely to

apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Service Provider shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

67.11 Insurance Market

In the event that Clause 67.5.1.1 applies in respect of an Insurance Term, (irrespective of the reasons for the same) the Service Provider shall approach the insurance market at least every four (4) Months to establish whether Clause 67.5.1.1 remains applicable to the Insurance Term. As soon as the Service Provider is aware that Clause 67.5.1.1 has ceased to apply to the Insurance Term, the Service Provider shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

68. ADMINISTRATION OF HIGHWAYS CLAIMS

The Parties shall comply with and implement the provisions of Schedule 26 (*Administration of Third Party Claims*).

PART N - EMPLOYEES AND EMPLOYMENT MATTERS

69. EMPLOYMENT MATTERS - TUPE

69.1 The Authority and the Service Provider agree that the following events:

69.1.1 the occurrence of the Service Commencement Date; and

69.1.2 where the identity of a provider (including the Authority) of any service which constitutes or which will constitute the Service is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment (together with any collective agreements with any recognised trade unions) of any Relevant Employees shall have effect (subject to Regulation 4(7) of the Transfer Regulations) thereafter as if originally made between those employees (or the relevant trade union

as the case may be) and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits. On the occasion of a Relevant Transfer the Service Provider shall procure that the former and any new Sub-contractor shall comply with their obligations under the Transfer Regulations.

69.2 **Compliance by Authority**

The Authority shall comply with its obligations under the Transfer Regulations in respect of each Relevant Transfer pursuant to this Contract and the Service Provider shall comply and shall procure that each relevant Sub-Contractor shall comply with its/their obligations under the Transfer Regulations in respect of each Relevant Transfer pursuant to this Contract and each of the Authority and the Service Provider (for itself and any relevant Sub-Contractor) shall indemnify the other against any Losses sustained as a result of any breach of this Clause 69.2 (*Compliance by Authority*) by the Party in default.

69.3 **Offer of Employment**

The following provisions shall apply where the Transfer Regulations do not apply (or may not apply) to any person who is an Authority Existing Employee:

69.3.1 the Service Provider shall offer to or shall procure the offer by the relevant Sub-Contractor to each and every such employee a new contract of employment commencing on the Service Commencement Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Service Commencement Date (except insofar as such terms and conditions relate to an occupational pension scheme) and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Business Days and shall be made:

69.3.1.1 not less than ten (10) Business Days before the Service Commencement Date, if it is believed that the Transfer Regulations shall not apply to a person; or

69.3.1.2 if it is believed that the Transfer Regulations apply to a person but it is subsequently decided that the Transfer Regulations do not so apply as soon as is practicable and in any event no later than ten

(10) Business Days after that decision is known to the Service Provider;

69.3.2 where any offer as referred to in Clause 69.3.1 (*Offer of Employment*) is accepted, the Authority shall indemnify, and keep indemnified in full, the Service Provider on the same terms and conditions as those set out in Clause 69.11 (*Indemnities by the Authority*) as if there had been a Relevant Transfer in respect of each and every Authority Existing Employee who has accepted any such offer and the provisions of Clauses 69.5 (*First Employee List*) to 69.8 (*Adjustment of Reorganisation and Remuneration Costs*) (inclusive) shall apply in the event of any resulting increase or decrease in the Remuneration Costs and Reorganisation Costs;

69.3.3 where any such offer as referred to in Clause 69.3.1 (*Offer of Employment*) is accepted, the Service Provider shall act, and shall procure that each relevant Sub-Contractor shall act in all respects as if the Transfer Regulations had applied to each and every Authority Existing Employee who has accepted any such offer and shall comply with Clause 70 (*Pensions*) in respect of each and every such employee who was immediately before the Service Commencement Date, an Authority Existing Employee;

69.3.4 for the avoidance of doubt, where any such offer as referred to in Clause 69.3.1 (*Offer of Employment*) is not accepted and the Transfer Regulations do not apply, the Authority Existing Employee shall remain an employee of the Authority.

69.4 **Emoluments and Outgoings**

The Parties agree that:

69.4.1 the Authority shall be responsible for or shall procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Commencement Date; and

69.4.2 the Service Provider shall be responsible or shall procure that any relevant Sub-Contractor is responsible, for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Service Provider or any relevant Sub-Contractor in connection with the provision of any part of the Service, including all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Commencement Date.

69.5 **First Employee List**

Part 2 of Schedule 31 (*Employee Information*) sets out information regarding the identity, number, age, sex, length of service, job title, any relevant grievance or disciplinary procedures brought by or against grade and terms and conditions of employment of and pension membership and relevant pensionable service relating to and other matters affecting, each of those employees of the Authority (and of any sub-contractor of the Authority) who it is expected, if they remain in the employment of the Authority (or of any relevant sub-contractor of the Authority) until immediately before the Service Commencement Date, would be Relevant Employees, but the Authority gives no warranty as to the accuracy or completeness of this information.

69.6 **Final Employee List**

The Authority shall provide:

69.6.1 to the Service Provider an update of the First Employee List ten (10) Business Days prior to the Planned Service Commencement Date; and

69.6.2 no later than within five (5) Business Days after the Service Commencement Date information, which was correct as at the Service Commencement Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List (the "**Final Employee List**") and the Authority gives, and shall give, no warranty as to the accuracy or completeness of any information contained in the update of the First Employee List or in the Final Employee List.

69.7 **Workforce Information**

The Parties acknowledge that Part 1 of Schedule 31 (*Employee Information*) sets out in respect of the Service, the following agreed information:

- 69.7.1 the workforce which the Service Provider proposes to establish to provide the Service (the "**Proposed Workforce**") classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- 69.7.2 the Monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Service (the "**Remuneration Costs**") which have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- 69.7.3 the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce including costs associated with dismissal by reason of redundancy or capability and costs of recruitment) (the "**Reorganisation Costs**") which have been calculated by the Service Provider and the relevant Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List.

69.8 **Adjustment of Reorganisation and Remuneration Costs**

If at any time (including after the submission of the Final Employee List pursuant to Schedule 31 (*Employee Information*)), the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to the remainder of this Clause 69.8 (*Adjustment of Reorganisation and Remuneration Costs*)) there shall be a revision of the Unitary Charge to compensate for any such differences, inaccuracies or omissions and the following provisions shall apply:

69.8.1 where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of the Service;

69.8.2 the Service Provider and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any revision to the Unitary Charge shall be calculated as if they had done so;

69.8.3 in calculating any adjustment to be made to the Unitary Charge pursuant to this Clause 69.8 (*Adjustment of Reorganisation and Remuneration Costs*):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- 69.8.4 if there are underpayments by the Service Provider or a relevant Sub-Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge pursuant to Clause 69.4.1 (*Emoluments and Outgoings*) in respect of all such liabilities of the Service Provider or the relevant Sub-Contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Commencement Date shall be dealt with in accordance with Clauses 69.4.1 (*Emoluments and Outgoings*) or 69.11 (*Indemnities by the Authority*)) and an appropriate increase in respect of such liabilities of the Service Provider which represent ongoing costs; and
- 69.8.5 in order to prevent duplication, no adjustment shall be made under this Clause 69.8.3 (*Adjustment of Reorganisation and Remuneration Costs*) if any indemnity given by the Authority under any other provision of this Contract would apply;
- 69.8.6 either Party may propose an adjustment to Unitary Charge pursuant to Clause 69.8.3 (*Adjustment of Reorganisation and Remuneration Costs*) by giving not less than ten (10) Business Days notice to the other. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to this Clause 69.8 (*Adjustment of Reorganisation and Remuneration Costs*);
- 69.8.7 in relation to all matters described in Clauses 69.8.1, 69.8.2 and 69.8.3 (*Adjustment of Reorganisation and Remuneration Costs*) the Service Provider and the Authority shall, (and the Service Provider shall procure that the relevant Sub-Contractor shall), co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations;

69.8.8 the Authority shall and the Service Provider shall, and shall procure that each relevant Sub-Contractor shall, take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the services of the Authority including the Service and to the Relevant Employees.

69.9 Union Recognition

The Authority shall, and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall, supply to the Service Provider no later than five (5) Business Days prior to the Planned Service Commencement Date true copies of its trade union recognition agreement(s) and the Service Provider shall and shall procure that each and every relevant Sub-Contractor shall, in accordance with the Transfer Regulations, recognise the trade unions representing Relevant Employees (as relevant to each relevant Sub-Contractor) after the transfer to the same extent as they were recognised by the Authority or the relevant Sub-contractor of the Authority before the Service Commencement Date.

69.10 Replacement Sub-Contractor

The Service Provider shall procure that, on each occasion on which a Sub-Contractor is replaced pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall, in accordance with the Transfer Regulations, recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the appointment of the relevant Sub-Contractor in respect of the provision of the Service.

69.11 Indemnities by the Authority

The Authority shall indemnify and keep indemnified in full the Service Provider (for itself and for the benefit of each relevant Sub-Contractor) against all Losses incurred by the Service Provider (or any relevant Sub-Contractor) in connection with or as a result of:

69.11.1 a breach by the Authority of its obligations under Clause 69.4.1 (*Emoluments and Outgoings*);

69.11.2 any Claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the date of the Relevant Transfer; and

69.11.3 any liability in relation to any Transferring Employee, in respect of his or her employment by the Authority or its termination which transfers in whole or part in accordance with the Transfer Regulations and/or the ARD which arises partly as a result of any act or omission occurring on or before the Service Commencement Date and partly as a result of any act or omission occurring after the Service Commencement Date provided that the Authority shall indemnify against such part of the Losses sustained by the Service Provider (or any relevant Sub-Contractor) in consequence of the liability as is reasonably attributable to the act or omission occurring before the relevant Service Commencement Date;

and the indemnities contained in Clause 69.11.1 and 69.11.2 (*Indemnities by the Authority*) shall apply as if references in those Clauses to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Authority also included a reference to the relevant employer of the Relevant Employee prior to the Service Commencement Date only to the extent that the Authority recovers any sum in respect of the subject matter of those indemnities under any indemnity or other legal entitlement it has against such person. The Authority shall use all reasonable endeavours to recover any such sums under any such entitlement in the case of Clause 69.11.1 and 69.11.2 (*Indemnities by the Authority*).

69.12 **Service Provider Indemnities**

The Service Provider shall indemnify and keep indemnified in full, the Authority (and at the Authority's request and in the case of Clauses 69.12.1 to 69.12.3 (*Service Provider Indemnities*) (inclusive) each and every Future Service Provider) against:

69.12.1 all Losses incurred by the Authority or any Future Service Provider in connection with, or as a result of, any Claim or demand against the Authority or any Future Service Provider by any person who is, or has been, employed or engaged by the Service Provider (or any relevant Sub-Contractor) in connection with the provision of any part of the Service where such Claim

arises as a result of any act, fault or omission of the Service Provider (and/or any relevant Sub-Contractor) after the Service Commencement Date;

69.12.2 all Losses incurred by the Authority or any Future Service Provider in connection with or as a result of a breach by the Service Provider of its obligations under Clause 69.4.2 (*Emoluments and Outgoings*); and

69.12.3 all Losses incurred by the Authority or any Future Service Provider in connection with, or as a result of, any Claim by any trade union or staff association or employee representative (whether or not recognised by the Service Provider and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from, or connected with any failure by the Service Provider (and/or any relevant Sub-Contractor) to comply with any legal obligation to such trade union, staff association or other employee representative whether under the Transfer Regulations, under the ARD or otherwise and, whether any such Claim arises or has its origin before, on, or after the Service Commencement Date;

69.12.4 any Claim by any Relevant Employee that the identity of the Service Provider (or the relevant Sub-Contractor) is to that Relevant Employee's detriment or that any proposed or actual substantial change by the Service Provider (or any relevant Sub-Contractor) to the Relevant Employees' working conditions or any proposed measures of the Service Provider (or the relevant Sub-Contractor) are to that employee's detriment whether such Claim arises before, on or after, the Service Commencement Date; and

69.12.5 any Claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Service Provider (or a relevant Sub-Contractor) to the Relevant Employees or their representatives whether before, on or after the Service Commencement Date and whether liability for any such Claim arises before, on or after the Service Commencement Date,

provided that the indemnities in this Clause 69.12 (*Service Provider Indemnities*) shall not apply in respect of any sum for which the Authority is to indemnify the Service Provider or a relevant Sub-Contractor pursuant to Clause 69.11 (*Indemnities by the Authority*) or as a result of any adjustment to the Unitary Charge in accordance with Clause 69.8 (*Adjustment of Reorganisation and Remuneration Costs*) or to the

extent that the Claim arises from a wrongful act or omission of the Authority or any Future Service Provider.

69.13 Provision of Details and Indemnity

The Service Provider shall as soon as reasonably practicable and in any event within five (5) Business Days of a request by the Authority, provide to the Authority details of any measures which the Service Provider (or any relevant Sub-Contractor) envisages it or they will take in relation to any employees who are, or who will be, the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Authority against all Losses resulting from any failure by the Service Provider to comply with this Clause 69.13 (*Provision of Details and Indemnity*).

69.14 [Not Used]

69.15 Returning Employees Information Provision

The Service Provider shall (and shall procure that any relevant Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the Expiry Date or following the service of a Termination Notice or as a consequence of the Authority notifying the Service Provider of its intention to retender this Contract pursuant to Clause 80.5.1 (*Retendering Election*):

69.15.1 on receiving a request from the Authority provide in respect of any person engaged or employed by the Service Provider (or any relevant Sub-Contractor) in the provision of the Service (the "**Assigned Employees**") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade, any relevant grievance or disciplinary procedures brought by or against, and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Service Provider (or of any relevant Sub-Contractor) until immediately before the Termination Date or the Expiry Date (as the case may be), would be Returning Employees (the "**Retendering Information**");

69.15.2 provide the Retendering Information promptly and at no cost to the Authority;

69.15.3 notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

69.15.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);

69.15.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and

69.15.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its, or their, business who have not previously been employed or engaged in providing the Service to provide the Service save with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed), provided that this shall not prevent any Assigned Employees from applying for a vacancy in the Service Provider or any relevant Sub-contractor or any of their Affiliates,

and the Service Provider shall keep indemnified in full the Authority, and at the Authority's request, any Future Service Provider against all Losses arising from any Claim by any Party as a result of the Service Provider (or relevant Sub-Contractor) breaching the provisions of Clauses 69.15.1 to 69.15.6 (*Returning Employees Information Provision*) (inclusive).

69.16 Termination of Contract

On the expiry or earlier termination of this Contract, the Parties agree that it is their intention that the Transfer Regulations shall apply in respect of the provision thereafter of any service equivalent to the Service but the position shall be determined in accordance with Legislation at the Expiry Date or Termination Date and the following provisions are without prejudice to such determination:

69.16.1 the Service Provider shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Service Provider (or any relevant Sub-Contractor who had

been engaged in the provision of the Service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Service Provider (or relevant Sub-Contractor) up to the Return Date are satisfied;

69.16.2 without prejudice to Clause 69.16.1 (*Termination of Contract*), the Service Provider shall:

69.16.2.1 remain (and procure that any relevant Sub-Contractor shall remain) (as relevant) responsible for all the Service Provider's (or relevant Sub-Contractor's) employees (other than the Returning Employees) on or after the Return Date and shall indemnify the Authority and any Future Service Provider against all Losses incurred by the Authority or any Future Service Provider resulting from any Claim whatsoever, whether arising before on or after the Return Date by or on behalf of any of the Service Provider's or relevant Sub-Contractor's employees who do not constitute the Returning Employees;

69.16.2.2 in respect of the Returning Employees, the Service Provider shall indemnify the Authority and any Future Service Provider against all Losses incurred by the Authority or any Future Service Provider resulting from any Claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such Claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including any failure by the Service Provider (or any relevant Sub-Contractor) to comply with its or their obligations under the Transfer Regulations and/or the ARD as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider;

69.16.2.3 the Authority shall be entitled to assign the benefit of the indemnity given pursuant to this Clause 69.16 to any Future Service Provider.

69.16.3 Upon expiry or termination of this Contract for whatever reason (the "**Return Date**"), the provisions of this Clause 69.16 (*Termination of Contract*) shall apply.

69.17 Offer of Employment on Expiry or Termination

If the Transfer Regulations do not apply on the Expiry Date or if earlier, the Termination Date, the Authority shall procure that each Future Service Provider (or the Authority) (as appropriate) shall offer employment to the persons employed by the Service Provider (or a relevant Sub-Contractor) and assigned to the provision of the Service immediately before the Return Date and the provisions of this Clause 69.17 (*Offer of Employment on Expiry or Termination*) shall apply:

69.17.1 if an offer of employment is made in accordance with this Clause 69.17 (*Offer of Employment on Expiry or Termination*), the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with Clause 70 (*Pensions*)) as applied immediately before the Expiry Date or if earlier, Termination Date including full continuity of employment, except that the Authority or Future Service Provider may, at their absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of Clause 69.15 (*Returning Employees Information Provision*);

69.17.2 where any such offer as referred to in Clause 69.17.1 (*Offer of Employment on Expiry or Termination*) is accepted, the Service Provider shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions as those set out in Clause 69.12 (*Service Provider Indemnities*) as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this Clause 69 (*Employment Matters - TUPE*) each and every such employee shall be treated as if they were a Returning Employee;

69.17.3 for the avoidance of doubt, where any such offer as referred to in Clause 69.17.1 (*Offer of Employment on Expiry or Termination*) is not accepted and the Transfer Regulations do not apply, the employee shall remain an employee of the Service Provider or relevant Sub-Contractor as appropriate.

