



Llywodraeth Cymru
Welsh Government

Project Agreement for Sections 5 & 6 of the A465

Mutual Investment Model (MIM)

AGREEMENT

between

THE WELSH MINISTERS

and

PROJECT CO

**The A465 Heads of the Valleys Dualling Abergavenny to
Hirwaun - Sections 5 (Dowlais to A470) and 6 (A470 to
Hirwaun)**

TABLE OF CONTENTS

Clause	Heading	Page No.
69	NO WAIVER	151
70	NO AGENCY	151
71	ENTIRE AGREEMENT	151
72	THIRD PARTY RIGHTS	152
73	SEVERABILITY	152
74	CONFLICTS OF AGREEMENTS	152
75	COSTS AND EXPENSES	152
76	AMENDMENTS	152
77	COUNTERPARTS	152
78	FURTHER ASSURANCE	153
79	GOVERNING LAW AND JURISDICTION	153
	SCHEDULES	155
	SCHEDULE 1 DEFINITIONS AND INTERPRETATION	155
	SCHEDULE 2 COMPLETION DOCUMENTS	214
	SCHEDULE 4 FUNDERS' DIRECT AGREEMENT	218
	SCHEDULE 5 LAND MATTERS	234
	SCHEDULE 6 CONSTRUCTION MATTERS	247
	SCHEDULE 7 THE PROGRAMME	253
	SCHEDULE 8 REVIEW PROCEDURE	257
	SCHEDULE 9 COLLATERAL AGREEMENTS	268
	SCHEDULE 10: PTU CRITERIA	309
	PART 1 PTU CRITERIA	309
	PART 2: HANDING OVER CERTIFICATE CRITERIA	311
	PART 3: TAKING OVER CERTIFICATE CRITERIA	312
	SCHEDULE 12 SERVICE REQUIREMENTS	314
	SCHEDULE 14 PAYMENT MECHANISM	319
	SCHEDULE 15 INSURANCE REQUIREMENTS	320
	SCHEDULE 16 CHANGE PROTOCOL	348
	SCHEDULE 17 COMPENSATION ON TERMINATION	439
	SCHEDULE 18 HANDBACK PROCEDURE	463
	SCHEDULE 19 RECORD PROVISIONS	468
	SCHEDULE 20 DISPUTE RESOLUTION PROCEDURE	473
	APPENDIX A - FAST TRACK DISPUTE RESOLUTION PROCEDURE	480
	SCHEDULE 21 PROJECT CO INFORMATION	484
	SCHEDULE 22 CERTIFICATES	487
	SCHEDULE 23 REFINANCING	497

TABLE OF CONTENTS

Clause	Heading	Page No.
	SCHEDULE 24 LIAISON PROCEDURE	505
	SCHEDULE 25 INSURANCE PROCEEDS ACCOUNT AGREEMENT	507
	SCHEDULE 26 COMMERCIAL SENSITIVE INFORMATION	516
	SCHEDULE 27 - NOT USED	518
	SCHEDULE 28 DISASTER PLAN	519
	SCHEDULE 29 COMMUNITY BENEFITS	520
	SCHEDULE 30 BIM PROTOCOL	530
	SCHEDULE 31 INTERIM PROJECT REPORT	531
	SCHEDULE 32	532
	STATUTORY FRAMEWORK AND THIRD PARTY AGREEMENTS	532
	SCHEDULE 33 RESTRICTED SERVICES	551
	SCHEDULE 34 NOT USED	558
	SCHEDULE 35 NETWORK MANAGEMENT	559
	SCHEDULE 36 SIDE ROADS WORKS	560
	SCHEDULE 37 LATENT DEFECT IDENTIFIED RISKS	568
	SCHEDULE 38 DRAWINGS	569
	SCHEDULE 39 AUTHORITY POLICIES	570

THIS AGREEMENT is made the

28th day of October 2020

BETWEEN:

- (1) The Welsh Ministers of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the "**Authority**"); and
- (2) Future Valleys Project Co Limited (registered under number 12857623) whose registered office is Fulcrum, 105 Piccadilly, Mayfair, London, W1J 7NJ¹ ("**Project Co**").

RECITALS:

- (A) The Authority wishes to procure the design, build, finance and maintenance of sections 5 (Dowlais to A470) and 6 (A470 to Hirwaun) of the A465 and associated Trunk Roads and Side Roads (the "**Project**");
- (B) The Authority conducted a competitive dialogue procurement competition to identify the most economically advantageous tender from persons interested in being appointed the Authority's private sector partner to procure the Project;
- (C) The tender submitted by Project Co has been selected as the most economically advantageous tender;
- (D) This Agreement is entered into pursuant to a project applying principles similar to the principles of the private finance initiative and is excluded from the Housing Grants, Construction and Regeneration Act 1996 by virtue of the Construction Contracts (England and Wales) Exclusion Order 1998 (SI 1998/646); and
- (E) The Project has been approved by the Minister for Economy, Transport and North Wales and the Minister for Finance and Trefnydd, on behalf of the Welsh Ministers.

NOW IT IS HEREBY AGREED as follows:

PART 1: GENERAL

1 DEFINITIONS AND INTERPRETATION

This Agreement shall be interpreted according to the provisions of Schedule 1 (*Definitions and Interpretation*).

2 EXECUTION AND DELIVERY OF DOCUMENTS

- 2.1 On or prior to execution of this Agreement Project Co shall deliver to the Authority the documents referred to in Section 1 (Documents to be delivered by Project Co) of Schedule 2 (Completion Documents) (unless the requirement to deliver any such document is waived by the Authority by written notice to Project Co); and
- 2.2 On or prior to execution of this Agreement the Authority shall deliver to Project Co the documents referred to in Section 2 (Documents to be delivered by the Authority) of Schedule 2 (Completion Documents) (unless the requirement to deliver any such document is waived by Project Co by written notice to the Authority).
- 2.3 [REDACTED]

2.4 [REDACTED]

2.5 Within sixty (60) Business Days of the date of this Agreement:

2.5.1 the Parties shall enter into the Insurance Proceeds Account Agreement and Project Co shall provide evidence that the Insurance Proceeds Account has been opened; and

2.5.2 the Authority shall procure:

- (a) a collateral warranty from each Warranty Party in favour of Project Co;
- (b) a collateral warranty from each Warranty Party in favour of the Construction Contractor;
- (c) a collateral warranty from Socotec UK Limited in favour of the Service Provider; and
- (d) a collateral warranty from each Warranty Party in favour of the Security Trustee.

3 COMMENCEMENT AND DURATION

This Agreement, and the rights and obligations of the parties, shall commence on the date of execution of this Agreement and, without prejudice to Clause 51.6 (*Continuing Obligations*), shall terminate automatically on the expiry of the Project Term.

4 PROJECT DOCUMENTS

Ancillary Documents

4.1 Project Co shall perform its obligations under, and observe all of the provisions of, the Project Documents to which it is a party and shall not:

- 4.1.1 terminate or agree to the termination of all or part of any Ancillary Document;
- 4.1.2 make or agree to any material variation to, or extension or renewal of any Ancillary Document;
- 4.1.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or
- 4.1.4 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 Ancillary Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under Schedule 8 (*Review Procedure*) and either:

- (a) there has been no objection in accordance with paragraph 3 of Schedule 8 (*Review Procedure*) within twenty (20) Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the parties; or

- (b) Project Co is acting in accordance with the comments of the Authority as provided in paragraph 4.2 of Schedule 8 (*Review Procedure*);

and, in the circumstances specified in Clause 4.1.1, Project Co has complied with Clause 61 (*Sub-contracting and Assignment*).

4.1A [REDACTED]

Changes to Funding Agreements and Refinancing

- 4.2 Subject to Clauses 4.3 and 4.4 (*Changes to Funding Agreements and Refinancing*), Project Co shall be free, at any time, to enter into, terminate, amend, waive its rights and generally deal with its Funding Agreements on such terms and conditions as it sees fit without the prior written consent of the Authority provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Agreement.
- 4.3 No amendment, waiver or exercise of a right under any Funding Agreement or Ancillary Document (including pursuant to limb (h) of the definition of “Exempt Refinancing”) shall have the effect of increasing the Authority's liabilities on early termination of this Agreement unless:
 - 4.3.1 Project Co has obtained the prior written consent of the Authority to such increased liability for the purposes of this Clause 4.3 (*Changes to Funding Agreements and Refinancing*);
 - 4.3.2 it is a Permitted Borrowing (save in respect of any Permitted Refinancing Financial Indebtedness (as defined in the Common Terms Agreement) in respect which the provisions of Clause 4.3.1 shall apply); or
 - 4.3.3 in respect of limb (h) of the definition of “Exempt Refinancing”, Project Co has obtained the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed and to be given where Project Co has demonstrated to the reasonable satisfaction of the Authority that the following conditions shall be met:
 - 4.3.3.1 following a re-running of the Financial Model, the Key Ratios have not increased as per the Financial Model as at the Commencement Date; and
 - 4.3.3.2 the transition away from LIBOR to a new benchmark would not have the effect of increasing the Authority's liabilities on early termination of this Agreement.
- 4.4 Any amendment or variation of any Funding Agreements which constitutes a Refinancing shall be carried out in accordance with the provisions of Schedule 23 (*Refinancing*).
- 4.5 Without prejudice to Clause 4.2 (*Changes to Funding Agreements and Refinancing*), Project Co shall liaise with the Authority, and shall use all reasonable endeavours to provide the Authority with a copy of the relevant agreement in settled draft form, not less than ten (10) Business Days before it enters into any Funding Agreement (other than the Initial Funding Agreements).