69.18 **Sub-Contractors**

In the event that the Service Provider enters into any Sub-contract in connection with this Contract, it shall impose obligations on its relevant Sub-Contractors in the same terms as those imposed on it pursuant to this Clause 69 (*Employment Matters - TUPE*) and shall procure that each relevant Sub-Contractor complies with such terms. The Service Provider shall indemnify and keep the Authority indemnified in full against all Losses, incurred by the Authority or any Future Service Provider as a result of, or in connection with, any failure on the part of the Service Provider and/or any relevant Sub-Contractor to comply with this Clause 69 (*Employment Matters - TUPE*).

70. **PENSIONS**

70.1 **Membership of the pension scheme**

Subject to Clauses 70.1.1 and 70.1.2, the Service Provider shall, and shall procure that each relevant Sub-contractor shall, ensure that all Transferring Employees that are to continue in or are to be offered membership of the Local Government Pension Scheme pursuant to the Admission Agreement (the "**Eligible Pension Scheme Employees**") continue in or are offered membership of the Local Government Pension Scheme in accordance with the Admission Agreement or are afforded pension rights which are certified by the Government Actuary Department or by Fellow of the Institute of Actuaries as providing pension benefits which are broadly comparable to or better than the terms of the pension scheme of which they were, or were eligible to be, members prior to the Relevant Transfer. The remaining provisions of this Clause 70 (*Pensions*) shall apply in relation to Transferring Employees who are the Eligible Pension Scheme Employees.

70.1.1 Eligible Pension Scheme Employees who do not apply to join the Local Government Pension Scheme within twelve (12) months of the Service Commencement Date shall not thereafter be entitled to join the Local Government Pension Scheme.

70.1.2 The Service Provider shall, six (6) months after Service Commencement Date, write to all Eligible Pension Scheme Employees who have not at that date applied to join the Local Government Pension Scheme, reminding them

of their right to do so. Such written reminder shall specify the date by which any such application must be made.

70.2 Admission Agreement

On or before the Service Commencement Date, the Service Provider shall, or shall procure that each relevant Sub-contractor shall, enter into and comply with the conditions of the Admission Agreement and Admission Agreement Bond (if required under the Admission Agreement) with the Authority (to which the Authority agrees) under the provisions of the Pensions Regulations so as to enable the Eligible Pension Scheme Employees to continue in membership or to participate in the LGPS. In this regard:

70.2.1 the Service Provider agrees to indemnify the Authority from and against any Loss suffered by it which arise from any breach by the Service Provider or relevant Sub-contractor of the terms of the Admission Agreement referred to in this Clause 70.2 (*Admission Agreement*);

70.2.2 subject to Clause 70.2.3 (*Admission Agreement*), the Service Provider shall, or shall procure that each relevant Sub-contractor shall, pay to the Administering Authority for the immediate credit of the LGPS such contributions as are due under the Pension Regulations in respect of each of the Eligible Pension Scheme Employees;

70.2.3 if any sum certified in writing by the Administering Authority as being payable under the Pension Regulations or the Admission Agreement by the Service Provider or each relevant Sub-contractor to the Administering Authority has not been paid by the date on which it becomes due under the Pension Regulations or the Admission Agreement the Authority shall, subject to Clause 56.11.2 be entitled to set off against any payments due to the Service Provider an amount equal to the sum due from the Service Provider or each relevant Sub-contractor to the Authority under this Contract and to pay the sum to the Administering Authority or in the event of set-off not being available to pay the sum direct to the Administering Authority and reclaim the same under Clause 70.2.1 (*Admission Agreement*).

70.2A Excess Contribution Rate

[REDACTED]

70.2B Exceptions from Excess Contribution Rate

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

70.2C Lower Contribution Rate

[REDACTED]

70.3 Exit Liabilities

Subject to Clause 70.2B, the Service Provider shall invoice to the Authority any amounts for which the Service Provider or any Sub-contractor is liable in respect of any additional payment in respect of the Transferring Employees (other than arising pursuant to a failure of the Service Provider or the Sub-contractor to make monthly contributions in accordance with the terms of the Admission Agreement) upon the cessation of the Service Provider's or Sub-Contractor's participation in the LGPS pursuant to the Admission Agreement. Such invoice shall be paid by the Authority within twenty-eight (28) days of receipt by the Authority.

70.4 Obligation to maintain status

The Service Provider shall, and shall procure that each relevant Sub-contractor shall, use its best endeavours to retain its status as a Transferee Admission Body and in the event that the Service Provider or any relevant Sub-contractor should lose its status as a Transferee Admission Body, it shall, and shall procure that each relevant Sub-contractor shall, use its best endeavours to regain its status as a Transferee Admission Body (including taking all steps and remedying all such matters as shall be notified to it by the Authority and/or the Administering Authority, regardless of the level of material expenditure entailed).

70.5 Alternative Pension Scheme

Without prejudice to the Service Provider's obligations in Clause 70.4 (*Obligation to maintain status*) above and subject to Clause 70.13 (*Changes to LGPS*), if, after having entered into an Admission Agreement in accordance with Clause 70.2 (*Admission Agreement*), the Service Provider or any relevant Sub-contractor ceases to

participate in the LGPS (for whatever reason) before the expiry of this Contract, the Service Provider shall, or shall procure that each relevant Sub-contractor shall, set up an alternative pension scheme or schemes (the "**Pension Scheme**"). The Pension Scheme shall be:

70.5.1 established within three (3) Months of the date of the Relevant Transfer (the Transfer Date) or cessation of participation in the LGPS (the "**Cessation Date**") (whichever applies) and maintained at least until the Expiry Date, or if earlier, the Termination Date;

70.5.2 reasonably acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed);

70.5.3 approved by Revenue & Customs as a registered pension scheme under Schedule 36 Part 1 of the Finance Act 2004 (or capable of such approval),

and the Service Provider shall, or shall procure that each relevant Sub-contractor shall, offer the Eligible Pension Scheme Employees membership of the Pension Scheme on and from the Transfer Date or the Cessation Date (as applicable) and the provisions of Clauses 70.6 (*Benefits under alternative Pension Scheme*) to 70.12 (*Redundancy and Severance Terms and discretionary Benefits*) (inclusive) shall apply, but with references to the "**Service Commencement Date**" replaced by references to the Transfer Date or Cessation Date (as applicable).

70.6 **Benefits under alternative Pension Scheme**

The Pension Scheme shall provide such benefits for future service for each Eligible Pension Scheme Employee as an actuary from the Government Actuary Department or a Fellow of the Institute of Actuaries employed by the Government Actuary Department certifies to be of broadly comparable overall value to the benefits to which the Eligible Pension Scheme Employee would have been entitled under the LGPS, had the Eligible Pension Scheme Employee continued to be a member of the LGPS.

70.7 **Government Actuary Department Certificate**

The Service Provider shall, or shall procure that each relevant Sub-contractor shall, ensure that the certificate from the Government Actuary Department for the Pension Scheme referred to in Clause 70.6 (*Benefits under alternative Pension Scheme*) shall

be delivered to the Authority on or before the Service Commencement Date or the Cessation Date (whichever applies).

70.8 Provision of Information by Authority

The Authority shall provide the Service Provider with such information as it may reasonably require in relation to the LGPS to enable the Service Provider to submit a proposal to the Government Actuary Department to assess the comparability of the Pension Scheme. The Service Provider shall, or shall procure that each relevant Sub-contractor shall, provide such documentation as is required by the Government Actuary Department to enable it to consider the question of comparability.

70.9 Costs

All costs incurred in obtaining a certificate of broad comparability from the Government Actuary Department shall be borne by the Service Provider or the relevant Sub-contractor (as applicable).

70.10 Bulk Transfer Payments

The Service Provider shall, or shall procure that each relevant Sub-contractor shall procure that the Pension Scheme shall be capable of receiving one or more bulk transfer payments for past service liabilities for and in respect of any or all of the Eligible Pension Scheme Employees from the LGPS (the amount of such bulk transfer payment or payments to be determined by the Government Actuary Department) and the Service Provider undertakes or shall procure that each relevant Sub-contractor undertakes to take all measures necessary to ensure that the trustees of the Pension Scheme accept any such bulk transfer payments.

70.11 Transfer of Past Service Benefits

The Service Provider shall, or shall procure that each relevant Sub-contractor shall, offer each Eligible Pension Scheme Employee the option of transferring his past service benefits in the LGPS to the Pension Scheme. Such offer shall be of benefits in the Pension Scheme on a day for day credit basis in respect of pensionable service in the LGPS, which are broadly comparable in value to those applying for and in respect of him under the LGPS immediately before the Service Commencement Date. In consideration of the receipt of a bulk transfer payment from the LGPS, the Service Provider undertakes or shall procure that each relevant Sub-contractor undertakes to

take all measures necessary to ensure that the trustees of the Pension Scheme provide the benefits described in this Clause 70.11 (*Transfer of Past Service Benefits*) in respect of such Eligible Pension Scheme Employee who accept the Service Provider's or relevant Sub-contractor's offer.

70.12 **Redundancy and Severance Terms and discretionary Benefits**

The following provisions shall apply:

70.12.1 the Service Provider shall, or shall procure that each relevant Sub-contractor shall, procure that any relevant redundancy and severance terms in the LGPS shall be replicated in the Pension Scheme for the benefit of the Eligible Pension Scheme Employees;

70.12.2 where the Service Provider or any relevant Sub-contractor has entered into an Admission Agreement, the Service Provider shall award benefits (where permitted) to the Eligible Pension Scheme Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Pension Scheme Employees would have received such benefits had they still been employed by the Authority; and

70.12.3 where the award of benefits in Clause 70.12.1 (*Redundancy and Severance Terms and discretionary Benefits*) is not permitted under the Compensation Regulations and/or the LGPS or the Service Provider or any relevant Sub-contractor has not entered into an Admission Agreement, the Service Provider shall, or shall procure that each relevant Sub-contractor shall, award benefits to the Eligible Pension Scheme Employees which are identical to the benefits the Eligible Pension Scheme Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Pension Scheme Employees would have received such benefits had they still been employed by the Authority.

70.13 **Transfer of Employment of Eligible Pension Scheme Employees**

Where the employment of any Eligible Pension Scheme Employee is transferred on a second and/or subsequent occasion during the Term to another employer (the "**New Employer**"), the Service Provider shall, or shall procure that each relevant Sub-contractor shall, procure that the New Employer complies with the provisions of

Clauses 70.1 (*Membership of the pension scheme*) to 70.12 (*Redundancy and Severance Terms and discretionary Benefits*) (inclusive) provided that for those purposes:

70.13.1 references to the Service Provider or the relevant Sub-contractor shall be deemed to be references to the New Employer;

70.13.2 references to the Service Commencement Date shall be deemed to be references to the date of the transfer to the New Employer; and

70.13.3 references to Eligible Pension Scheme Employee shall be deemed to be references to the Eligible Pension Scheme Employee transferred to the New Employer.

70.14 Changes to LGPS

In the event of a material change to the Pension Regulations governing the Local Government Pension Scheme, including a change to the balance between employer and employee contributions, or the rules of eligibility for membership of the Local Government Pension Scheme or revocation of the ability for private sector organisations to remain as members of the Local Government Pension Scheme, the Authority shall be entitled to issue an Authority Change, whether in substitution for the application of Clause 70.4 or otherwise, in order to implement such changes.

PART O - TERMINATION

71. TERMINATION

71.1 Termination or Expiry of this Contract

Without prejudice to Clause 93 (*Continuing Obligations*) this Contract shall terminate on the earlier of:

71.1.1 the date of termination pursuant to Clause 80.6 (*Relevant Discharge Terms*)

71.1.2 the date of termination pursuant to Clauses 67.4.2 and 67.4.2.1 (*Uninsurable Risks*);

71.1.3 the date of termination by the Authority pursuant to Clause 72 (*Voluntary Termination by the Authority*);

71.1.4 the date of termination by the Authority pursuant to Clause 73 (*Service Provider Default*)

71.1.5 the date of termination following a Prohibited Act pursuant to Clause 75 (*Termination for Corrupt Gifts and Fraud*);

71.1.6 the date of termination by the Service Provider pursuant to Clause 74 (*Termination by the Service Provider*);

71.1.7 the date of termination following a Force Majeure Event pursuant to Clause 76 (*Termination Following a Force Majeure Event*); and

71.1.8 the Expiry Date.

71.2 **Exclusive Right to Terminate**

Each and any of the events referred to in:

71.2.1 Clauses 71 to 76 constitute the only breaches of this Contract or any Project Document which shall permit termination of this Contract by the Authority; and

71.2.2 Clause 74 (*Termination by the Service Provider*) constitutes the only breaches of this Contract or any Project Document which shall permit termination of this Contract by the Service Provider.

71.3 **Senior Lenders Rights**

The provisions set out in Clause 71 (*Termination*) to Clause 77 (*Other Consequences of Termination or Expiry*) (inclusive) are subject to the Senior Lenders' Direct Agreement.

72. **VOLUNTARY TERMINATION BY THE AUTHORITY**

72.1 **Voluntary Termination by the Authority**

The Authority may terminate the Contract at any time on or before its Expiry Date by complying with its obligations under Clauses 72.1A.1 to 72.1A.3 below.

72.1A If the Authority wishes to terminate the Contract under this Clause, it must give serve a Termination Notice on the Service Provider stating:

72.1A.1 that the Authority is terminating the Contract under this Clause 72 (*Voluntary Termination by the Authority*);

72.1A.2 that the Contract will terminate on the date specified in the Termination Notice, which shall be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice; and

72.1A.3 whether the Authority has chosen to exercise its option under Clause 72.2 below.

72.2 On termination, the Authority shall have the option to require the Service Provider to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

72.3 On termination under Clause 72.1 above, the Authority shall pay the Service Provider an amount equal to the Authority Default Termination Sum payable under Clause 80.1.1.

72.4 This Contract shall terminate on the date specified in the Termination Notice.

73. SERVICE PROVIDER DEFAULT

73.1 If a Service Provider Default has occurred and the Authority wishes to terminate this Contract, it may serve a Termination Notice on the Service Provider in accordance with Clause 73.2 (*Termination Notice*).

73.2 Termination Notice

The Termination Notice must specify:

73.2.1 the type and nature of the Service Provider Default that has occurred, giving reasonable details; and

73.2.2 that in the case of a Service Provider Default within limbs (a), (h), (l), (q) or (r) of the definition of that term this Contract [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73.2.3 that in the case of any other Service Provider Default (not being limbs) (a), (h), (l), (q) or (r), this Contract will, subject to the provisions of the Senior Lender's Direct Agreement, terminate on the date falling twenty (20) Business Days after the date the Service Provider receives the Termination Notice.

73.2.4 [Redacted text block]

73.3 Service Provider's Rectification

If the Service Provider either:

73.3.1 rectifies the Service Provider Default within forty (40) Business Days of receipt of the Termination Notice; or

73.3.2 implements the rectification programme, if applicable, in accordance with its terms,

the Termination Notice shall be deemed to be revoked and this Contract shall continue.

73.4 Failure to Rectify

If in the case of a Service Provider Default within limbs (a), (h), (l), (q) or (r) of the definition of that term:

73.4.1 [REDACTED]
[REDACTED] and the Service Provider fails to rectify the Service Provider Default by the date falling forty (40) Business Days after the date of receipt of the Termination Notice; or

73.4.2 the Service Provider fails to rectify the Service Provider Default within the time period specified in the Termination Notice.

the Authority may give notice stating that this Contract shall, subject to the terms of the Senior Lenders' Direct Agreement, terminate on the date falling five (5) Business Days after the date of receipt of such notice.

73.4A [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

73.5 Persistent Breach

73.5.1 If a particular breach, other than any breach for which Performance Adjustments or Milestone Default Termination Points could have been awarded and/or a Traffic Management Adjustment or Carbon Adjustment could have been made, has continued [REDACTED]
[REDACTED] then the Authority may serve a notice on the Service Provider:

73.5.1.1 specifying that it is a formal warning notice;

73.5.1.2 giving reasonable details of the breach; and

73.5.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

73.5.2 If, following service of such a warning notice, the breach specified has continued [REDACTED] [REDACTED] after the date of service, then the Authority may serve another notice (a "**Final Warning Notice**") on the Service Provider:

73.5.2.1 specifying that it is a Final Warning Notice;

73.5.2.2 stating that the breach specified has been the subject of a warning notice served within [REDACTED] prior to the date of service of the Final Warning Notice; and

73.5.2.3 stating that if such breach continues for more than [REDACTED] [REDACTED] or recurs [REDACTED] [REDACTED] after the date of service of the Final Warning Notice, the Contract may be terminated.

73.5.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

73.6 **Termination by the Authority for Breach of the Refinancing Provisions**

If the Service Provider wilfully breaches Clause 105.1 (*Refinancing*) then the Authority may terminate the Contract at any time on or before its Expiry Date by serving a Termination Notice on the Service Provider stating:

73.6.1 that the Authority is terminating the Contract pursuant to this Clause 73.6 (*Termination by the Authority for Breach of the Refinancing Provisions*);

73.6.2 that this Contract shall terminate on the date falling [REDACTED] [REDACTED] after the date of receipt of the notice; and

73.6.3 whether the Authority has chosen to exercise its option under Clause 73.6A below.

and this Contract shall terminate on the date falling [REDACTED] after the date of receipt of the Termination Notice.

73.6A On termination, the Authority shall have the option to require the Service Provider to transfer to the Authority all of its right, title and interest in and to the Assets.

73.7 **Replacement of a non-performing Sub-contractor**

73.7.1 Where the whole (and not part only) of the First Tier Sub-Contract is terminated by the Service Provider, the Service Provider shall, by a notice to the Authority (a "**Wipe Clean Notice**") be entitled to require that there be disregarded for the purposes of calculating whether a Service Provider Default has occurred pursuant to paragraphs (b), (n), (o), (p) or (q) of the definition contained within Schedule 1 (*Definitions*), any Milestone Default Termination Point(s) and/or Performance Adjustments and/or warning notices and/or Final Warning Notices incurred by the Service Provider prior to the date that the First Tier Sub-Contractor was replaced and attributable to the performance or non-performance of that replaced First Tier Sub-Contractor, provided that the Service Provider shall not be entitled to give more than two (2) such notices in total during the Term, of which only one (1) such notice may be given during the Core Investment Period.