Delivery

- 4.6 Without prejudice to the provisions of this Clause 4 (*Project Documents*), if at any time an amendment is made to any Project Document, or Project Co enters into a

new Project Document (or any agreement which affects the interpretation or application of any Project Document), Project Co 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, certified as a true copy by an officer of Project Co.

Funding Default

- 4.7 Project Co shall promptly upon the occurrence of a Funding Default notify the Authority of such Funding Default.
- 4.8 The Authority may, in circumstances referred to in Clause 4.7 (*Funding Default*) above (regardless of whether the Senior Funders have exercised any enforcement or similar rights under the Senior Funding Agreements), require Project Co to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Funders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.
- 4.9 Project Co shall promptly upon a failure by the Senior Funders to advance amounts due under the Senior Funding Agreements (or in circumstances that might reasonably be expected to lead to such a failure) notify the Authority of such failure (or expected failure).
- 4.10 The Authority may, in the circumstances referred to in Clause 4.9 (*Funding Default*) above, require Project Co to attend, and use all reasonable endeavours to ensure that the Senior Funders attend, such meetings as the Authority may convene to discuss the circumstances.

5 THE PROJECT OPERATIONS

Scope

- 5.1 Subject to and in accordance with the provisions of this Agreement, Project Co shall perform its duties under this Agreement at its own cost and risk without recourse to the Authority except as otherwise expressly provided in this Agreement.

General standards

- 5.2 Project Co shall at its own cost be solely responsible for procuring that the Project Operations are at all times performed:
 - 5.2.1 in compliance with all Law and Consents (including without limitation the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents;
 - 5.2.2 in a manner that is not likely to be injurious to health or to cause damage to property;
 - 5.2.3 in a manner consistent with the Authority discharging its statutory duties and other functions undertaken by it as the same may be notified to Project Co from time to time;
 - 5.2.4 in compliance with the Orders and any New Order; and
 - 5.2.5 insofar as not in conflict with an express obligation of Project Co under this Agreement, or where in relation to a matter there is no express obligation or standard imposed on Project Co under this Agreement, in accordance with Good Industry Practice.

In the event that any ambiguity, uncertainty, dispute or discrepancy arises in the nature and scope of Project Co's obligations under this Clause 5.2 (*General Standards*), the provisions of this Clause 5.2 (*General Standards*) will be given meaning and have effect in descending order of precedence set out in this Clause 5.2 (*General Standards*).

Authority's Undertaking

5.3 The Authority undertakes to Project Co that it shall:

- 5.3.1 subject to the provisions of this Agreement, comply with all Laws and Consents applicable to it which relate to the Project Operations;
- 5.3.2 not wilfully impede Project Co in the performance of its obligations under this Agreement (having regard always to the interactive nature of the activities of the Authority and/or Authority Parties and of Project Co and to the Authority's use of the Project Facilities and any other operations or activities carried out by the Authority and/or Authority Parties on or at the Site for the purposes contemplated by this Agreement and any other of the Authority's and/or any Authority Party's statutory functions);
- 5.3.3 inform Project Co as soon as reasonably practicable if at any time it becomes unable to meet any of its financial obligations and in such case inform, and keep Project Co informed, of any course of action to remedy the situation recommended or required by the Welsh Government, the Authority or other competent authority; and
- 5.3.4 to the extent permitted by Law, supply to Project Co within sixty (60) Business Days of their publication, a copy of the Authority's Annual Report and Accounts,

provided that, to avoid doubt, nothing in this Clause 5.3 (*Authority's Undertaking*) shall in any way fetter the discretion of the Authority in fulfilling its statutory functions.

Co-operation

5.4 Each party agrees to cooperate, at its own expense, with the other party in the fulfilment of the purposes and intent of this Agreement. To avoid doubt, neither party shall be under any obligation to perform any of the other's obligations under this Agreement.

Public Use

- 5.5 Project Co shall keep the Project Road open for public use and in such condition so it can be used safely by Users.
- 5.6 Project Co shall ensure that all Project Operations shall be carried out so as not to interfere unnecessarily with:
 - 5.6.1 the convenience of Users;
 - 5.6.2 the convenience of other members of the public; and/or
 - 5.6.3 the access to, use and occupation of public or private roads or footpaths, footways, cycleways or bridleways whether under the control or in the possession of the Authority, Statutory Authority or any other person.

6 GENERAL OBLIGATIONS AND RESPONSIBILITIES OF PROJECT CO

Other business

- 6.1 Project Co shall not engage in any business or activity other than the business or activities related to, and conducted for, the purpose of the Project Operations.

Project Co Parties

- 6.2 Subject to the provision of Clause 35.1.7, Project Co shall not be relieved or excused of any responsibility, liability or obligation under this Agreement by the appointment of any Project Co Party. Project Co shall, as between itself and the Authority, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all Project Co Parties. All references in this Agreement to any act, default, omission, breach or negligence of Project Co shall be construed accordingly to include any such act, default, omission, breach or negligence of a Project Co Party.

Safety

- 6.3 Project Co shall, in carrying out the Project Operations, have full regard for the safety of all persons on the Site (whether lawfully or not) and keep the Site, the Works and the Project Facilities in an orderly state, appropriate in accordance with Good Industry Practice, to avoid danger to such persons.

7 AUTHORITY'S DATA

No liability

- 7.1 The Authority shall not be liable to Project Co for and Project Co shall not seek to recover from the Authority (or from any Authority Party (excluding any Warranty Party)) any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Disclosed Data by, or on behalf of, Project Co or any Project Co Party.

No warranty

- 7.2 The Authority gives no warranty or undertaking of whatever nature in respect of the Disclosed Data and, specifically (but without limitation), the Authority does not warrant that the Disclosed Data represents all of the information in its possession or power (either during the conduct of the tender process for the Project or at the time of execution of this Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Agreement or under any of the Project Documents. In addition, without prejudice to the application of Clause 34.11.1 (*Compensation*) and/or Clause 34.3.2 (*Delay Events*) to the extent that such provisions may apply in respect of any breach on the part of the Authority of Clause 9.1 (*Access*), the Authority shall not be liable to Project Co in respect of any failure to disclose or make available to Project Co (whether before, on or after the execution of this Agreement) any information, documents or data, nor any failure to review or to update the Disclosed Data, nor any failure to inform Project Co (whether before, on or after execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data.

Project Co investigation

- 7.3 Project Co acknowledges and confirms that:
- 7.3.1 it has conducted its own analysis and review of the Disclosed Data and has, before the execution of this Agreement, satisfied itself as to the accuracy,

completeness and fitness for purpose of any such Disclosed Data upon which it places reliance; and

7.3.2 it shall not be entitled to and shall not (and shall procure that no Project Co Party shall) make any claim against the Authority or any Authority Party (excluding any Warranty Party) whether in contract, tort or otherwise including, without limitation, any claim in damages, for extensions of time or for additional payments under this Agreement on the grounds:

- (a) of any misunderstanding or misapprehension in respect of the Disclosed Data; or
- (b) that incorrect or insufficient information relating to the Disclosed Data was given to it by any person, whether or not an Authority Party,

nor shall Project Co be relieved from any obligation imposed on, or undertaken by it, under this Agreement on any such ground.

8 REPRESENTATIVES

Representatives of the Authority

- 8.1 The Authority's Representative shall be [REDACTED] or such other person appointed pursuant to this Clause. The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Project Operations which are identified in this Agreement as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Agreement as may be notified to Project Co from time to time.
- 8.2 The Authority's Representative shall be entitled at any time, by notice to Project Co, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Authority's Representative and all references to the "**Authority's Representative**" in this Agreement (apart from this Clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 8.3 The Authority may by notice to Project Co change the Authority's Representative. The Authority shall (as far as practicable) consult with Project Co prior to the appointment of any replacement for the Authority's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to Project Co in the execution of its obligations under this Agreement).
- 8.4 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.
- 8.5 No act or omission of the Authority or Authority Party, the Authority's Representative or any officer, employee or other person engaged by the Authority shall, except as otherwise expressly provided in this Agreement:
 - 8.5.1 in any way relieve or absolve Project Co from, modify, or act as a waiver or personal bar of, any liability, responsibility, obligation or duty under this Agreement; or

8.5.2 in the absence of an express order or authorisation under Schedule 16 (*Change Protocol*), constitute or authorise a Change.

- 8.6 Except as previously notified in writing before such act by the Authority to Project Co, Project Co and Project Co's Representative shall be entitled to treat any act of the Authority's Representative which is authorised by this Agreement as being expressly authorised by the Authority and Project Co and Project Co's Representative shall not be required to determine whether an express authority has in fact been given.