73.7.2 The Authority shall still be entitled to make Adjustments to the Unitary Charge during the period following the date upon which the First Tier Sub-Contractor was replaced, where the Service Provider serves a notice pursuant to Clause 73.7 (*Replacement of a non-performing Sub-contractor*).

74. **TERMINATION BY THE SERVICE PROVIDER**

74.1 If an Authority Default has occurred and the Service Provider wishes to terminate the Contract, it must serve a Termination Notice on the Authority within thirty (30) Business Days of becoming aware of the Authority Default.

74.2 The Termination Notice must specify the type of Authority Default which has occurred entitling the Service Provider to terminate.

74.3 The Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Termination Notice, unless the Authority rectifies the Authority Default within thirty (30) Business Days of receipt of the Termination Notice.

75. TERMINATION FOR CORRUPT GIFTS AND FRAUD

75.1 Termination for a Prohibited Act

If the Service Provider or any Key Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the provisions of Clauses 75.2 (*Prohibited Act*) to 75.7 (*Notice of Termination*) (inclusive).

75.2 Prohibited Act

Notwithstanding Clauses 75.3 - 75.6, if a Prohibited Act is committed by the Service Provider or by an employee not acting independently of the Service Provider, then the Authority may terminate the Contract by serving a Termination Notice on the Service Provider.

75.3 Notice of Termination

If the Prohibited Act is committed by an employee of the Service Provider acting independently of the Service Provider, then the Authority may serve a Termination Notice on the Service Provider and the Contract will terminate, unless within twenty (20) Business Days of receipt of such Termination Notice the Service Provider terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.

75.4 Prohibited Act by the Key Sub-Contractor

If the Prohibited Act is committed by a Key Sub-Contractor or by an employee of that Key Sub-Contractor not acting independently of that Key Sub-Contractor, then the Authority may serve a Termination Notice to the Service Provider and the Contract will terminate, unless within twenty (20) Business Days of receipt of such Termination Notice, the Service Provider terminates the relevant Key Sub-Contract and procures the performance of such part of the Service by another person

75.5 Prohibited Act by employee of a Sub-Contractor

If the Prohibited Act is committed by an employee of a Key Sub-Contractor acting independently of that Key Sub-Contractor, then the Authority may serve a

Termination Notice to the Service Provider and the Contract will terminate, unless within twenty (20) Business Days of receipt of such Termination Notice the Key Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.

75.6 **Prohibited Act by other person**

If the Prohibited Act is committed by any other person not specified in Clauses 75.2 (*Prohibited Act*) to 75.5 (*Prohibited Act by employee of a Sub-Contractor*) (inclusive), then the Authority may serve a Termination Notice on the Service Provider and the Contract will terminate unless within twenty (20) Business Days of receipt of such Termination Notice, the Service Provider:

75.6.1 procures the termination of such person's employment and of the appointment of their employer (where not employed by the Service Provider or the Key Sub-Contractors) and (if necessary) procures the performance of such part of the Service by another person; or

75.6.2 in the case of a DNO carrying out Non-Contestable Works and where no organisation other than the DNO can carry out such Non-Contestable Works for the Service Provider:

75.6.2.1 (where the person is acting independently of his or her employer), uses reasonable endeavours to procure the termination of such person's employment, or the removal of that person from the provision of the Service and (if applicable) procures the performance of such part of the Service by another person; or

75.6.2.2 (where such person is not acting independently of his or her employer), take such actions as is required by the Authority (acting in a reasonable and proportionate manner) in relation to the DNO including, where practicable, procurement of a reasonably equivalent viable alternative provider of the Non-Contestable Works.

75.7 **Notice of Termination**

Any Termination Notice under this Clause 75 (*Termination for Corrupt Gifts and Fraud*) shall specify:

75.7.1 the nature of the Prohibited Act;

75.7.2 the identity of the Party whom the Authority believes has committed the Prohibited Act;

75.7.3 where Clause 75.6.2.2 (*Prohibited Act by other person*) applies, what reasonable actions the Authority requires to be taken in relation to the DNO;

75.7.4 the date on which the Contract shall terminate, in accordance with the applicable provision of this Clause 75 (*Termination for Corrupt Gifts and Fraud*); and

75.7.5 whether the Authority elects not to have transfer of the Assets pursuant to Clause 77.6 (*Transfer of Assets*).

75.8 **Bribery Act Procedures**

The Service Provider undertakes to the Authority that it will throughout the duration of this Contract use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Service Provider from bribing any person with the intention of obtaining or retaining business for the Service Provider or with the intention of obtaining or retaining an advantage in the conduct of business for the Service Provider.

76. **TERMINATION FOLLOWING A FORCE MAJEURE EVENT**

76.1 **Obligations**

No Party shall be entitled to bring a Claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any Loss or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt (but without prejudice to Clauses 76.5 (*Termination*) or 76.7 (*Termination by Authority*)), the Authority shall not be entitled to terminate this

Contract for a Service Provider Default if such Service Provider Default arises from a Force Majeure Event.

76.2 Adjustments to be made

Nothing in Clause 76.1 (*Obligations*) shall affect any entitlement to make Adjustments or any Adjustments made as a result of the operation of Schedule 4 (*Payment Mechanism*) in the period during which the Force Majeure Event is subsisting.

76.3 Obligation to Notify

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

76.4 Consultation

As soon as practicable following such 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 facilitate the continued performance of the Contract.

76.5 Termination

If no such terms are agreed on or before the date falling one hundred and twenty (120) days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under the Contract for a period of more than one hundred and eighty (180) days, then, subject to Clause 76.6 (*Compensation on Termination*), either Party may terminate this Contract by serving a written Termination Notice to the other Party and this Contract shall terminate twenty (20) Business Days after receipt of such Termination Notice.

76.6 Compensation on Termination

If the contract is terminated under Clause 76.5 (*Termination*) or 76.7 (*Termination by Authority*):

76.6.1 compensation shall be payable by the Authority in accordance with Clause 80.3 (*Compensation following a Force Majeure Event or Uninsurability*); and

76.6.2 the Authority may require the Service Provider to transfer its title, interest and rights in and to any Assets to the Authority.

76.7 Termination by Authority

If the Service Provider serves a Termination Notice on the Authority under Clause 76.5 (*Termination*) stating that it wishes to terminate the Contract, then the Authority has the option either to accept such Termination Notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires the Contract to continue. If the Authority gives the Service Provider such notice, then:

76.7.1 the Authority shall pay to the Service Provider the Monthly Payment from the day after the date on which the Contract would have terminated under Clause 76.5 (*Termination*) as if the Service affected by the Force Majeure Event was being fully provided less any amounts which, but for such Force Majeure Event, the Service Provider would have paid to any sub-contractor under a Sub-contract and which are retained by the Service Provider; and

76.7.2 the Contract will not terminate until expiry of a Termination Notice (of at least twenty (20) Business Days) from the Authority to the Service Provider that it wishes the Contract to terminate.

76.8 Mitigation

The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Service Provider shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

76.9 Cessation of a Force Majeure Event

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 Contract. Following such notification the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

77. OTHER CONSEQUENCES OF TERMINATION OR EXPIRY

77.1 Financial Consequences of Termination

Upon termination of this Contract pursuant to Clause 67.4 (*Uninsurable Risks*), Clause 71 (*Termination*), Clause 73 (*Service Provider Default*), Clause 74 (*Termination by the Service Provider*), Clause 75 (*Termination for Corrupt Gifts and Fraud*) or Clause 76 (*Termination Following a Force Majeure Event*), compensation payments shall be made by the Authority or the Service Provider (as the case may be) in accordance with Clause 80 (*Compensation on Termination*).

77.2 Transfer of documents etc to the Authority

The Service Provider shall within twenty (20) Business Days of the Expiry Date (or, if earlier the Termination Date) hand over to the Authority all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Service Provider relating to and/or touching upon the design, installation, maintenance and/or replacement of the Project Network, Work Sites and the carrying out of the Service other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Service after the Termination Date or the Expiry Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer shall be surrendered, released and/or handed-over to the Authority by whatever means and in whatever format the Authority may reasonably require.

77.3 Provision of Information

The Service Provider shall (subject to any condition imposed on the Service Provider or any Key Sub-Contractor by Legislation):

77.3.1 following the service of a Termination Notice;

77.3.2 following termination of this Contract when a Termination Notice is not served;

77.3.3 at any time during the Term immediately upon request from the Authority;
and

77.3.4 no later than six (6) Months and no earlier than twelve (12) Months before
the Expiry Date,

supply to the Authority all information reasonably required by the Authority to carry
out the Service (including information on the identity, terms and conditions of
employment of all employees of the Service Provider or any Key Sub-Contractor
employed in the provision of the Service and information relating to the Assets and/or
Service Provider Equipment and/or Service Provider Party Equipment) and the
Service Provider warrants that, to the best of its knowledge and belief, such
information is accurate in all material respects.

77.4 Vacation of Authority's Property, etc.

On the Expiry Date (or if earlier on the Termination Date), the Service Provider shall,
and shall procure that all Service Provider Parties shall:

77.4.1 vacate any of the Authority's facilities or premises where any part of the
Service was or is being carried out; and

77.4.2 minimise any inconvenience to the Authority and any other Authority Party
caused by such vacation; and

77.4.3 make good any damage caused by the Service Provider and/or any Service
Provider Party (at the Service Provider's expense) within twenty
(20) Business Days of such vacation.

77.5 Assignment of Rights, etc.

On the Expiry Date (or if earlier, on the Termination Date) the Service Provider shall:

77.5.1 assign to the Authority or any person nominated by the Authority the benefit
of all and any contracts or arrangements (as may be reasonably required by
the Authority) it may have with any third parties and shall, if for any reason it
cannot assign the same, declare a trust of all its beneficial interest in the same
for the benefit of the Authority; and

77.5.2 take such action in relation to Intellectual Property Rights as is referred to in Clause 84 (*Intellectual Property Rights*); and

77.5.3 take such action in relation to demobilisation as is set out in Schedule 14 (*Demobilisation*),

and the Service Provider hereby irrevocably and unconditionally appoints the Authority as the Service Provider's lawful attorney for the duration of the Term (and to the complete exclusion of any rights that the Service Provider may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this Clause 77.5 (*Assignment of Rights, etc.*) as the attorney may think fit.

77.6 Transfer of Assets

Unless or to the extent that the Authority elects in writing to the contrary, the Service Provider shall transfer its rights, title and interest in and to the Assets to the Authority (or any person nominated by the Authority), on and with effect from the Expiry Date or, if earlier, the Termination Date (as the case may be) for no additional payment.

77.7 Co-operation by the Service Provider

On and after the Termination Date the Service Provider shall continue to act in good faith and shall co-operate with the Authority to ensure the smooth hand-over of the Project Network, the Assets and the Service.

77.8 Duty to Co-operate

During the final six (6) Months of the Term (where this expires by effluxion of time) or during the period of any Termination Notice of this Contract, and in either case for a reasonable period thereafter, the Service Provider shall co-operate fully with the transfer of responsibility for the Service (or any part of the Service) to the Authority or any New Service Provider of such services the same or similar to the Service, and for the purposes of this Clause 77 (*Other Consequences of Termination or Expiry*) the meaning of the term "*co-operate*" shall include:

77.8.1 liaising with the Authority and/or any New Service Provider, and providing reasonable assistance and advice concerning the Service and their transfer to the Authority or to such New Service Provider;

77.8.2 allowing any New Service Provider access (at reasonable times and on reasonable notice) to the Project Network, Work Sites and any depots from which the Service is provided but not so as to interfere with or impede the provision of the Service;

77.8.3 providing to the Authority and/or to any New Service Provider all and any information concerning the Service which is reasonably required for the efficient transfer of responsibility for performance of the Service; and

77.8.4 transferring its rights, title and interest in and to the Assets to the New Service Provider with effect on and from the Expiry Date.

77.9 Retendering the Service on Expiry

77.9.1 On or before a date falling no later than twelve (12) Months prior to the Expiry Date, the Authority shall notify the Service Provider in writing whether it wishes:

77.9.1.1 to retender the provision of the Service; and/or

77.9.1.2 the Service Provider to transfer, on the Expiry Date, all of its rights, title and interest in and to the Assets to the Authority.

77.9.2 If the Authority wishes to retender the provision of the Service then:

77.9.2.1 the retendering shall be carried out on the basis that the Authority will contract with a successor service provider to provide the new service on and from the Expiry Date;

77.9.2.2 the Service Provider shall do all necessary acts (including entering into any contracts) to ensure that the successor service provider obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date;

77.9.2.3 the Authority will bear all costs of any retendering of the Contract on expiry.

77.10 **Transfer of Responsibility**

The Service Provider shall, and shall procure that each Key-Sub-Contractor shall, use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Service to a New Service Provider or to the Authority, as the case may be, and the Service Provider shall, and shall procure that each Key-Sub-Contractor shall, take no action at any time during the Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

78. **DE-MOBILISATION PROCEDURES**

During the twelve (12) Month period immediately preceding the Expiry Date or, if applicable, during the period between the date of service of any Termination Notice and the relevant date of termination, and for any additional period as set out in Schedule 14 (*Demobilisation*) the Parties shall comply with their respective obligations as set out in Schedule 14 (*Demobilisation*).

79. **HANDBACK PROCEDURE**

79.1 **General**

Without prejudice to any other requirements of this Contract, the Service Provider shall perform the Services in accordance with the provisions of this Contract so that at the Expiry Date (and, for avoidance of doubt, not the Termination Date) the Project Network and each Project Network Part comply with the Output Specification.

79.2 **Carriageways, Footways and Structures**

79.2.1 Carriageways and Footways

79.2.1.1 Subject to Clause 79.2.1.2, the Service Provider shall ensure that all Carriageways and Footways on the Project Network comply with Service Standard 2 of the Output Specification on the Expiry Date.

79.2.1.2 In relation to Performance Requirements 2.35 and 2.36, retention of payments to rectify failures to meet the required levels of the Deflection Condition Index shall be dealt with in accordance with Clause 27.13 (*Deflectograph Surveys*) and shall not lead to retention

pursuant to this Clause 79.2 (*Carriageways, Footways and Structures*).

79.2.1.3 The Service Provider shall use the data generated from the Surveys undertaken in the twenty third (23rd) Contract Year ("**Year 23**") and the twenty fourth (24th) Contract Year ("**Year 24**") pursuant to Clause 27 (*Independent Surveys and Inspections*) to:

79.2.1.3.1 predict the deterioration rates of the Carriageways and Footways on the Project Network for the remainder of the Term; and

79.2.1.3.2 identify the works required to be carried out in the remainder of Year 23 and Year 24 and the twenty fifth (25th) Contract Year ("**Year 25**") to ensure that the Carriageways and Footways on the Project Network shall comply with Service Standard 2 when the Surveys are undertaken in Year 25 pursuant to Clause 27 (*Independent Surveys and Inspections*) and that they comply with Service Standard 2 on the Expiry Date.

79.2.1.4 The Service Provider shall ensure that all Investment Programmes prepared in accordance with Clause 20 (*Investment Programmes*) shall include all works identified pursuant to Clause 79.2.1.3.2, and, whenever any such works are included in any Investment Programme, then the Service Provider shall provide to the Authority an estimate of the cost of carrying out such works, together with a written statement from the Independent Surveyor confirming to the Authority the accuracy of such costings, and shall carry out the Service in the remainder of Year 23, Year 24 and Year 25 (as applicable) in accordance with such Investment Programmes.

79.2.1.5 If the data generated from the Surveys carried out in Year 25 identifies that the Carriageways and Footways on the Project Network do not comply with Service Standard 2, the Service Provider shall:

79.2.1.5.1 notify the Authority in writing of all failures of such Carriageways and Footways on the Project Network to comply with Service Standard 2, including identification of the relevant Carriageways and Footways which have so failed, and the relevant Performance Requirements that have not been complied with in respect of such failed Carriageways and Footways, within five (5) Business Days of the Service Provider becoming aware of such failure;

79.2.1.5.2 identify the works required to be carried out in the remainder of the Term to ensure that the Carriageways and Footways on the Project Network shall comply with Service Standard 2 on the Expiry Date; and

79.2.1.5.3 update the relevant Investment Programmes prepared in accordance with Clause 20 (*Investment Programmes*) including all works identified pursuant to Clause 79.2.1.5.2, and, whenever any such works are included in any Investment Programme, then the Service Provider shall provide to the Authority an estimate of the cost of carrying out such works, together with a written statement from the Independent Surveyor confirming to the Authority the accuracy of such costings, and shall carry out the Service in the remainder of the Term in accordance with such Investment Programmes.

79.2.1.6 From the first Contract Month following the end of Year 25, the Authority shall be entitled to retain from the Monthly Unitary Charge (or where such amount is greater than the Monthly Unitary Charge due in the Month falling at the end of Year 25, to demand from the Service Provider payment of any shortfall) an amount of money equivalent to the cost of all works which have been included pursuant to Clause 79.2.1.5.3 within Investment Programmes submitted by the Service Provider and on the basis of the costing attributed to such works in the relevant Investment Programme, provided that such

amount shall be paid by the Authority into the Retention Fund Account.

79.2.1.7 The Service Provider shall notify the Authority and the Independent Surveyor as soon as reasonably practicable following the carrying out of any works in Year 26 whether the works referred to in the Investment Programmes submitted pursuant to Clause 79.2.1.5.3 are completed or not and, where such works are not completed, the reason why such works have not been completed together with the Service Provider's proposed date for the completion of such works, in which case, provided that any such notification provided is accompanied by a written statement from the Independent Surveyor confirming to the Authority the accuracy of such notification, then the Service Provider shall be entitled to withdraw from the Retention Fund Account an amount of money equivalent to the costing identified in the Investment Programme submitted by the Service Provider pursuant to Clause 79.2.1.5.2 of the works that have been carried out.