Representative of Project Co

- 8.7 Project Co's Representative shall be [REDACTED] or such other person appointed pursuant to Clause 8.8 (*Representative of Project Co*). Project Co's Representative shall have full authority to act on behalf of Project Co for all purposes of this Agreement. Except as previously notified in writing before such act by Project Co to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of Project Co's Representative in connection with this Agreement as being expressly authorised by Project Co and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 8.8 Project Co may by reasonable notice to the Authority change Project Co's Representative. Where Project Co wishes to do so it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).
- 8.9 Project Co's Key Personnel are identified in Schedule 3 (*Key Personnel*). Project Co shall, as far as it is within Project Co's control, ensure that such persons retain their involvement in the Works and, in particular, will not, for the duration of the Works, require or request any of them to be involved in any other project on behalf of Project Co or any of the Shareholders or its or their Associated Companies if, in the reasonable opinion of the Authority, this would adversely affect the Project. In the event that due to matters outwith Project Co's control it is necessary for there to be a change in any Key Personnel, Project Co shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

Liaison Procedures

- 8.10 The Authority and Project Co shall establish and maintain throughout the Project Term a joint Liaison Committee and shall initiate, develop, agree, distribute, implement, control and maintain liaison procedures, all in accordance with the provisions of Schedule 24 (*Liaison Procedure*).

PART 2: LAND ISSUES

9 NATURE OF LAND INTERESTS

Access

9.1 Subject to clause 9.2, the Authority shall grant to Project Co and Project Co Parties, or procure that Project Co and the Project Co Parties are granted:

9.1.1 access to the Site; and

9.1.2 the Ancillary Rights,

in each case subject only to the Reserved Rights, the Title Conditions, the Third Party Agreements and the Authority's rights under this Agreement and solely for the purposes of implementing the Project Operations and the Restricted Services.

Duration of Rights of Access

9.2 Subject to clauses 9.2A, 9.3 and 9.4, the commencement and duration of the rights of access given under clause 9.1 (Access) shall be as follows:

9.2.1 in respect of the Site, from the Land Access Date until the Expiry Date or, if earlier, the Termination Date;

9.2.2 in respect of each Temporary Highways Area, from the Land Access Date until the date of issue of the relevant Taking Over Certificate in respect of the Works carried out in such Temporary Highways Area or, if earlier, the Termination Date; and

9.2.3 in respect of each Temporary Use Area, from the Land Access Date until the date of issue of the relevant Handing Over Certificate in respect of that Temporary Use Area or, if earlier, the Termination Date.

9.2A The FV Land will not be available to Project Co until the FV Land Access Date.

Extent of Rights

9.3 The rights referred to at Clause 9.1 (Access) shall not operate or be deemed to operate as a lease of the Project Facilities or the Site or any part of the Project Facilities or the Site and Project Co shall not have or be entitled to exclusive possession (save to the extent expressly included within the Ancillary Rights) or any estate, right, title or interest in and to the Site or the Project Facilities except as provided herein and shall occupy the Site and Project Facilities as a licensee only.

9.4 The rights referred to at Clause 9.1 (Access) are personal to Project Co and the Project Co Parties.

9.5 Project Co shall procure that:

9.5.1 all Project Operations carried out at the Site by or on behalf of Project Co (whether before, during or after the completion of the Works) shall be carried out in a manner which does not breach any of the Title Conditions and/or the Reserved Rights; and

9.5.2 there shall be no action, or omission to act by Project Co or a Project Co Party, which shall give rise to a right for any person to obtain title to the Site or any part of it.

- 9.6 If at any time Project Co or any Project Co Party requires access to any interest in land which does not, at the relevant time, form part of the Site, or any additional rights beyond those which Project Co or any Project Co Party has in relation to any part of the Site ("**Additional Access Rights**"), the responsibility and cost of securing or acquiring such Additional Access Rights shall be entirely the responsibility of Project Co. Project Co shall obtain the Authority's written consent prior to procuring any Additional Access Rights such consent not to be unreasonably withheld or delayed.
- 9.7 Project Co shall bear all costs, expenses, fees, liabilities and charges or other sums in respect of and any Direct Losses or claims arising from the procurement and/or exercise of any Additional Access Rights.
- 9.8 All Claims made by any Injurious Affection Party, Land Compensation Party and/or Operational Compensation Costs Party shall be dealt with in accordance with Section 4 (*Injurious Affection*) of Schedule 5 (*Land Matters*).