79.2.2 Structures

79.2.2.1 The Service Provider shall ensure that all Structures comply with Service Standard 3 on the Expiry Date.

79.2.2.2 The Service Provider shall use the data generated from the Structure Inspections undertaken from the nineteenth 19th Contract Year ("**Year 19**") pursuant to Clause 27 (*Independent Surveys and Inspections*) to:

79.2.2.2.1 predict the deterioration rates of the Structures on the Project Network for the remainder of the Term; and

79.2.2.2.2 identify the works required to be carried out in the remainder of the Term to ensure that the Structures on the Project Network shall comply with Service Standard 2 when the Structure Inspections are undertaken in the remainder of the Term pursuant to Clause 27

(Independent Surveys and Inspections) and that they comply with Service Standard 3 on the Expiry Date.

79.2.2.3 The Service Provider shall ensure that all Investment Programmes prepared in accordance with Clause 20 (*Investment Programmes*) shall include all works identified pursuant to Clause 79.2.2.2.2, and, whenever any such works are included in any Investment Programme, then the Service Provider shall provide to the Authority an estimate of the cost of carrying out such works, together with a written statement from the Independent Surveyor confirming to the Authority the accuracy of such costings, and shall carry out the Service in the remainder of the Term in accordance with such Investment Programmes.

79.2.2.4 If the data generated from the Structure Inspections carried out in Year 23 and Year 24 identifies that the Structures on the Project Network do not comply with Service Standard 3, the Service Provider shall:

79.2.2.4.1 notify the Authority in writing of all failures of such Structures on the Project Network to comply with Service Standard 3, including identification of the relevant Structures which have so failed, and the Performance Requirements that have not been complied with in respect of such failed Structures, within five (5) Business Days of the Service Provider becoming aware of such failure;

79.2.2.4.2 identify the works required to be carried out in the remainder of the Term to ensure that the Structures on the Project Network shall comply with Service Standard 3 on the Expiry Date; and

79.2.2.4.3 update the relevant Investment Programmes prepared in accordance with Clause 20 (*Investment Programmes*) including all works identified pursuant to Clause 79.2.2.4.2, and, whenever any such works are included in any Investment Programme, then the Service

Provider shall provide to the Authority an estimate of the cost of carrying out such works, together with a written statement from the Independent Bridge Inspector confirming to the Authority the accuracy of such costings, and shall carry out the Service in the remainder of the Term in accordance with such Investment Programmes.

79.2.2.5 If the data generated from the Structure Inspections carried out in Year 24 and Year 25 identifies that the Structures on the Project Network do not comply with Service Standard 3, the Service Provider shall:

79.2.2.5.1 notify the Authority in writing of all failures of such Structures on the Project Network have failed to comply with Service Standard 3, including identification of the relevant Structures which have so failed, and the Performance Requirements that have not been complied with in respect of such failed Structures, within five (5) Business Days of the Service Provider becoming aware of such failure;

79.2.2.5.2 identify the works required to be carried out in the remainder of the Term to ensure that the Structures on the Project Network shall comply with Service Standard 3 on the Expiry Date; and

79.2.2.5.3 update the relevant Investment Programmes prepared in accordance with Clause 20 (*Investment Programmes*) including all works identified pursuant to Clause 79.2.2.5.2, and, whenever any such works are included in any Investment Programme, then the Service Provider shall provide to the Authority an estimate of the cost of carrying out such works, together with a written statement from the Independent Bridge Inspector confirming to the Authority the accuracy of such costings, and shall carry out the Service in the remainder

of the Term in accordance with such Investment Programmes.

79.2.2.6 From the first Contract Month following the end of Year 25, the Authority shall be entitled to retain from the Monthly Unitary Charge (or where such amount is greater than the Monthly Unitary Charge due in the Month falling at the end of Year 25, to demand from the Service Provider payment of any shortfall) an amount of money equivalent to the cost of all works which have been included pursuant to Clause 79.2.2.5.3 within Investment Programme submitted by the Service Provider and on the basis of the costing attributed to such works in the relevant Investment Programme provided that such amount shall be paid by the Authority into the Retention Fund Account.

79.2.2.7 The Service Provider shall notify the Authority and the Independent Bridge Inspector as soon as reasonably practicable following the carrying out of any works in Year 26 whether the works referred to in the Investment Programmes submitted pursuant to Clause 79.2.2.5.2 are completed or not and, where such works are not completed, the reason why such works have not been completed together with the Service Provider's proposed date for the completion of such works, in which case, provided that any such notification provided is accompanied by a written statement from the Independent Bridge Inspector confirming to the Authority the accuracy of such notification, then the Service Provider shall be entitled to withdraw from the Retention Fund Account an amount of money equivalent to the costing identified in the Investment Programme submitted by the Service Provider pursuant to Clause 79.2.2.5.3 of the works that have been carried out.

79.3 Apparatus and Highway Trees

79.3.1 The Service Provider shall ensure that all Apparatus and Highway Trees on the Project Network comply with the relevant provisions of the Output Specification on the Expiry Date.

79.3.2 The Service Provider shall undertake and complete the Final Service Inspection so that such Final Service Inspection is completed no later than nine (9) Months prior to the Expiry Date, in respect of all Apparatus and Highway Trees on the Project Network in order to confirm whether all Apparatus and Highway Trees comply with the relevant provisions of the Output Specification in the final Contract Year.

79.3.3 If the Final Service Inspection identifies that any Apparatus and/or Highway Trees do not comply with the relevant provisions of the Output Specification then the Service Provider shall notify the Authority, in writing, (within five (5) Business Days of completion of the Final Service Inspection) of the following:

79.3.3.1 which Apparatus and/or Highway Trees do not comply with the relevant provisions of the Output Specification; and

79.3.3.2 which Performance Requirements within the Output Specification have not been complied with in respect of the Apparatus and/or Highway Trees referred to in Clause 79.3.3.1; and

79.3.3.3 update the relevant Investment Programmes in accordance with Clause 20 (*Investment Programmes*) in respect of the works required including an estimate of the cost of carrying out such works (and such costing may be verified by the Authority in accordance with Clause 79.3.6) in order that the Apparatus and/or Highway Trees on the Project Network shall meet the relevant provisions of the Output Specification as soon as reasonably practicable and, in any event, prior to the Expiry Date.

79.3.4 From the end of the first Month following the end of Year 25, the Authority shall be entitled to retain from the Monthly Unitary Charge (or where such amount is greater than the Monthly Unitary Charge due in the Month falling at the end of Year 25, to demand from the Service Provider payment of any shortfall) an amount of money equivalent to the cost of all works which have been included pursuant to Clause 79.3.3.3 within Investment Programme submitted by the Service Provider and on the basis of the costing attributed to such works in the relevant Investment Programme provided that such amount shall be paid by the Authority into the Retention Fund Account.

79.3.5 The Service Provider shall notify the Authority as soon as reasonably practicable following the carrying out of any works in Year 26;

whether the works referred to in the Investment Programmes submitted pursuant to Clause 79.3.3.3 are completed or not and, where such works are not completed, the reason why such works have not been completed together with the Service Provider's proposed date for the completion of such works

in which case (subject to any independent verification by the Authority pursuant to Clause 79.3.6), then the Service Provider shall be entitled to withdraw from the Retention Fund Account an amount of money equivalent to the costing identified in the Investment Programme submitted by the Service Provider pursuant to Clause 79.3.3.3 of the works that have been carried out.

79.3.6 Without prejudice to Clause 12 (*Authority Access*) and Clause 30 (*Monitoring of Surveys and Inspections*), the Authority shall be entitled to appoint (at its own cost) an independent expert to inspect, test, check, verify or otherwise investigate any costings provided by the Service Provider pursuant to this Clause 79.3 (*Apparatus and Highway Trees*) or the carrying out of any works or Services by the Service Provider pursuant to Clause 79.3 (*Apparatus and Highway Trees*), including whether Apparatus or Highway Trees comply with the relevant provisions of the Output Specification.

79.4 Retention Fund Account

79.4.1 The Parties shall ensure that the Retention Fund Account is opened at least one Month prior to the commencement of the fourteenth (14th) Contract Year and that all monies required to be retained pursuant to this Clause 79 (*Handback Procedure*) and Clause 27.13 (*Deflectograph Surveys*) are retained in the Retention Account.

79.4.2 The application of monies from the Retention Fund Account in accordance with this Clause 79 (*Handback Procedure*) and Clause 27.13 (*Deflectograph Surveys*) shall fully discharge the liability of the Authority to make that portion of the payment of the Monthly Unitary Charge that otherwise would have been due to the Service Provider.

79.4.3 The interest accrued on the sums which are retained in the Retention Fund Account shall be credited to the Retention Fund Account and shall be available for use by the Authority as and when it accrues for the same purposes as the Retention Fund.

79.4.4 From the Expiry Date or the Termination Date (as applicable) the Authority shall be entitled to use the funds standing to the account of the Retention Fund Account in a manner determined by its absolute discretion with no need to obtain approval from the Service Provider to such use, and any mandate or agreement regulating the use of the Retention Fund Account shall be drafted accordingly.

80. COMPENSATION ON TERMINATION

80.1 Compensation following Authority Default

80.1.1 On termination of this Contract pursuant to Clause 74 (*Termination by the Service Provider*), the Authority shall pay the Service Provider the Authority Default Termination Sum in accordance with this Clause on the Termination Date.

80.1.2 Subject to Clauses 80.1.3 to 80.1.6 below, the Authority Default Termination Sum shall be an amount equal to the aggregate of:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80.1.3 On payment of the amount referred to in Clause 80.1.2 above, the Authority shall have the option to require the Service Provider to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.

80.1.4 If the aggregate of the amounts referred to in Clauses 80.1.2.1 and 80.1.2.3 is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 80.1.2.2, provided always that:

80.1.4.1 the amount referred to in Clause 80.1.2.2 shall only be paid to the extent that the Service Provider has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

80.1.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-contractor Breakage Costs shall be paid in respect of any Sub-contract in circumstances where there is an event of default under such Sub-contract which would entitle the Service Provider to terminate such Sub-contract.

80.1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Service Provider has wilfully, or through gross negligence, failed to comply with its obligations under Clause 11.3.4.1 of the Senior Lenders' Direct Agreement then in addition to the deduction of the Distribution referred to in limb (g) of the definition of Revised Senior Debt Termination Amount contained within Schedule 1 (*Definitions*), the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

80.1.6 If the Service Provider has wilfully or through gross negligence failed to comply with its obligations under Clause 11.3.4.2 of the Senior Lenders' Direct Agreement and there has been an overstatement of the cash balances by the Service Provider as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 80.1, then the Authority Default Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the

Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

80.2 Compensation following a Prohibited Act

80.2.1 On termination of this Contract in accordance with Clause 75 (*Termination for Corrupt Gifts and Fraud*), then the Authority shall pay the Service Provider an amount equal to the Revised Senior Debt Termination Amount.

80.2.2 Such amount shall be determined and paid in accordance with Clause 80.7.7 (*Method of Payment*).

80.2.3 If termination occurs then the Authority may require the Service Provider to transfer its rights, title and interest in and to the Assets to the Authority.

80.3 Compensation following a Force Majeure Event or Uninsurability

80.3.1 On termination of this Contract under Clause 76 (*Termination Following a Force Majeure Event*) the Authority shall pay to the Service Provider the "**Force Majeure Termination Sum**" in accordance with Clause 80.7.7 (*Method of Payment*).

80.3.2 Subject to Clauses 80.3.4 (*Compensation following a Force Majeure Event or Uninsurability*) to 80.3.7 below the Force Majeure Termination Sum shall be the amount equal to the aggregate of:

80.3.2.1 the Base Senior Debt Termination Amount;

80.3.2.2 the Junior Debt less an amount equal to the aggregate of payments of interest made by the Service Provider under the Subordinated Financing Agreements;

80.3.2.3 all amounts paid to the Service Provider by way of subscription for shares in the capital of the Service Provider less dividends and other distributions paid to the shareholders of the Service Provider (save to the extent deducted under Clause 80.3.2.2 above); and

80.3.2.4 redundancy payments for employees of the Service Provider that have been or will be reasonably incurred by the Service Provider as a

direct result of termination of this Contract and any Sub-contractor Breakage Costs.

80.3.3 If the amounts referred to in Clause 80.3.2.2 and/or Clause 80.3.2.3 are less than zero, then, for the purposes of the calculation in Clause 80.3.2 they shall be deemed to be zero.

80.3.4 If the aggregate of the amounts referred to in Clauses 80.3.2.1, 80.3.2.2 and 80.3.2.3 above is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 80.3.2.4 provided always that:

80.3.4.1 the amount referred to in Clause 80.3.2.4 above shall only be paid to the extent that the Service Provider has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

80.3.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-contractor Breakage Costs shall be paid in respect of any Sub-contract in circumstances where there is an event of default under such Sub-contract which would entitle the Service Provider to terminate such Sub-contract.

80.3.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Service Provider has wilfully, or through gross negligence, failed to comply with its obligations under Clause 11.3.4.1 of the Senior Lender's Direct Agreement then in addition to the deduction of the Distribution referred to in limb (g) of the definition of Revised Senior Debt Termination Amount contained within Schedule 1 (*Definitions*), the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

80.3.6 If the Service Provider has wilfully or through gross negligence failed to comply with its obligations under Clause 11.3.4.2 of the Senior Lenders' Direct Agreement and there has been an overstatement of the cash balances

by the Service Provider as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 80.3.6 (*Compensation following a Force Majeure Event or Uninsurability*), then the Force Majeure Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

80.3.7 Such amount shall be determined and paid in accordance with Clause 80.7.7 (*Method of Payment*).

80.3.8 On termination, the Authority shall have the option to require the Service Provider to transfer to the Authority all of its right, title and interest in and to the Assets.

80.4 **Compensation on Termination for breach of the Refinancing Provisions**

80.4.1 On termination under Clause 73.6 (*Termination by the Authority for Breach of the Refinancing Provisions*) the Authority shall pay to the Service Provider an amount equal to the amount payable under Clause 80.2.1 (*Compensation following a Prohibited Act*) in accordance with Clause 80.7.7 (*Method of Payment*).

80.5 **Compensation following a Service Provider Default**

80.5.1 Retendering Election

Subject to Clause 80.5.2, if the Authority terminates this Contract pursuant to Clause 73.1 (*Service Provider Default*) following the occurrence of a Service Provider Default, the Authority shall be entitled either to:

80.5.1.1 retender the provision of the Service in accordance with Clause 80.5.3 (*Retendering Procedure*); or

80.5.1.2 require an expert determination in accordance with Clause 80.5.4 (*No Retendering Procedure*).

80.5.2 The Authority shall be entitled to retender the provision of the Service in accordance with Clause 80.5.3 (*Retendering Procedure*) if:

80.5.2.1 the Authority notifies the Service Provider on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

80.5.2.2 there is a Liquid Market, and either:

- (a) the Senior Lenders have not exercised their rights to step-in under Clause 5 of the Senior Lenders' Direct Agreement; or
- (b) the Service Provider or Senior Lenders have not procured the transfer of the Service Provider's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to re-tender the provision of the Service and Clause 80.5.4 (*No Retendering Procedure*) shall apply.

80.5.3 Retendering Procedure

If the Authority elects to retender the provision of the Service under Clause 80.5.1 (*Retendering Election*), then the following provisions shall apply:

80.5.3.1 The objective of the retendering procedure shall be to establish and pay to the Service Provider the Highest Compliant Tender Price, as a result of the Tender Process.

80.5.3.2 The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.

80.5.3.3 The Authority shall notify the Service Provider of the qualification criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process but shall act reasonably in setting such requirements and terms.

80.5.3.4 The Service Provider authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 89 (*Confidentiality*) that is reasonably required as part of the Tender Process.

80.5.3.5 The Service Provider may, at its own cost, appoint a person ("**Tender Process Monitor**") to monitor the Tender Process for the purpose of monitoring and reporting to the Service Provider and the Senior Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Service Provider or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Service Provider as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.

80.5.3.6 The Tender Process Monitor shall enter into a confidentially agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Service Provider in the event that the Service Provider refers a Dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure.

80.5.3.7 For all or any part of a Month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Service Provider:

- (a) the Post Termination Service Amount for that Month, on or before the date falling ten (10) Business Days after the end of that Month; and
- (b) the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.

80.5.3.8 If any Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.

80.5.3.9 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding Claim under any Required Insurance on the date that the New Contract is entered into.

80.5.3.10 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Service Provider of the Adjusted Highest Compliant Tender Price.

80.5.3.11 If the Service Provider refers a Dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Service Provider the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Business Days after it has been determined in accordance with the Dispute Resolution Procedure the Authority shall pay interest to the Service Provider at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld, from the date specified in paragraph 80.5.3.12 below until the date specified in this Clause 80.5.3.11. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest

Compliant Tender Price is a positive number) pay to the Service Provider the agreed amount no later than the date specified in paragraph 80.5.3.12 below, with the disputed amount being dealt with in accordance with this paragraph 80.5.3.11.

80.5.3.12 Subject to Clauses 80.5.3.11 and 80.5.3.15, the Authority shall pay to the Service Provider an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract.

80.5.3.13 The discharge by the Authority of its payment obligation in Clauses 80.5.3.9 and/or 80.5.3.10 above shall be in full and final settlement of all the Service Provider's Claims and rights against the Authority for breaches and/or termination of this Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price.

80.5.3.14 Subject to Clauses 80.5.3.15 and 80.5.3.18 below, if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Service Provider on or before the date falling two years after the Termination Date then the following provisions of this Clause 80.5.3 shall not apply to that termination and the provisions of Clause 80.5.4 (*No Retendering Procedure*) shall apply instead.

80.5.3.15 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Service Provider and with effect from the time that the Authority gives notice of that event to the Service Provider, the Authority shall be released from all liability to the Service Provider for breaches and/or termination of this Contract and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination

itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

80.5.3.16 If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Service Provider to the Authority on the date of the New Contract.

80.5.3.17 The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under Clause 80.5.4 (*No Retendering Procedure*) by notifying the Service Provider that this election has been made.

80.5.3.18 If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Service Provider of this decision and pay to the Service Provider an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

80.5.4 No Retendering Procedure

If either the Authority is not entitled to retender the provision of the Project under Clause 80.5.3 (*Retendering Procedure*) or the Authority elects to require an expert determination in accordance with this Clause 80.5.4 (*No Retendering Procedure*) then the following procedure shall apply.

80.5.4.1 Subject to Clause 80.5.4.2 (*No Retendering Procedure*) below, the Service Provider shall not be entitled to receive any Post Termination Service Amount.

80.5.4.2 If the Authority elects to require an expert determination in accordance with this Clause 80.5.4 (*No Retendering Procedure*) after it has elected to follow the procedure under Clause 80.5.3 (*Retendering Procedure*), then the Authority shall continue to pay to the Service Provider each Post Termination Service Amount until the Compensation Date, in accordance with Clause 80.5.3 (*Retendering Procedure*).

80.5.4.3 In agreeing or determining the Estimated Fair Value of the Contract the Parties shall be obliged to follow the principles set out below:

- (a) all Capital Contributions and forecast amounts should be calculated in nominal terms at current prices, using the indexation formula in accordance with Paragraph 3.2 of Schedule 4 (Payment Mechanism) between the date of calculation and the forecast payment date(s) as set out in the Contract and using the assumed forecast rate of increase in RPIX (as set out in the Base Case) in applying the formula;
- (b) the total of all future payments of the full Unitary Charge (without deductions) forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;
- (c) the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to Clause 80.5.4.3(b) above, such costs to include (without double counting):
 - (i) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - (ii) the costs of the Service forecast to be incurred by the Authority in providing the Service to the standard required, and
 - (iii) any rectification costs required to deliver the Service to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge referred to in Clause 80.5.4.3(b) above.

80.5.4.4 If the Parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling forty (40) Business Days after the date on which the Authority elected to require an expert determination in accordance with this Clause 80.5.4 (*No Retendering Procedure*), then the Adjusted Estimated Fair Value of the Contract shall be determined in accordance with the Dispute Resolution Procedure.

80.5.4.5 The Authority shall pay to the Service Provider an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this Clause 80.5.4 (*No Retendering Procedure*).

80.5.4.6 The discharge by the Authority of its obligation in Clause 80.5.4.5 is in full and final settlement of all the Service Provider's Claims and rights against the Authority for breaches and/or termination of this Contract or other Project Document whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.

80.5.4.7 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Service Provider to the Authority on the Compensation Date.

80.6 Relevant Discharge Terms

80.6.1 In the event of the making of a determination or order by a court of final jurisdiction on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997) the result of which is that this Contract does not have effect or is otherwise unenforceable, then

the Service Provider shall be entitled to be paid by the Authority the sum equivalent to the Authority Default Termination Sum.

80.6.2 The Authority shall pay the Authority Default Termination Sum in accordance with Clause 80.7.7 (*Method of Payment*).

80.7 **General**

80.7.1 Costs

The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Clause 80 (*Compensation on Termination*) shall only be such costs and/or expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred and shall only be counted once.

80.7.2 Ascertainment of Compensation

The amount of any compensation paid pursuant to this Clause 80 (*Compensation on Termination*) including the identification and calculation of each element comprised in or to be deducted from it, the ascertainment of any amount or matter requiring to be estimated or anticipated and (where so required by the provisions of this Clause 80 (*Compensation on Termination*)) or the reasonableness of any amount or matter shall be as agreed between the Parties or, if they are unable to agree within a period which is reasonable in the light of the amounts and matters requiring to be so identified, ascertained or calculated, as referred to and determined in accordance with the Dispute Resolution Procedure and so that an interim or partial amount of compensation may be declared payable pending final determination where, because of difficulty in resolving particular elements comprised in it, undue delay would otherwise be caused in payment or commencement of payment of compensation.

80.7.3 Grossing up

If any amount of compensation payable by the Authority under Clauses 72.2 (*Voluntary Termination by the Authority*), 80.1 (*Compensation following Authority Default*), 80.2 (*Compensation following a Prohibited Act*), 80.3 (*Compensation following a Force Majeure Event or Uninsurability*), 80.4

(Compensation on Termination for breach of the Refinancing Provisions) or 80.5 *(Compensation following a Service Provider Default)* is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Service Provider such additional amount as will leave the Service Provider in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Service Provider to reduce the Tax to which the payment is subject.

80.7.4 Set-off on Termination

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Clauses 72.2 *(Voluntary Termination by the Authority)*, 80.1 *(Compensation following Authority Default)*, 80.2 *(Compensation following a Prohibited Act)*, 80.3 *(Compensation following a Force Majeure Event or Uninsurability)*, 80.4 *(Compensation on Termination for breach of the Refinancing Provisions)* or 80.5 *(Compensation following a Service Provider Default)*, save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

80.7.5 Outstanding Senior Debt

80.7.5.1 The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time.

80.7.5.2 The receipt by the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the Authority's obligation to pay such sums to the Service Provider.

80.7.6 Full Satisfaction

Any payment of compensation shall be in full satisfaction of any Claim which can be made against the Authority by the Service Provider in relation to the termination of this Contract or any Project Document. The compensation payable under Clauses 72.2 (*Voluntary Termination by the Authority*), 80.1 (*Compensation following Authority Default*), 80.2 (*Compensation following a Prohibited Act*), 80.3 (*Compensation following a Force Majeure Event or Uninsurability*), 80.4 (*Compensation on Termination for breach of the Refinancing Provisions*) or 80.5 (*Compensation following a Service Provider Default*), shall be the sole remedy of the Service Provider against the Authority in respect of termination of this Contract.

80.7.7 Method of Payment

80.7.7.1 The Authority shall pay to the Service Provider the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate, on or before the date falling forty (40) Business Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with Clause 80.7.7.2 below.

80.7.7.2 The Authority may, other than on an Authority Default, elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in instalments as follows:

- (a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:

- (i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing this Outstanding Principal on the dates ("**Instalment Dates**") and in the amounts that the Service Provider would have been required to pay principal to the Senior Lenders under the terms of the Senior Financing Agreements had the Termination Date not occurred; and
 - (ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) in equal instalments on the Instalment Dates;
- (b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Service Provider would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Financing Agreements had the Termination Date not occurred; or
- (c) as the Parties may otherwise agree.

80.7.7.3 From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

80.7.7.4 If the Authority has elected to pay in accordance with Clause 80.7.7.2 above, it may (on twenty (20) Business Days prior written notice to the Service Provider) elect to pay the outstanding parts of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt

Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

80.7.7.5 If the Authority:

- (a) fails to make a payment to the Service Provider in accordance with Clauses 80.7.7.1, 80.7.7.2 and/or 80.7.7.3 above; or
- (b) breaches Clause 85 (*Assignment and Sub-Contracting*),

the Service Provider may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of this Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

81. STEP IN

81.1 Step-In Events

If the Authority reasonably believes that it needs to take action in connection with the Service:

81.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

81.1.2 to discharge a statutory duty,

then the Authority shall be entitled to take action in accordance with this Clause 81 (*Step-In Events*)

81.2 Notice

If Clause 81.1 (*Step-In Events*) applies and the Authority wishes to take action, the Authority shall notify the Service Provider of the following:

81.2.1 the action it wishes to take;

81.2.2 the reason for such action;

81.2.3 the date it wishes to commence such action;

81.2.4 the time period which it believes will be necessary for such action; and

81.2.5 to the extent practicable, the effect on the Service Provider and its obligation to provide the Service during the period such action is being taken.

81.3 **Required Action**

Following service of a notice under Clause 81.2 (*Notice*), the Authority shall take such action as notified under Clause 81.2 (*Notice*) and any consequential additional action as it reasonably believes is necessary (together the "**Required Action**") and the Service Provider shall give all reasonable assistance to the Authority while it is taking such Required Action.

81.4 **Emergency Step-In**

The Authority shall be entitled to Step-In forthwith and without prior notice if the Authority considers that the relevant circumstances are an Emergency. The Authority shall use all reasonable endeavours to liaise with the Service Provider on the occurrence of an Emergency and to notify the Service Provider of those matters set out in Clause 81.2 (*Notice*) as soon as practicable.

81.5 **Step-In in the event of no Breach**

If the Service Provider is not in breach of its obligations under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Service Provider from providing any part of the Service:

81.5.1 the Service Provider shall be relieved from its obligations to provide such part of the Service; and

81.5.2 in respect of the period in which the Authority is taking the Required Action and provided that the Service Provider provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent incremental costs are incurred), the Monthly Payment due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full over that period.

81.6 **Step-In in the event of a Breach**

If the Required Action is taken as a result of a breach of the obligations of the Service Provider under this Contract, then for so long as and to the extent that any Required Action is taken, and this prevents the Service Provider from providing any part of the Service:

81.6.1 the Service Provider shall be relieved of its obligations to provide such part of the Service; and

81.6.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Payment due from the Authority to the Service Provider shall equal the amount the Service Provider would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full over that period less an amount equal to all the Authority's costs of operation in taking the Required Action.

81.7 **Step-Out**

On completion of any Required Action or, as the case may be on the cessation of the relevant Step-In Event, the Authority shall notify the Service Provider by prior notice as soon as reasonably practicable that it should resume provision of the Service in relation to that part of the Service affected by the Step-In and the Authority shall withdraw from the Step-In.

81.8 **Authority Indemnity**

The Authority agrees that to the extent that any Required Action is taken by the Authority otherwise than as a result of a breach by the Service Provider, the Authority shall carry out such Required Action in accordance with Good Industry Practice and the Authority shall indemnify the Service Provider against its liability for actions, Claims, demands, costs, charges and expenses which arise directly as a result of a breach by the Authority of this Clause 81.8 (*Authority Indemnity*) (and in the case of costs, charges and expenses such having been properly and reasonably incurred).

PART P - DISPUTE RESOLUTION

82. DISPUTE RESOLUTION

82.1 Consultation

82.1.1 Any Dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Clause 82 (*Dispute Resolution*).

82.1.2 If a Dispute arises in relation to any aspect of this Contract, the Service Provider and the Authority shall first consult in good faith in an attempt to come to an agreement in relation to the Dispute.

82.1.3 Without prejudice to Clause 82.1.2 above, either Party may give the other notice of the intention to refer the Dispute to adjudication and the Adjudicator shall be selected in accordance with Clause 82.2 (*Adjudication*).

82.2 Adjudication

82.2.1 The Adjudicator nominated to consider a Dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

82.2.1.1 there shall be two panels of experts, one in respect of operational and maintenance matters (the "**Operational Panel**") and one in respect of financial matters (the "**Financial Panel**"). All the experts on each panel shall be wholly independent of the Service Provider, the Authority, the relevant Sub-contractor and any major competitors of the Service Provider or relevant Sub-contractor;

82.2.1.2 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Service Provider and the Authority. Such appointments shall take place within twenty (20) Business Days of the date of this Contract;

82.2.1.3 the Financial Panel shall be comprised of three (3) experts who shall be appointed jointly by the Service Provider and the Authority. Such appointments shall take place within twenty (20) Business Days of the date of this Contract;

82.2.1.4if any member of a panel resigns during the Term, a replacement expert shall be appointed by the Service Provider and the Authority as soon as practicable;

82.2.1.5if the Authority and the Service Provider are unable to agree on the identity of the experts to be appointed to the panel, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) days of any application for such appointment by either Party.

82.2.2 Within five (5) Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.

82.2.3 In any event, the Adjudicator shall provide to both Parties his written decision on the Dispute, within twenty (20) Business Days of appointment (or such other period as the Parties may agree after the reference, or thirty (30) Business Days from the date of reference if the Party which referred the Dispute agrees). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to that decision (save where Clause 82.3.1 (*Arbitration*) applies).

82.2.4 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

82.2.5 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

82.2.6 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to

open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

82.2.7 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 89 (*Confidentiality*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

82.2.8 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

82.3 **Arbitration**

82.3.1 If:

82.3.1.1 there is any Dispute in respect of matters referred to in Clause 52 (*Changes to the Service*), Clause 53 (*Change in Law*), Clause 72.2 (*Voluntary Termination by the Authority*), Clause 79 (*Handback Procedure*), Clause 80.1 (*Compensation following Authority Default*), Clause 80.2 (*Compensation following a Prohibited Act*), Clause 80.3 (*Compensation following a Force Majeure Event or Uninsurability*), Clause 80.4 (*Compensation on Termination for breach of the Refinancing Provisions*) or Clause 80.5 (*Compensation following a Service Provider Default*); or

82.3.1.2 either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 82.2.3; or

82.3.1.3 both Parties agree,

then either Party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other Party of its intention to refer the Dispute to:

82.3.1.4 arbitration, in which case the provisions of this Clause 82.3
(*Arbitration*) shall apply; or

82.3.1.5 the Courts of England and Wales if it relates to a question of law.

82.3.2 Such notification of arbitration served in accordance with Clause 82.3.1 shall invite the other Party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten (10) years' standing ("**Arbitrator**"). If the Parties are unable within ten (10) Business Days to agree the identity of the Arbitrator either Party may request the President of the Law Society to make the appointment.

82.3.3 The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract, to vary or cancel the decision of the Adjudicator and, where appropriate to order financial compensation to be paid by one Party to the other. The arbitration shall take place in London.

82.3.4 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the Parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.

82.3.5 The Arbitrator shall deliver his decision on any matter referred to him within twenty (20) Business Days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) Months (or such other period as the Parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state the reasons for his decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the arbitration will be in the discretion of the Arbitrator.

82.4 **Related Disputes**

82.4.1 If any Dispute arising under this Contract raises issues which relate to any Dispute between the Service Provider and the Key Sub-Contractor arising under the Key Sub-Contract or otherwise affects the relationship or rights of the Service Provider and/or the Key Sub-Contractor under the Key Sub-

contract ("**Key Sub-Contract Dispute**"), then the Service Provider may include as part of its submissions made to the Adjudicator or to the Arbitrator, where the Dispute is referred to arbitration, submissions made by the Key Sub-Contractor.

82.4.2 The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Key Sub-Contract Dispute but the decision of the Adjudicator or the Arbitrator shall, subject to Clause 82.3.1 (*Dispute Resolution*), be binding on the Service Provider and the Key Sub-Contractor insofar as it determines the issues relating to the Key Sub-Contract Dispute.

82.4.3 Any submissions made by the Key Sub-Contractor shall:

82.4.3.1 be made within the time limits applicable to the delivery of submissions by the Service Provider; and

82.4.3.2 concern only those matters which relate to the Dispute between the Authority and the Service Provider under this Contract.

82.4.4 Where the Key Sub-Contractor makes submissions in any reference before:

82.4.4.1 the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third ($\frac{1}{3}$) by the Authority and two-thirds ($\frac{2}{3}$) by the Service Provider; and

82.4.4.2 the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

82.4.5 The Authority shall have no liability to the Key Sub-Contractor arising out of or in connection with any decision of the Adjudicator or Arbitrator or in respect of the costs of the Key Sub-Contractor in participating in the resolution of any Dispute under this Contract.

82.4.6 The Service Provider shall not allow the Key Sub-Contractor access to any document relevant to the issues in dispute between the Authority and the Service Provider save where:

82.4.6.1 the document is relevant also to the issues relating to the Key Sub-Contract Dispute; and

82.4.6.2the Service Provider has first delivered to the Authority a written undertaking from the Key Sub-Contractor addressed to the Authority that they shall not use any such document otherwise than for the purpose of the Dispute Resolution Procedure under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or Arbitrator or any professional adviser engaged by the Key Sub-Contractor to advise in connection with the Dispute.

82.5 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Clause 82 (*Dispute Resolution*) and shall give effect forthwith to every decision of the Adjudicator and/or the Arbitrator delivered under this Clause 82 (*Dispute Resolution*).

82.6 If either Party disputes the other's entitlement to any payment claimed by the other pursuant to or arising out of this Contract the provisions of this Clause 82.6 shall apply. Any Disputed Amount may be withheld pending agreement or determination of the rights and obligations of the Parties in relation to the Disputed Amount but any undisputed amounts shall be paid when due.

83. INFORMAL RESOLUTION OF DISPUTES

83.1 The Parties shall undertake to attempt to resolve any Dispute arising out of or in connection with this Contract promptly by informal discussion and negotiation between the Parties prior to referral of the Dispute to the Dispute Resolution Procedure, such informal resolution of Disputes to be conducted as follows:

83.1.1 in the first instance, the Authority Representative and the Service Provider Representative will seek to resolve any Disputes at or by the next Service Operations Board Meeting taking place after the Dispute has arisen, or at such other date as may be requested by any of the Parties and agreed between them (acting reasonably);

83.1.2 if the Dispute cannot be resolved by the Authority Representative and the Service Provider Representative at the relevant Service Operations Board Meeting or at such other meeting as arranged between the Authority Representative and the Service Provider Representative, either Party may

give notice to the other Party in writing that a Dispute has arisen, and refer the Dispute to the Second Management Level for resolution;

83.1.3 if the Dispute cannot be resolved by the Second Management Level within ten (10) Business Days of the Dispute having been referred to them either Party may serve a further notice to the other Party in writing that the Dispute has not been resolved by the Second Management Level, and refer the Dispute to the Third Management Level for resolution.

83.2 If the Third Management Level is unable, or fails, to resolve the Dispute within twenty (20) Business Days of the date of the notice pursuant to Clause 83.1.3 the Dispute shall be referred to the Dispute Resolution Procedure.