Surplus Land

- 9.9 Within thirty (30) Business Days after the Actual Completion Date, Project Co shall by notice to the Authority specify any area of land falling within the boundaries of the Site which is not required by them in connection with the Project. The Authority shall be entitled in its absolute discretion (as between the Authority and Project Co) to remove such area of land from the Site.
- 9.10 If the Authority exercises its rights to remove any area of land referred to in Clause 9.9 (*Surplus Land*), then such area of land shall be excluded from the definition of the Site, with effect from the effective date of such exercise (such effective date to be specified by the Authority). The parties shall use their reasonable endeavours to agree any revisions to the Site Plans necessary to reflect such exclusion and if they are unable to reach agreement:
- 9.10.1 within one hundred and twenty (120) Business Days of the effective date of such exercise then either party may refer the matter for resolution under the Dispute Resolution Procedure; or
- 9.10.2 the Authority shall be entitled to withdraw the exercise of its discretion pursuant to clause 9.9.
- 9.11 If and so long as the Authority does not exercise its rights to remove any area of land referred to in Clause 9.9 (*Surplus Land*) in respect of any such area of land, then such area shall remain part of the Site and the terms of this Agreement shall continue to apply in respect of such area of land.

10 THE SITE

- 10.1 The condition of the Site shall be the sole responsibility of Project Co. Accordingly (without prejudice to any other obligation of Project Co under this Agreement), Project Co shall be deemed to have:
- 10.1.1 carried out a Ground Physical and Geophysical Investigation and to have inspected and examined the Site and their surroundings and (where applicable) any existing structures or works on, over or under the Site;
- 10.1.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the condition of the Existing Road, the form and nature of the Site, the load bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution of the Works;

- 10.1.3 satisfied itself as to the extent and adequacy of the Site and of the rights of access to and through the Site granted hereunder and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Site) without prejudice to Project Co's rights under this Agreement in respect of a breach by the Authority of its obligations under Clause 9.1 (Access);
 - 10.1.4 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties as well as the risks of interference by Protesters or Trespassers on the Site and/or the approach to the Site;
 - 10.1.5 satisfied itself as to the conditions, burdens, restrictions and reservations set out in the Title Conditions and the Reserved Rights; and
 - 10.1.6 thoroughly examined, checked and satisfied itself as to the adequacy, completeness, correctness and suitability of all Design Data made available to Project Co by or on behalf of the Authority prior to execution of this Agreement and which Project Co has adopted or made use of or which Project Co intends to adopt or make use of.
- 10.2 To avoid doubt, Project Co accepts full responsibility for all matters referred to in Clause 10.1 (*The Site*) and Project Co shall:
- 10.2.1 not be entitled to make any claim against the Authority of any nature whatsoever save, if applicable, as expressly provided in Clause 34 (*Delay Events and Compensation Events*), on any grounds including (without limitation) the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not the Authority or an Authority Party; and
 - 10.2.2 be responsible for, and hold the Authority harmless from, cleaning up and/or otherwise dealing with any Contamination at the Site and/or which it otherwise causes so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with, at its own cost, any applicable Laws and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or Project Co).

Good Environmental Management

- 10.3 Without prejudice to any other provision of this Agreement, Project Co shall, and shall procure that any Project Co Party shall, at all times during the Project Term carry out and abide by the following provisions ("**Good Environmental Management**") namely that it shall:
- 10.3.1 comply with all applicable Law including Environmental Law and the Authority's Policies in relation to its occupation and use of the Site in the provision of the Project Operations;
 - 10.3.2 comply with the principles of BS EN ISO 14001 or its successors;
 - 10.3.3 in respect of the Site keep a record of the nature, amounts and use of Hazardous Materials brought on to or otherwise stored or used at the Site including details of the operations in which the materials are used and the location in which they are stored;
 - 10.3.4 ensure that no act or omission of it or any Project Co Party of which Project Co is aware or ought reasonably to be aware:

- (a) puts the Authority and/or any Authority Party in breach of Environmental Law; or
 - (b) is capable within one (1) year from the end of the Project Term of putting the Authority and/or any Authority Party in breach of Environmental Law (as such Environmental Law stands immediately prior to the end of the Project Term and disregarding any changes to Environmental Law which may take place after the end of the Project Term and assuming the Authority acts as a reasonably prudent operator).
- 10.4 Project Co shall, in relation to the Utilities required or affected as a result of carrying out the Works:
 - 10.4.1 be responsible for determining the location of such Utilities as may be at the Site and for the maintenance of access to such Utilities at the Site;
 - 10.4.2 make and rely upon all necessary investigations and surveys as to such Utilities at the Site;
 - 10.4.3 be responsible and make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any Utilities within or outside of the Site;
 - 10.4.4 pay to all Relevant Authorities or undertakings (and indemnify and hold the Authority harmless from and against) all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such Utilities within or outside of the Site; and
 - 10.4.5 otherwise do all that is required in relation to the Utilities required for the purpose of the carrying out of the Works including but not limited to using all reasonable endeavours to conclude with each Utilities Third Party the terms of the relevant Utilities Agreement.
- 10.5 Project Co shall throughout the Project Term:
 - 10.5.1 procure, purchase and supply the Utility Services;
 - 10.5.2 procure and purchase all electricity required for the Electricity Using Apparatus and the delivery of such electricity supply to the Electricity Using Apparatus.