83.3 The management levels ("**Management Levels**") referred to in this Clause 83 (*Informal Resolution of Disputes*) are as follows:

	Authority	Service Provider
"Second Management Level"	Executive Director, Place	Managing Director of Amey Local Government
"Third Management Level"	Chief Executive	Chief Executive of Amey Plc

or as amended by notification (in writing) by one of the Parties.

83.4 If any of the above is unable to attend a meeting, a substitute may attend, provided that such substitute has at least the same seniority and is authorised to settle the unresolved Dispute.

83.5 The specific format for the resolution of Disputes will be left to the reasonable discretion of the relevant Management Level, but may include the preparation and submission of statements of fact or of position.

PART Q - GENERAL PROVISIONS

84. INTELLECTUAL PROPERTY RIGHTS

84.1 Use of Service Provider Materials

The Service Provider shall make available to the Authority free of charge (and hereby irrevocably and non exclusively licences the Authority to use) all Service Provider Materials that might reasonably be required by the Authority, and the Service Provider shall obtain all necessary licenses, permissions and consents to ensure that the Service Provider Materials can be made available to the Authority on these terms, for the purposes of:

84.1.1 the Authority carrying out its obligations or enforcing any rights under this Contract, receiving the Service and/or for the purposes of complying with any statutory duties which the Authority may have; and

84.1.2 following termination of this Contract, or during a Step-In Event, the provision of services the same as, or similar to, the Services, including where required any activities in relation to the appointment of a replacement service provider to carry out the provision of services the same as, or similar to, the Services,

(together the "**Approved Purposes**"), and in this Clause "**use**" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

84.2 Grant of Rights to Authority

The Service Provider:

84.2.1 hereby grants to the Authority, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Contract or upon or at any time following termination of this Contract) licence (carrying the right to grant sub-licences) to use all the Intellectual Property Rights which are or become vested in the Service Provider; and

84.2.2 shall, where any Intellectual Property Rights are or become vested in a third party, use its reasonable endeavours to procure the grant of a like licence to that referred to in Clause 84.2.1 (*Grant of Rights to Authority*) to the Authority,

in both cases, solely for the Approved Purposes.

84.3 **Retention of Rights**

The Service Provider shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the Term remain vested throughout the term of this Contract in the Service Provider, and the Service Provider shall enter into appropriate agreements with any Service Provider Party (or other Third Parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

84.4 **Ownership of Trade Marks and Data**

The Service Provider acknowledges that the Authority is or (where such rights have not yet been created) will be the proprietor of:

84.4.1 the Data, all copies thereof and all Intellectual Property Rights in, and to, the Data;

84.4.2 the Authority Project Intellectual Property; and

84.4.3 the Trade Marks and all Intellectual Property Rights in, and to, the Trade Marks.

84.5 **Further assurance by the Service Provider**

The Service Provider shall, if and when necessary as required by the Authority, at the Service Provider's expense sign, execute and do and use its reasonable endeavours to procure that any Third Party properly executes all documents and does all acts and things as the Authority may reasonably require to fully and effectively enable the Authority to obtain the benefit of the licence (including the right to grant sub-licences) granted under Clause 84.1 (*Use of Service Provider Materials*) and/or the rights assigned to it pursuant to Clause 84.2 (*Grant of Rights to Authority*).

84.6 **Computer Data**

To the extent that any of the data, materials and documents referred to in this Clause are generated by or maintained on a computer or similar system, the Service Provider shall:

84.6.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Service Provider may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format;

84.6.2 where the Service Provider and/or any Service Provider Party owns the Intellectual Property Rights in any relevant software and such software comprises customisations of other software that is generally available to be licensed (a "**Commercially Available Software Package**"), provided the Authority obtains a licence to use such Commercially Available Software Package, the Service Provider shall provide or shall procure that the relevant Service Provider Party shall provide to the Authority a copy of such customisations (in machine-executable and source code forms) together with the relevant version of the Commercially Available Software Package to which the customisations have been applied; and

84.6.3 where the Service Provider owns the Intellectual Property Rights in any relevant software and has the source code, enter into with the Authority and the National Computing Centre Limited or such other organisation as the Parties may determine (acting reasonably) an escrow agreement with respect to the same based on the then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

84.7 **Storage of Data**

The Service Provider shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Clause 84.5 (*Further assurance by the Service Provider*) in accordance with Good Industry Practice. Without prejudice to this obligation, the Service Provider shall submit to the Authority Representative for

approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Service Provider shall comply, and shall cause all Service Provider Parties to comply, with all procedures to which the Authority Representative has given its approval. The Service Provider may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority Representative, who shall be entitled to object on the basis set out above.

84.8 **Claims Against Authority**

Where a Claim or proceedings is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights (other than any Disclosed Information) or because the use of any materials, plant, machinery or equipment in connection with the Services or the Project infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights granted to the Service Provider by or on behalf of the Authority and such use is otherwise than in accordance with the terms of this Contract, the Service Provider shall indemnify the Authority at all times from and against all such Claims and proceedings and the provisions of Clause 66 (*Indemnity*) shall apply.

84.9 **Licence to use Trade Marks and Data**

The Authority hereby grants to the Service Provider a non-exclusive, non-transferable, royalty free licence for the Term to use and copy:

84.9.1 (subject to Clause 84.10 (*Directions of Authority*)), the Trade Marks;

84.9.2 the Data; and

84.9.3 any other Authority Project Intellectual Property,

solely for the purpose of carrying out the Service (the "**Permitted Purposes**") and only to the extent necessary for the Permitted Purposes. The licence granted to the Service Provider under this Clause 84.9 (*Licence to use Trade Marks and Data*) shall include the right for the Service Provider to grant a sub-licence to any Service Provider Party for the Permitted Purposes (but only to the extent necessary for the Permitted Purposes) on terms no less onerous than those set out in this Contract. The

Service Provider shall procure that each such Service Provider Party shall only use and copy such items as permitted by the licence set out in this Clause 84.9 (*Licence to use Trade Marks and Data*).

84.10 Directions of Authority

The Service Provider shall observe, and shall procure that all Service Provider Parties observe, all reasonable directions given by the Authority from time to time in relation to the permitted form and manner of use and representation of the Trade Marks.

84.11 Indemnity in favour of the Authority

The Service Provider shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all costs, Claims, Losses, liabilities and expenses which the Authority may sustain or incur, or which may be brought or established against the Authority or by any of its permitted sub-licensees, and which in any case arise out of or in relation to or by reason of any Claim or allegation that:

84.11.1 the use or reproduction, modification, merger and adaptation by the Authority or by its permitted sub-licensees of the Service Provider Materials, in accordance with the terms of the licence granted under Clause 84.1 (*Use of Service Provider Materials*), infringes any Intellectual Property Rights of any third party; and/or

84.11.2 the maintenance, management, provision, carrying out, replacement and operation of the Project Network and/or the Service in accordance with the terms of the licence granted under Clause 84.1 (*Use of Service Provider Materials*) and/or 84.2 (*Grant of Rights to Authority*), infringes any Intellectual Property Rights of any third party; and/or

84.11.3 the maintenance, management, provision, carrying out, replacement and operation of services analogous to the Service but provided by a third party in accordance with the terms of the licence granted under Clause 84.1 (*Use of Service Provider Materials*) and/or 84.2 (*Grant of Rights to Authority*), infringes any Intellectual Property Rights of any third party; and/or

84.11.4 the receipt of the Service and/or any services analogous to the Service but provided by a third party infringes any Intellectual Property Rights of any third party,

whether, in each case, such costs, Claim, liabilities and expenses are incurred directly by the Authority or as a result, without limitation, of any indemnity given at any time by the Authority to any sub-licensee upon the same terms mutatis mutandis as this Clause 84.11 (*Indemnity in favour of the Authority*).

84.12 **Materials which come into being in the future**

Where any of the Service Provider Materials referred to in this Clause 84 (*Intellectual Property Rights*) has yet to come into existence, the provisions of this Clause 84 (*Intellectual Property Rights*) shall apply to such Service Provider Materials immediately upon the same coming into existence.

84.13 **Consequences of Termination/Expiry**

Upon expiry or earlier termination of this Contract (howsoever caused):

84.13.1 the licence granted by the Authority to the Service Provider pursuant to Clause 84.9 (*Licence to use Trade Marks and Data*) shall cease to have effect; and

84.13.2 the Service Provider shall cease use of the Data, the Trade Marks, and all other Authority Project Intellectual Property and return to the Authority or, at the Authority's request, destroy all copies (whether hard copy or electronic) of or embodying any of the Data and/or the Authority Project Intellectual Property (the "**Authority Materials**") in the power, possession or control of the Service Provider or any Service Provider Party and shall, at the request of the Authority, remove all references to the Trade Marks from any items, livery, cars, buildings, letterhead, systems or documents in the power, possession or control of the Service Provider or any Service Provider Party. For this purpose, the Parties shall (acting reasonably) agree the time and manner of any required action and (in default of such agreement within twenty (20) Business Days after the Expiry Date or the Termination Date (as the case may be)), the Service Provider shall permit the Authority to enter on to the premises at any reasonable time or times, (save in an Emergency), where the Authority Materials are held to identify and remove the Authority Materials.

85. ASSIGNMENT AND SUB-CONTRACTING

85.1 Binding on successors and assigns of the Service Provider and the Authority

This Contract, the Project Documents and the Ancillary Documents shall be binding on, and shall enure to the benefit of, the Service Provider and the Authority and their respective successors and permitted assigns.

85.2 Assignment and Sub-Contracting by Service Provider

Subject to the provisions of Clause 85.3 (*Assignment by the Authority*) and the provisions of the First Tier Sub-Contractor Direct Agreement and/or Key Sub-Contractor Collateral Warranty, the Service Provider shall not, without the prior consent of the Authority, sub-contract, assign, under let, charge, sell, bargain or otherwise deal in anyway with this Contract or any Project Document or any Ancillary Documents, or any part thereof or any benefit or interest therein or thereunder provided that the Service Provider may assign or otherwise dispose of the benefit of this Contract or any Project Document or any Ancillary Documents by way of charge or security (in a form previously approved by the Authority, such approval not to be unreasonably withheld or delayed) for the purposes of raising and/or securing finance for this Project and within ten (10) Business Days of any such assignment or disposal, the Service Provider shall deliver to the Authority a certified copy of the assignment or disposal document.

85.3 Assignment by the Authority

The rights and obligations of the Authority under this Contract and/or any other Project Document (if applicable) shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Contract and any other Project Document (if applicable) and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract and any other Project Document (if applicable) being:

85.3.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

85.3.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract and any other Project Document (if applicable); or

85.3.3 any other public body whose obligations under this Contract and any other Project Document are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Service Provider) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract and any other Project Document (if applicable).

85.4 **Exceptions**

The Parties agree that:

85.4.1 the provisions of Clause 85.2 (*Assignment and Sub-Contracting by Service Provider*) do not apply to the grant of any security for any loan made to the Service Provider under the Financing Agreements; and

85.4.2 nothing in this Contract shall prohibit the Service Provider from providing or procuring the provision of the Service from a Key Sub-Contractor whose identity has been notified to the Authority (and who the Authority has approved, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Business Days of notice from the Service Provider provided that the Service Provider has provided the Authority with information as the Authority considers (acting reasonably) is sufficient for it to make a decision pursuant to Clause 85.5 (*Refusal of Consent*)) prior to the appointment or replacement of a Key Sub-Contractor, provided that the Service Provider shall remain primarily and directly liable for the Service Provider's obligations under this Contract;

85.4.3 by entering into this Contract, the Authority approves the Key Sub-Contractor appointed by the Service Provider as at the date of this Contract.

85.5 **Refusal of Consent**

The Authority shall be entitled to refuse to give consent pursuant to Clause 85.4.2 (*Exceptions*) where, in the Authority's reasonable opinion:

- 85.5.1 the replacement Key Sub-Contract does not include provisions acceptable to the Authority (acting reasonably) in respect of the assignment of the replacement Key Sub-Contract, provided that reasonable provisions allowing an assignment for the purposes of a bona fide internal restructuring within the proposed replacement Key Sub-Contractor's group of companies shall be deemed to be acceptable to the Authority (and it shall not be necessary to obtain the Authority's consent) where the assignee remains within the proposed replacement Key Sub-Contractor's group of companies and provided further that there are obligations requiring the assignee to assign the Key Sub-Contract to a company within the proposed replacement Key Sub-Contractor's group of companies if it ceases to be such a group company;
- 85.5.2 the replacement Key Sub-Contract contains terms materially less advantageous to the Authority than the Key Sub-Contract;
- 85.5.3 the proposed replacement Key Sub-Contractor does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out the Service proposing to be sub-let or sub-contracted to it;
- 85.5.4 the proposed replacement Key Sub-Contractor is not (so far as applicable to the proposed replacement Key Sub-Contractor's obligations under the replacement Key Sub-Contract) subject to provisions equivalent to those set out in Schedule 4 (*Payment Mechanism*) and taking into account the risks assumed by such Key Sub-Contractor and the payments received by it);
- 85.5.5 the proposed replacement Key Sub-Contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice;
- 85.5.6 the proposed replacement Key Sub-Contractor does not have the legal capacity, power or authority to become a party to the replacement Key Sub-Contract; or
- 85.5.7 the proposed replacement Key Sub-Contractor refuses to enter into the Admission Agreement (if applicable).

85.6 **Liability**

The sub-contracting by the Service Provider of any of the Service shall not relieve the Service Provider of any liability under this Contract for any breach of the obligations arising under this Contract, or for the actions, negligence and/or defaults by any Service Provider Party. The Service Provider shall not be released from any of its obligations under this Contract as a result of the termination of the appointment of a Key Sub-Contractor for any reason.

85.7 Prohibition

The Service Provider shall procure that no Key Sub-Contractor will sub-contract to any person any of its duties, obligations or responsibilities where one or more of the grounds set out in Clause 85.5 (*Refusal of Consent*) apply to the person to whom the work is proposing to be sub-contracted.

85.8 First Tier Sub-Contractor Direct Agreement

85.8.1 The Service Provider shall procure that prior to commencement of a replacement of a First Tier Sub-contract the replacement First Tier Sub-Contractor enters into and delivers to the Authority a duly executed replacement First Tier Sub-Contractor Direct Agreement in the Agreed Form. Any First Tier Sub-Contractor Direct Agreement will be subject to the rights of the Senior Lender under the Direct Agreement and the Senior Financing Agreements and shall impose no greater obligations or liabilities upon the relevant First Tier Sub-Contractor than are imposed on that First Tier Sub-Contractor under the First Tier Sub-Contract entered into.

85.9 Key Sub-Contractor Collateral Warranties

The Service Provider shall:

85.9.1 within ten (10) Business Days of the appointment of any Key Sub-Contractor or deliver Key Sub-Contractor Collateral Warranties from each of its Key Sub-Contractors or Highways Surfacing Works Sub-Contractor to the Authority; and

85.9.2 in the event that any new or replacement Key Sub-Contractor(s) (other than a First Tier Sub-Contractor) or Highways Surfacing Works Sub-Contractor is appointed by the Service Provider during the Term deliver to the Authority

(upon such appointment) an agreement in the form of the Key Sub-Contractor Collateral Warranty.

85.10 Any Key Sub-Contractor Collateral Warranty will be subject to the rights of the Senior Lender's Direct Agreement and the Senior Financing Agreement and shall impose no greater obligations or liabilities upon the relevant party than are imposed on that party under the Key Sub-Contract entered into.

86. CHANGE IN OWNERSHIP OF THE SERVICE PROVIDER AND HOLDCO

86.1 Limitation on Transfers of Shares in the Service Provider

Subject to Clause 86.4 (*Share Transfers to be Disregarded*), from the date of this Contract until the expiry of the Core Investment Period, the Service Provider shall procure that no Change in Ownership shall occur to the Service Provider or any company of which the Service Provider is a subsidiary ("**subsidiary**" shall have the meaning given to it in section 1159 of the Companies Act 2006 (as amended)).

86.2 Freedom to Transfer Shares

On and from expiry of the Core Investment Period the Shareholders shall, subject to Clause 86.5 (*Notification of Change in Ownership*) be at liberty to transfer their shareholdings in the Service Provider in whole or in part.

86.3 Ownership

The Service Provider represents and warrants to the Authority that at the date of this Contract the legal and beneficial ownership of the Service Provider and Holdco is as set out in Schedule 27 (*Service Provider Details*) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Service Provider or Holdco.

86.4 Share Transfers to be Disregarded

Any Change in Ownership arising as a consequence of:

86.4.1 any change in beneficial or legal ownership of any shares that are listed on a stock exchange;

86.4.2 as a consequence of the exercise by the Senior Lenders of the rights in respect of shares of the Service Provider or Holdco granted in any document conferring security over any of the shares of the Service Provider or Holdco; or

86.4.3 any transfer of shares in the Service Provider or Holdco by Parentco and/or an Affiliate of Parentco to Parentco and/or an Affiliate of Parentco,

shall be disregarded for the purpose of Clause 86.1 above.

86.5 Notification of Change in Ownership

86.5.1 The Service Provider shall inform the Authority as soon as reasonably practicable (and in event, within twenty (20) Business Days) of any Change in Ownership occurring.

86.5.2 The Authority may request that the Service Provider inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority's request for details, of any Change in Ownership.

86.5.3 The Service Provider's obligations under Clauses 86.5.1 and 86.5.2 (*Notification of Change in Ownership*) shall, except where a legal transfer of shares has occurred, be limited to the extent of the Service Provider's awareness having made all reasonable enquiry.

86.6 Where, during the period referred to in Clause 86.1, the holder of any shares in the Service Provider or Holdco is an Affiliate of Parentco and that holder ceases to be an Affiliate of Parentco it shall be a breach of this Clause 86 if the shares held by that holder are not within 20 days of that holder ceasing to be an Affiliate of Parentco transferred to Parentco or an Affiliate of Parentco.

87. CHANGES TO FINANCING AGREEMENTS, PROJECT DOCUMENTS AND ANCILLARY DOCUMENTS

87.1 Delivery of Initial and Changed Project Documents, Ancillary Documents and Financing Documents

87.1.1 The Service Provider has provided to the Authority, copies of the Project Documents as listed in Annexure 2 (*Project Documents, Ancillary Documents and Financing Agreements*).

87.1.2 Without prejudice to the provisions of Clauses 87.2.2 or 87.3 or to the definition of Senior Financing Agreements in Schedule 1 (*Definitions*), if at any time an amendment is made to any Project Document, Financing Agreement or Ancillary Document, or the Service Provider enters into a new Project Document, Financing Agreement or Ancillary Document (or any agreement which affects the interpretation or application of any Project Document, Financing Agreement or Ancillary Document), the Service Provider shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Service Provider.

87.2 **Changes to Project Documents, Ancillary Documents and Financing Agreements**

87.2.1 No amendment, waiver or exercise of a right under any Financing Agreement or Project Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless:

87.2.1.1 the Service Provider has obtained the prior written consent of the Authority to such increased liability for the purposes of this Clause 87.2 (*Changes to Project Documents, Ancillary Documents and Financing Agreements*); or

87.2.1.2 it is Permitted Borrowing.

In the event of any conflict between the provisions of this Clause 87.2 and any other provision of this Contract, the provisions of this Clause 87.2 shall prevail.

87.2.2 The Service Provider shall perform its obligations under, and observe all of the provisions of, the Project Documents and Ancillary Documents (to the extent that they do not conflict with the terms of this Contract).

87.2.3 The Service Provider shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

87.2.3.1 terminate, agree to the termination of, give notice to terminate or otherwise take action to terminate, repudiate or discharge or secure the termination of all or part of any Project Document or Ancillary Document treat the same as having been terminated, repudiated or discharged;

87.2.3.2 make or agree to or purport to make any material variation of any Project Document or Ancillary Document other than as permitted under any other terms of this Contract;

87.2.3.3 in any material respect depart from its obligations, (or waive, release, fail to exercise, settle, compromise, allow to lapse or otherwise prejudice or vary any rights or Claim it may have in a material respect), or procure that any counterparty to a Project Document or an Ancillary Document in any material respect departs from its obligations (or waives, releases, settles, compromises, allows to lapse or otherwise prejudice or vary any rights or Claim they may have in a material respect), under any Project Document or any Ancillary Document; or

87.2.3.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document or Ancillary Document.

87.2.4 All additions, amendments, modifications and/or waivers to any other Project Document to which the Authority is a party and notwithstanding any provision to the contrary in any Project Document, shall be binding only if made in writing and signed by a duly authorised representative of each of the Parties to the relevant Project Document. All such additions, amendments and/or modifications shall be dated, numbered and attached or appended to the relevant Project Document.

87.3 Without prejudice to the provisions of Clause 87 (*Changes to Financing Agreements, Project Documents and ancillary Documents*) and Clause 105 (*Refinancing*) the Service Provider shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a

material adverse effect on the ability of the Service Provider to perform its obligations under the Project Documents, Ancillary Documents or this Contract.

88. COMPLIANCE WITH LEGISLATION

88.1 Legislation

The Service Provider shall perform its obligations under this Contract and any Project Document or any Ancillary Document in accordance with all applicable Legislation from time to time in force subject to any consequential effect or otherwise referred to in Clause 53 (*Change in Law*).

88.2 Duty to Comply with Legislation

Without prejudice to the generality of Clause 53 (*Change in Law*) and Clause 88.1 (*Legislation*), the Service Provider shall:

88.2.1 give all notices;

88.2.2 obtain and maintain in full force and effect; and

88.2.3 pay all fees required to be paid or given,

by any Legislation and/or Guidance and/or in relation to all Necessary Consents relevant to the provision of the Service and as required for the proper performance of the Service Provider's duties and obligations under this Contract, under any Project Document and under any Ancillary Document.

88.3 Public Health Act

The Service Provider shall be fully responsible for ensuring that the obligations of the Service Provider and the Authority (to the extent that the Service Provider is carrying out such obligations on the Authority's behalf or is acting in accordance with the Authority's reasonable instructions pursuant to this Contract) under the Public Health Act 1961 and all other applicable Legislation are complied with insofar as they apply to the performance of the Service and for taking all necessary or appropriate action in relation to the same.

89. CONFIDENTIALITY

89.1 The Parties agree that the provisions of this Contract and each Project Document and Ancillary Document shall, subject to Clause 89.2 not be treated as Confidential Information and may be disclosed without restriction and the Service Provider acknowledges that the Authority intends to publish, subject to Clause 89.2 below, the Contract and some of the Project Documents on a website. .

89.2 Clause 89.1 above shall not apply to provisions of this Contract or a Project Document or Ancillary Document designated as Commercially Sensitive Information and listed in part 1 and Part 2 of Schedule 30 (*Commercially Sensitive Information*) which shall, subject to Clause 89.4 (*Excluded Matters*) and Clause 90.6 (*Disclosure of Indicative Lists*), be kept confidential for the periods specified in Parts 1 and 2 of Schedule 30 (*Commercially Sensitive Information*).

89.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and Project Documents and Ancillary Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

89.4 **Excluded Matters**

Clauses 89.2 and 89.3 (*Confidentiality*), shall not apply to:

89.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;

89.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 89 (*Confidentiality*);

89.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a Dispute between the Service Provider and any of its Sub-contractors;

89.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation

placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

89.4.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

89.4.6 any provision of information to:

89.4.6.1 the Parties' own professional advisers or insurance advisers; or

89.4.6.2 to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers; or

89.4.6.3 where it is proposed that a person should, or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Service Provider to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Service Provider and/or Holdco in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

89.4.7 any disclosure by the Authority of information relating to the design, installation, operation and maintenance of the Project Network Parts and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:

89.4.7.1 any proposed New Service Provider, its advisers and lenders, should the Authority decide to retender this Contract;

89.4.7.2 any person in connection with Schedule 9 (*Electricity Market Test*) and Schedule 17 (*Original Non-Contestable Works*);

89.4.8 any registration or recording of the Necessary Consents and property registration required;

89.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or

89.4.10 any disclosure for the purpose of:

89.4.10.1 the examination and certification of the Authority's or the Service Provider's accounts;

89.4.10.2 any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has used its resources;

89.4.10.3 complying with a proper request from either Party's insurance adviser or insurer on placing or renewing any insurance policies; or

89.4.10.4 (without prejudice to the generality of Clause 89.4.4 (*Excluded Matters*)) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 89.4.4 nor Clause 89.4.10.4 (*Excluded Matters*) shall permit disclosure of Confidential Information otherwise prohibited by Clause 89.3 (*Confidentiality*) where that information is exempt from disclosure under section 41 of the FOIA.

89.5 **Duties on the recipient**

Where disclosure is permitted under Clause 89.4 (*Excluded Matters*) (other than Clauses 89.4.2, 89.4.4, 89.4.5, 89.4.8 and 89.4.10), the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

89.6 **Audit**

For the purposes of:

89.6.1 the Audit Commission Act 1998 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts);

89.6.2 the examination and certification of the Authority's accounts;

89.6.3 an examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has performed its function,

the External Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Service Provider and any Sub-contractor and may require the Service Provider and any Sub-contractor to produce such oral or written explanations as he considers necessary, and the Service Provider hereby agrees to co-operate with and procure the co-operation of all Service Provider Parties with, the requirement of the External Auditor and Audit Commission as contemplated by this Clause 89.6 (*Audit*).

89.7 Authority Consent

The Service Provider shall not make use of the Contract or any information issued or provided by or on behalf of, the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.

89.8 Prior Consent

Where the Service Provider, in carrying out its obligations under this Contract, is provided with information relating to a member of the public, the Service Provider shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Service Provider has obtained the prior written consent of that person and has obtained the prior written consent of the Authority.

89.9 Delivery to the Authority

On or before the Expiry Date, the Service Provider shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to members of the public, including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority.

89.10 Audit Commission

The Parties acknowledge that the Audit Commission has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

89.11 Official Secrets Act

The provisions of this Clause 89 (*Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

90. FREEDOM OF INFORMATION

90.1 Authority Obligations

The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 90.2 (*Delivery to the Authority*) to 90.7 (*Cost of Compliance*) (inclusive) below.

90.2 Delivery to the Authority

Where the Authority receives a Request for Information in relation to Information that the Service Provider or a Service Provider Party is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Service Provider such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Service Provider shall:

90.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within five (5) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

90.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in sections 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

90.3 **Representations to the Authority**

Following notification under Clause 90.2 (*Delivery to the Authority*), and up until such time as the Service Provider has provided the Authority with all the Information specified in Clause 90.2.1 (*Delivery to the Authority*), the Service Provider may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

90.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

90.3.2 whether Information is to be disclosed in response to a Request for Information,

and in no event shall the Service Provider respond directly, or allow any Service Provider Party to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

90.4 **Retention of Information**

The Service Provider shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

90.5 **Transfer of Requests for Information**

The Service Provider shall, or shall procure that any Service Provider Party shall, transfer to the Authority any Request for Information received by the Service Provider or such Service Provider Party as soon as practicable and in any event within two (2) Business Days of receiving it.

90.6 **Disclosure of Indicative Lists**

The Service Provider acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Authority may

nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

90.7 **Cost of Compliance**

In the event of a request from the Authority pursuant to Clause 90.2 (*Delivery to the Authority*) above, the Service Provider shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with the request and where it does require the Service Provider to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under section 10 of the FOIA. In such case, the Authority shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.

90.8 **FOIA Code**

The Service Provider acknowledges that (notwithstanding the provisions of this Clause 90 (*Freedom of Information*)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**FOIA Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Project:

90.8.1 in certain circumstances without consulting with the Service Provider; or

90.8.2 following consultation with the Service Provider and having taken its views into account,

provided always that where Clause 90.8 (*FOIA Code*) above applies, the Authority shall, where reasonably practicable, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Service Provider prior to any disclosure.

91. DATA PROTECTION ACT

91.1 Compliance with the Act

In relation to all Personal Data, the Service Provider shall and shall procure that each Key Sub-contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up-to-date registration or notification under the DPA covering the data processing to be performed in connection with the Service.

91.2 No Transfer outside European Economic Area

The Service Provider and any Key Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Service and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

91.3 Restrictions on Disclosure

The Service Provider shall not, and shall procure that each Key Sub-contractor shall not, disclose Personal Data to any third parties other than:

91.3.1 to employees, Key Sub-Contractors to whom such disclosure is reasonably necessary in order for the Service Provider to carry out the Service; or

91.3.2 to the extent required under a court order,

provided that disclosure under Clause 91.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 91.3 (*Restrictions on Disclosure*) and that the Service Provider shall and shall procure that each Key Sub-contractor shall give notice in writing to the Authority of any disclosure of Personal Data it or a Key Sub-Contractor is required to make under Clause 91.3.2 immediately it is aware of such a requirement.

91.4 Prevention of unlawful processing

The Service Provider shall and shall procure that each Key Sub-contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including reasonable steps to ensure the reliability of staff having access to the Personal Data.

91.5 Provision of Information

The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider and the Key Sub-Contractors referred to in Clause 91.4 (*Prevention of unlawful processing*). Within twenty (20) Business Days of such request, the Service Provider shall and shall procure that each Key Sub-contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

91.6 Service Provider Indemnity

The Service Provider shall and shall procure that each Key Sub-contractor shall indemnify and keep indemnified the Authority against all Losses, Claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 91 (*Data Protection Act*) caused by the Service Provider or by any act or omission of any Key Sub-Contractor.

91.7 Prior Consent

Where the Service Provider or any Key Sub-contractor, in carrying out its obligations under this Contract, is provided with Personal Data relating to a member of the public, the Service Provider shall not, and shall procure that each Key Sub-contractor shall not, disclose or make use of any such Personal Data otherwise than for the purpose for which it was provided, unless the Service Provider or such Key Sub-contractor has sought the prior written consent of such person and the Authority. The Service Provider shall and shall procure that each Key Sub-contractor shall, in carrying out any processing of Personal Data relating to a member of the public, do so in accordance with the DPA and this Clause 91 (*Data Protection Act*).

91.8 Delivery to the Authority

On or before the Expiry Date, the Service Provider shall and shall procure that each Key Sub-contractor shall ensure that all documents or computer records in its possession, custody or control, which contain Personal Data relating to a member of the public (including any documents in the possession, custody or control of a First Tier Sub-Contractor) are delivered up to the Authority.

92. CONSENTS AND APPROVALS

92.1 Diligent Pursuance of Obligations

Without prejudice to Clause 33 (*Representatives*), each Party shall and shall procure that any representative(s) appointed upon its behalf pursuant to this Contract shall deal in a timely and diligent manner in relation to the carrying of any service, duty or obligation under this Contract, any Project Document and any Ancillary Document.

92.2 Service Provider's Obligations

Neither the giving of any approval, inspection, knowledge of the terms of any contract or document nor the review of any document or course of action by, or on behalf of, the Authority or any person authorised by the Authority pursuant to this Contract, any Project Document and any Ancillary Document shall relieve the Service Provider of any of its obligations under this Contract, any Project Document or any Ancillary Document.

92.3 Examination by the Authority or its Representatives

Without limitation to Clause 92.2 (*Service Provider's Obligations*), no examination or lack of examination by the Authority or any person authorised on its behalf, of the Service Provider's or any Key Sub-contractor's drawings, documents, calculations or details relating to the design, construction, completion, commissioning and testing of the Project Network Parts or the management or provision of the Service or otherwise nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Service Provider from any obligations or liability under or in connection with this Contract and any Project Document and any Ancillary Document.

93. CONTINUING OBLIGATIONS

Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract and notwithstanding the provisions of Clause 107 (*Sole Remedy*):

93.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and

93.2 termination of this Contract shall not affect the continuing rights of the Authority and the Service Provider under Clause 56.2 (*Payment*), Clause 66 (*Indemnity*), Clause 77 (*Other Consequences of Termination or Expiry*), Clause 78 (*De-Mobilisation Procedures*), Clause 79 (*Handback Procedure*), Clause 82 (*Dispute Resolution*), Clause 84 (*Intellectual Property Rights*) Clause 85 (*Assignment and Sub-Contracting*), Clause 89 (*Confidentiality*), Clause 90 (*Freedom of Information*), Clause 91 (*Data Protection Act*), Clause 101 (*Notices*), Clause 103 (*Public Relations and Publicity*), Clause 104 (*Service Provider Records*), Clause 112 (*Law of the contract and Jurisdiction*), Schedule 4 (*Payment Mechanism*), Schedule 6 (*Insurance*), Schedule 14 (*Demobilisation*) or any other provision of this Contract which is expressed to survive termination or which it is required to give effect to such termination or the consequences of such termination,

and such provisions shall survive the termination of this Contract and continue in full force and effect, along with any other Clauses or Schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination shall survive termination or expiry as aforesaid.

94. COSTS AND EXPENSES

Each Party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Contract and the Project Documents and the Ancillary Documents.

95. COUNTERPARTS

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

96. LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman may investigate complaints of injustice in consequence of maladministration against the Authority under the Local Government Act 1974 which can include complaints relating to the Project. If such a complaint is made the Service Provider shall:

- 96.1 fully and promptly answer whether oral or written communications from the Local Government Ombudsman and send to the Authority Representative a copy of any communication to the Local Government Ombudsman at the same time as it is sent to the Local Government Ombudsman;
- 96.2 co-operate fully and courteously in any investigation by the Local Government Ombudsman, including any requests to view documents or premises or to interview the Service Provider's or any Key Sub-Contractor's employees; and
- 96.3 fully and promptly respond to any communication from the Authority Representative concerning the complaint so that the Authority may answer any issue raised by the Local Government Ombudsman directly with the Authority.
- 96.4 In the event of:
 - 96.4.1 a Local Government Ombudsman reporting that injustice has been caused to a person aggrieved in consequence of maladministration; and
 - 96.4.2 such maladministration having been caused or contributed to by the Service Provider or any Key Sub-Contractor; and
 - 96.4.3 the Authority deciding, on having such report laid before it, to make such payment or provide some other benefit (as the case may be) to such person,the Service Provider shall reimburse the Authority the amount of such payment or pay to the Authority the reasonable cost of such benefit (as the case may be).

97. DISCRIMINATION

97.1 Non-Discrimination

The Service Provider shall, and shall procure that all Key Sub-Contractors shall comply with all requirements of all Legislation relating to equalities and human

rights, and shall not unlawfully discriminate against any employee or member of the public on the grounds of, without limitation:

97.1.1 age;

97.1.2 colour;

97.1.3 disability;

97.1.4 ethnic or national origin;

97.1.5 marital status;

97.1.6 religion;

97.1.7 sex;

97.1.8 sexuality (including sexual orientation);

97.1.9 trade union membership or activity; and

97.1.10 responsibility for dependants, where a relevant employee or member of the public has sole or substantial responsibility for familial or non-familial dependants,

and in particular, but without limitation, the Service Provider and each Key Sub-Contractor shall not discriminate on the grounds of nationality in the selection of Sub-contractors. If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider or any Key Sub-Contractor, then the Service Provider shall take all necessary steps to prevent recurrence of such unlawful discrimination and shall deliver to the Authority full details of the steps taken to prevent such recurrence.