11 CONSENTS

- 11.1 Project Co shall be responsible for:
 - 11.1.1 obtaining all Consents which may be required for the performance of the Project Operations; and
 - 11.1.2 implementing each Consent within the period of its validity in accordance with its terms.
- 11.2 In the event that:
 - 11.2.1 a Consent that has been granted is subsequently amended, repealed, revoked or otherwise ceases to be in full force and effect in accordance with its terms as a consequence of any action by a Relevant Authority;

11.2.2 affected persons are entitled to claim compensation for the adverse effects of such action under a statutory scheme of compensation; and

11.2.3 Project Co is not entitled in its own name to claim under that scheme but the Authority is so entitled,

the Authority must use all reasonable endeavours, at the request and at the cost of Project Co, to claim or to include within its claim such sums as Project Co acting reasonably requests and shall pay to Project Co the part of any compensation that it receives under that scheme that relates to the sums claimed at the request of Project Co.

11.3 Not used.

Third Party Agreements

11.4 Third Party Obligations sub-contracted to Project Co

The Authority hereby sub-contracts to Project Co the obligation to observe and perform the Delegated Obligations and Project Co shall perform the same and, indemnify and hold the Authority harmless from and against:

11.4.1 all claims and losses 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 date of this Agreement; and

11.4.2 any additional costs, claims, demands, liabilities, losses or expenses incurred as a result of:

- (a) the defective performance of Project Co or the failure of Project Co to observe or perform the Delegated Obligations including the internal costs of the Authority of satisfying the Delegated Obligations in place of Project Co (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
- (b) 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 Project Co to observe and perform the Delegated Obligations in accordance with their terms to the extent due for performance after the date of this Agreement.

11.5 Assignment of benefit of Delegated Rights to Project Co

The Authority hereby assigns to Project Co the benefit of the Delegated Rights, and Project Co shall, unless otherwise requested by the Authority, exercise the Delegated Rights, and Project Co shall observe the proper exercise of the same and indemnify and hold the Authority harmless from and against:

11.5.1 all claims and losses arising out of or in relation to improper exercise or a failure to exercise the Delegated Rights; and

11.5.2 any additional costs, claims, demands, losses, liabilities or expenses incurred by the Authority as a result of:

- (a) the exercise by Project Co of the Delegated Rights; and

- (b) 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 Project Co to exercise the Delegated Rights in accordance with their terms and having due regard to the respective rights and obligations of the parties under this Agreement.

The assignment to Project Co of the Delegated Rights pursuant to this clause 11.5 shall be solely for the purpose of Project Co performing Project Operations and Restricted Services in accordance with this Agreement and shall only subsist for so long as Project Co is performing such Project Operations and Restricted Services. Project Co shall not confer on any third party the right to enjoy or exercise any Delegated Rights other than to the Contractor and/or the Service Provider where required for the performance of the Project Operations and Restricted Services in accordance with this Agreement.

11.6 Retained Obligations and Retained Rights

The Authority shall observe and perform the Retained Obligations and shall properly exercise the Retained Rights. Subject to Clause 11.9 (*Consistency of exercise*), nothing in this Agreement shall have the effect of removing or otherwise prejudicing the exercise of the Retained Rights.

For the avoidance of doubt (and without prejudice to Clause 11.5 (*Assignment of benefit of Delegated Rights to Project Co*)), the categorisation of rights of the Authority as being Retained Rights (which is for the purpose of the use of the term Retained Rights in this Agreement) is without prejudice or limitation to the Authority's other rights under or in connection with the Third Party Agreements

11.7 Informing other parties

The Authority shall, within fifteen (15) Business Days of the date of this Agreement, inform each of the other parties to the Third Party Agreements in writing that Project Co is the assignee of the Delegated Rights and is to perform the Delegated Obligations on behalf of the Authority.

11.8 Performance of Delegated Obligations

Project Co 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 11 (*Consents*) or to any other party to the Third Party Agreements.

11.9 Consistency of exercise

Each party to this Agreement shall exercise all of its rights and obligations under this Agreement, 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 to avoid putting the other party or parties in breach of either of the same.

11.10 Termination, release, variation, etc, of Third Party Agreements

No party to this Agreement shall without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed):

11.10.1 agree to terminate, give notice to terminate or otherwise take action to terminate, repudiate or discharge or secure the termination of any of the Third Party Agreements or treat the same as having been terminated, repudiated or otherwise discharged;

11.10.2 release, waive, settle, compromise or otherwise prejudice or vary any rights or claims which another party may have under any of the Third Party Agreements; or

11.10.3 vary or agree or purport to vary the terms of any of the Third Party Agreements.