97.2 **Statutory Equality and Race Relations**

The Service Provider shall, and shall ensure that each First-Tier Sub-Contractor and Key Sub-Contractor shall, comply with any requirements and instructions which the Authority reasonably imposes in connection with the statutory equality and race relations obligations imposed on any public sector body including the new duties introduced by the Equality Act 2006 and the Equality Act 2010 (and any guidance

and/or codes issued thereunder applying to public authorities), and the Statutory Code of Practice on the Duty to Promote Disability Equality which entered into force in December 2006 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) and any relevant codes of practice issued by the Equality and Human Rights Commission, or in relation to any provision listed in this Clause 97.2 (*Statutory Equality and Race Relations*) any substitute or amended legislation or Guidance or code of practice of a similar nature which imposes requirements and/or gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment and service provision. The Service Provider shall provide such reasonable information as the Authority may reasonably require upon reasonable notice to enable it to assess the Service Provider Parties' continuing compliance with this Clause 97.2 (*Statutory Equality and Race Relations*).

97.3 **Sub-Contractor Requirements**

The Service Provider shall procure that the provisions of this Clause 97 (*Discrimination*) shall (*mutatis mutandis*) be incorporated within its contractual arrangements with each Key Sub-Contractor.

98. **ECONOMIC AND MONETARY UNION**

98.1 **Continuity of Contracts**

Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 15 June 1997 of the Authority of Ministers of the European Union, the introduction of the euro shall not, of itself:

98.1.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Contract, any Project Document or any Ancillary Document; or

98.1.2 give any Party to this Contract, any Project Document or any Ancillary Document the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Contract or any Project Document or any Ancillary Document.

98.2 Sterling References

If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Contract and any Project Document and any Ancillary Document to Sterling or £ shall be construed as references to euro or €(as the case may be), at the agreed Sterling-euro conversion rate on the date of that substitution. Provided that the provisions of this Clause 98 (*Economic and Monetary Union*) shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the Parties otherwise agree.

98.3 Consequential Changes

Without prejudice to Clauses 98.1 (*Continuity of Contracts*) and 98.2 (*Sterling References*), the Parties shall negotiate in good faith in order to agree any amendments to this Contract and/or any Project Document and/or any Ancillary Document which the Authority determines to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Contract, any Project Document and any Ancillary Document reflect then current market practices and conventions relating to the introduction of the euro).

99. ENTIRE AGREEMENT

99.1 Entire Agreement

This Contract, the Project Documents, the Ancillary Documents and any other contracts referred to therein constitute the entire agreement between the Parties in connection with its subject matter and supersede all prior representations, communications, negotiations, understandings, agreements or arrangements between the Parties concerning the subject matter of this Contract.

99.2 No Representation

Each of the Parties acknowledge that:

99.2.1 subject to Clause 65.1 (*Service Provider's Warranties*) it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except

those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

99.2.2 this Clause 99.2 (*No Representation*) shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which was induced by fraud.

100. LANGUAGE - ENGLISH TO BE LANGUAGE OF PROJECT DOCUMENTS

English shall be the language of this Contract, the Project Documents and Ancillary Documents and all documentation or information required or produced in the course of or in connection with the Service Provider's performance of the Service shall be in English.

101. NOTICES

101.1 Any notice to be given or served by one Party to the other Party under this Contract shall be served as follows:

101.1.1 Such notice shall either be delivered personally or by first class pre-paid post or by e-mail to the relevant address as set out in Clauses 101.1.2 or 101.1.3 (*Notices*) (as the case may be) or to such other address as a Party may have notified to the other Party by not less than five (5) Business Days prior notice. Service shall be deemed to have been effected as follows:

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

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

101.1.1.3 subject to Clauses 101.3 or 101.4, if sent by e-mail on the day of transmission provided that a read receipt is duly requested and/or other evidence is received and a confirmatory copy is on the same day that the e-mail is transmitted, sent by pre-paid first or second class post in the manner provided for in this Clause 101.1.1.2, save that if the time of such service by e-mail is either after 4.00 pm on a Business Day or on a day other

than a Business Day service shall be deemed to occur instead at 10.00 am on the following Business Day.

101.1.2 For the purposes of this Clause 101 (*Notices*), the Service Provider's details are:

Position: Service Provider Representative

Address: 4th Floor, Chancery Exchange, 10 Furnival Street,
London EC4A 1AB

E-mail: peter.leahy@amey.co.uk

Copied to e-mail: SHEFFIELD.SPV@amey.co.uk

Attention: Service Provider Representative

101.1.3 For the purposes of this Clause 101 (*Notices*), the Authority's details are:

Position: Authority Representative

Address: Howden House, Sheffield, S1 2SH

E-mail: highwayspficientteam@sheffield.gov.uk

Attention: Steve Robinson

101.2 Proof of Service

In proving service under this Clause 101 (*Notices*) it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the e-mail was properly addressed and despatched.

101.3 Non service of Electronic E-mail

In the event that an automatic electronic notification is received by the sender within 48 hours after sending the e-mail informing the sender that:

101.3.1 the e-mail has not been delivered to the recipient; or

101.3.2 the recipient is out of the office; or

101.3.3 no read receipt or other evidence of receipt has been duly received,

that e-mail shall be deemed not to have been served by e-mail and shall instead only be deemed served two (2) Business Days after the confirmatory copy is posted in accordance with Clause 101.1.1.3.

101.4 Exclusions to Service by E-mail

Clause 101.1.1.3 shall not apply to the service of any notices served pursuant to Clause 81 (Step In), nor to the service of any notices served pursuant to Part O (Termination) nor to the service of any proceedings or other documents in a legal action to which the Civil Procedures Rules apply.

102. PARTNERSHIP - NO PARTNERSHIP BETWEEN THE PARTIES

Nothing in this Contract or any Project Document or any Ancillary Document shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute any of the Parties as the agent of any of the others or to allow any Party to hold itself out as acting on behalf of the other.

103. PUBLIC RELATIONS AND PUBLICITY

103.1 No Communication with Media

103.1.1 The Service Provider shall not by itself, its employees or agents (and shall procure that any Service Provider Party shall not) communicate with any member of the print, broadcast, internal Authority media or other communications media on any matter concerning this Contract or the Project without the prior written approval of the Authority.

103.1.2 The Service Provider shall, and shall procure that any Service Provider Parties shall, subject to Clause 84.9 (*Licence to use Trade Marks and Data*), not use any crest, logo, livery or trademark of the Authority without the prior written approval of the Authority (which may be withheld or given subject to conditions at the Authority's absolute discretion).

103.2 No photographs/film

No facilities to photograph or film within or upon any Authority Property used in

relation to the Project shall be given or permitted by the Service Provider unless the Authority has given its prior written approval.

103.3 **Employee Identification and Communications**

The Service Provider warrants that it has prepared the following, which are set out in Schedule 24 (*Livery and Uniform*), in accordance with the provisions of this Clause 103.3:

103.3.1 a logo to be used by the Service Provider on all communications, vehicles, identification cards, livery and all other materials to be used by the Service Provider in relation to the operation of the Services, which must be consistently used on all materials;

103.3.2 a strap line to be used by the Service Provider in conjunction with the logo produced pursuant to Clause 103.3.3, provided that the Service Provider shall not be permitted to use the words 'in Partnership with Sheffield City Council' and shall not have any reference to other organisations operating within the City;

103.3.3 details of the livery to be used by the Service Provider on all vehicles, including incorporation of the logo and strap line, to be consistent with the logos and strap lines used on other materials produced pursuant to this Clause 103.3 (*Employee Identification and Communications*);

103.3.4 details of the uniform to be worn by all Personnel, ensuring that such uniforms could not be construed as indicating support for any political parties or local football teams and such uniforms shall incorporate the Service Providers logo and strap line as appropriate; and

103.3.5 a proforma for an identification card to be used for all Personnel, incorporating the logo and strap line, as well as the name of the Service Provider (or any Sub-contractor employing such Personnel as appropriate), a contact number for verification of the Personnel and a photo along with the name of the Personnel.

103.4 The Service Provider shall comply with the provisions of the Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009 and sections 55 and 1194 of the Companies Act 2006 in relation to

any of the materials devised by it pursuant to this Clause 103 (*Public Relations and Publicity*) and in relation to its business name, and in particular in relation to the use of the word 'Sheffield'.

103.5 The Service Provider shall ensure that the only branding which may be used in publicising the Project or the arrangements between the Authority and the Service Provider shall be the logo and strap line prepared by the Service Provider pursuant to Clauses 103.3.1 and 103.3.2. No other branding may be used in publishing the Project or the arrangements between the Authority and the Service Provider whatsoever without the Authority's prior written consent.

103.6 The Service Provider shall ensure that all stationery (including notepaper, compliments slips, forms, facsimile paper, invoices, receipts and other stationery), vehicles and equipment used in connection with the Project shall bear the Authority's branding as set out in the Authority's Branding Policy, and the logo and strap line prepared by the Service Provider pursuant to Clauses 103.3.1 and 103.3.2, and no other branding shall appear on such stationary, vehicles or equipment without the Authority's prior written consent.

104. SERVICE PROVIDER RECORDS

104.1 General Records and Open Book Accounting

The Service Provider shall:

104.1.1 at all times maintain a full record of particulars of the costs of performing the Service, including those relating to the design, installation, maintenance, operation and finance;

104.1.2 when requested by the Authority, provide a summary of any of the costs referred to in Clause 104.1.1 (*General Records and Open Book Accounting*), including details of any funds held by the Service Provider specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Service Provider of its obligations under this Contract;

104.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause 104 (*Service Provider Records*);

104.1.4 provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three Month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the term of this Contract and any other information relating to the Project that the Authority may reasonably require;

104.1.5 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication; and

104.1.6 provide to the Authority a copy of the Senior Lender's Financial Model as at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto;

104.1.7 promptly upon the occurrence of a Financing Default or Potential Financing Default notify the Authority of such Financing Default or Potential Financing Default; and

104.1.8 use all reasonable endeavours to assist the Authority in its preparation of any report required by the Department for Transport or HM Treasury from time to time.

104.2 **Interim Project Report**

The Authority may in the circumstances referred to in Clause 104.1.7 (*General Records and Open Book Accounting*) above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Service Provider to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.

104.3 **Books of Accounts**

Compliance with Clause 104.1 (*General Records and Open Book Accounting*) shall require the Service Provider to keep (and where appropriate shall procure that each First Tier Sub-Contractor shall keep) books of account in accordance with best accountancy practice with respect to this Contract showing in detail:

104.3.1 administrative overheads;

104.3.2 payments made to Key Sub-Contractors;

104.3.3 capital and revenue expenditure;

104.3.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of Clause 12 (*Authority Access*), Clause 30 (*Monitoring of Surveys and Inspections*), Clause 42 (*Market Testing*), Clause 44 (*Obligation to Monitor and Report*), Clause 46 (*Relief Events*), Clause 47 (*Compensation Events*), Clause 48 (*Excusing Causes*), Clause 52 (*Changes to the Service*), Clause 53 (*Change in Law*), Clause 58 (*Revenue Sharing*) and Schedule 11 (*Emergency Planning and Response*),

and the Service Provider shall have (and procure that the First Tier Sub-Contractors shall have) the books of account evidencing the items listed in Clauses 104.3.1 to 104.3.4 (*Books of Accounts*) available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.

104.4 **Maintenance of Records**

The Service Provider shall maintain or procure that the following are maintained:

104.4.1 a full record of all incidents relating to health, safety and security which occur during the term of the Contract; and

104.4.2 full records of all maintenance procedures carried out during the term of the Contract,

and the Service Provider shall have the items referred to in Clauses 104.4.1 and 104.4.2 (*Maintenance of Records*) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority, as and when requested.

104.5 **Examination by Auditor**

The Service Provider shall permit records referred to in this Clause 104 (*Service Provider Records*) to be examined and copied by the Authority's auditor, any other

[REDACTED]

105.3 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in Clause 105.2.

105.4 The Service Provider shall promptly provide the Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

105.5 The Authority shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:

105.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

105.5.2 a reduction in the Unitary Charge over the remainder of the Term; or

105.5.3 a combination of any of the above.

105.6 The Authority and the Service Provider will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under Clause 105.5 above). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the Dispute shall be determined in accordance with the Dispute Resolution Procedure.

105.7 The Refinancing Gain (including any Margin Gain) shall be calculated after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority

by the Service Provider within twenty (20) Business Days of any Qualifying Refinancing. Such costs shall be allocated as between the Margin Gain (if any) and the remaining Refinancing Gain (if any) pro rata.

105.8 Without prejudice to the other provisions of this Clause 105 (*Refinancing*), the Service Provider shall (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same and (b) include a provision in the Financing Agreements (other than Subordinated Financing Agreements) whereby the Service Provider is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than Subordinated Financing Agreements).

105.9 **Authority right to request refinancing**

105.9.1 If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements), the Authority may, by notice to the Service Provider, require the Service Provider to request potential funders to provide terms for a potential Refinancing (a "**Refinancing Notice**").

105.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Service Provider and Authority shall meet to discuss the Refinancing Notice within twenty (20) Business Days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) Business Days following the meeting.

105.9.3 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to Clause 105.9.2, then the Service Provider shall:

105.9.3.1 act promptly, diligently and in good faith with respect to the potential Refinancing;

105.9.3.2 use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential

Refinancing (provided that the Service Provider shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Service Provider, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Clause 105.7; and

105.9.3.3 either:

- (a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Clause 105.9.3.2 above and (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (b) if the Service Provider (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements) in accordance with the requirements of Clause 105.9.3.2, provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Service Provider has complied with its obligations in Clauses 105.9.3.1 and 105.9.3.2.

105.9.4 Following receipt of the information referred to in Clause 105.9.3.3(a), the Authority shall (in its absolute discretion) either:

105.9.4.1 instruct the Service Provider to implement the proposed Refinancing; or

105.9.4.2 instruct the Service Provider to discontinue the proposed Refinancing,

provided that if the Authority reasonably considers that the requirements of Clause 105.9.3.3(a) have not been satisfied, the Authority may require the Service Provider to satisfy its obligations under Clause 105.9.3.3(a) whereupon the provisions of Clauses 105.9.3 and 105.9.4 shall apply as if the Authority had served a Refinancing Notice.

105.9.5 If the Authority instructs the Service Provider to implement the proposed Refinancing:

105.9.5.1 the Service Provider shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

105.9.5.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

105.9.5.3 the provisions of Clauses 105.1 to 105.8 shall apply.

105.9.6 If:

105.9.6.1 the Authority instructs the Service Provider to discontinue the potential Refinancing pursuant to Clause 105.9.4.2; or

105.9.6.2 the requirements of Clause 105.9.3.3(b) are satisfied,

then, the Authority shall reimburse the Service Provider for the reasonable and proper professional costs incurred by the Service Provider in relation to the potential Refinancing, such costs to be paid to the Service Provider by the Authority within twenty (20) Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Service Provider except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the

normal course of such business have been paid to third parties and (b) the Authority has, by prior written agreement, approved the use of such internal management resource.

105.9.7 The Authority shall be entitled to issue a Refinancing Notice under Clause 105.9.1 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Clause 105.9.2 has been issued for the purpose of this Clause 105.9.7.

106. SEVERABILITY

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

107. SOLE REMEDY

107.1 Common Law Rights for the Authority

Subject to:

107.1.1 any other express right of the Authority pursuant to this Contract; and

107.1.2 the Authority's right to Claim, on or after termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of Schedule 2 (*Output Specification*) by the Service Provider, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to Clause 80 (*Compensation on Termination*),

the sole remedy of the Authority in respect of a failure to provide the Services as set out in Schedule 2 (*Output Specification*) shall be the operation of Schedule 4 (*Payment Mechanism*).

107.2 Common Law Rights for the Service Provider

Without prejudice to any entitlement of the Service Provider:

107.2.1 to specific performance of any obligation under this Contract; or

107.2.2 to injunctive relief; or

107.2.3 to enforce any payment obligation under or in relation to or for breach of this Contract subject to any Dispute having been resolved in accordance with the Dispute Resolution Procedure,

the Service Provider shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Contract to the extent that this Contract provides an express remedy in relation to the breach.

107.3 Nothing in Clause 107.3 or Clause 107.2 (*Common Law Rights for the Service Provider*) shall prevent or restrict the right of the Authority or the Service Provider (as appropriate) to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

108. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation or make a Claim under this Contract in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Claim or Loss pursuant to this Contract.

109. THIRD PARTY RIGHTS

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract.

110. WAIVER

110.1 Waiver in Writing

No term or provision of this Contract shall be considered as waived by any Party to this Contract unless a waiver is given in writing by that Party.

110.2 **No Waiver in Writing**

No waiver under Clause 110.1 (*Waiver in Writing*) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

111. **NON-SOLICITATION**

111.1 The Service Provider shall not and shall ensure that any Service Provider Party shall not solicit the employment or recruitment of or recruit any Authority Party or agency worker to work for the Service Provider (or the Service Provider Party) during the Mobilisation Period whom the Authority designates by notice in writing to the Service Provider prior to the date of this Contract as a key worker.

111.2 For the purposes of this Clause 111.1 (*Non-Solicitation*), "**solicit**" includes any response by the Service Provider or Service Provider Party to an enquiry concerning employment by a key worker except to indicate that such recruitment is prohibited by the Authority.

112. **LAW OF THE CONTRACT AND JURISDICTION**

112.1 **English Law**

This Contract and any non-contractual obligation arising out of or in connection with this Contract, shall be governed by the laws of England and Wales and, subject to Clause 82 (*Dispute Resolution*), the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof this document is executed as a deed by the Parties or their duly authorised representatives on the date of this Contract.

The Common Seal of **SHEFFIELD**) [*Seal of Sheffield City Council*]
CITY COUNCIL was hereunto) 12/61/230
affixed)
to this deed in the presence of:)

[*A Oakley*] Authorised Signatory

Signed by **AMEY HALLAM**)
HIGHWAYS LIMITED acting)
by: [*K Cottrell*])
)

in the presence of Attorney

[*David Fennel*] David Fennel

55 Colmore Row, Birmingham