11.11 New third party agreements

11.11.1 Project Co 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.

11.11.2 As a requirement for any consent pursuant to Clause 11.11.1 and should any other new third party agreements be required, the parties shall agree whether such agreement(s) shall be a Third Party Agreement and whether any associated obligations or rights contained therein shall be designated as Delegated Obligations, Delegated Rights, Retained Obligations and/or Retained Rights.

11.12 Enforcement of Authority's rights and dispute resolution

The Authority shall:

11.12.1 at the request of Project Co take such steps as Project Co may reasonably request to enforce the Authority's rights and powers under the Third Party Agreements to the extent reasonably required by Project Co to perform its obligations under this Agreement;

11.12.2 subject to Clause 11.10 (Termination, release, variation, etc, of Third Party Agreements), permit Project Co to engage in such negotiations and conduct such disputes with any other party to the Third Party Agreements as Project Co reasonably requires to perform its obligations under this Agreement including by conducting such court, arbitration or other proceedings as Project Co may reasonably consider necessary for such purpose; and

11.12.3 be indemnified and secured to its reasonable satisfaction by Project Co against all claims and losses incurred by virtue of or in relation to such matters as are referred to in Clauses 11.12.1 and 11.12.2 above, and Project Co shall keep the Authority informed of the progress of any such enforcement action, negotiations, disputes or proceedings as are referred to in Clause 11.12.2.

11.13 Effect of breach

Project Co shall indemnify and keep indemnified in full the Authority (for itself and for the benefit of any Authority Party and any affected third party) against all claims and/or losses which may arise out of, or in consequence of or in the course of or in connection with, the performance or non-performance by Project Co of its obligations under this Clause 11 (*Consents*).

11.13A The obligations contained in Clauses 11.4 to 11.13 (inclusive) shall only apply to the [REDACTED] from the Phase [REDACTED] Actual Completion Date.

11.14 Liaison

11.14.1 Project Co shall initiate, develop, agree, distribute, implement, control and maintain a Roads Liaison Procedure in accordance with the provisions of Section 3 (*Roads Liaison Procedure*) of Schedule 32 (*Statutory Framework and Third Party Agreements*).

11.14.2 Whenever Project Co is required by this Agreement to take any action in accordance with the Roads Liaison Procedure, it shall take such action in accordance with the procedures agreed in accordance with the provisions of Section 3 (*Roads Liaison Procedure*) of Schedule 32 (*Statutory Framework and Third Party Agreements*).

11.14.3 For the avoidance of doubt, the parties acknowledge that:

- (a) as between Project Co and a Liaison Party (other than the Authority), the Roads Liaison Procedure are not, and are not intended to be, legally binding, and neither Project Co nor the Liaison Party shall acquire any rights or liabilities, or be entitled to enforce any rights or obligations, as between themselves solely as a result of the existence of or the breach of such Roads Liaison Procedure; and
- (b) as between Project Co and the Authority, any breach of the terms of any Roads Liaison Procedure by Project Co (whether or not the Authority is a party to such Liaison Procedure) shall constitute a breach of this Agreement.

11.14.4 Project Co shall organise and participate in Liaison Forums, in accordance with the provisions of Section 3 (*Roads Liaison Procedure*) of Schedule 32 (*Statutory Framework and Third Party Agreements*).

11.15 Interested Parties

Project Co shall discharge:

11.15.1 any Requirements of Relevant Authorities from time to time;

11.15.2 the Requirements of Other Interested Parties; and

11.15.3 any other requirements of any Interested Party (other than any Relevant Authority) from time to time which that Interested Party is legally empowered to impose on the Authority (otherwise than by contract) or on Project Co and which relates to the Project Facilities,

of which Project Co has notice.

11.16 Notices under Third Party Agreements

Each of the Authority and Project Co shall promptly provide to the other a copy of any notice received by it from a third party under or in respect of a Third Party Agreement (save where the notice has already been provided to the other or, in the case of notices received by the Authority, the notice is not, in the reasonable opinion of the Authority, relevant to the rights and obligations of Project Co in connection with the Project).

PART 3: DESIGN AND CONSTRUCTION

12 THE DESIGN CONSTRUCTION AND COMMISSIONING PROCESS

Overall Responsibility

12.1 Project Co shall carry out the Works:

12.1.1 so as to procure satisfaction of the Authority's Construction Requirements;

12.1.2 in accordance with Project Co's Proposals;

12.1.3 in accordance with the Quality Plans;

12.1.4 in accordance with the Design and Certification Procedure;

12.1.5 in accordance with the requirements and obligations set out in the Environmental Assessment Documents; and

12.1.6 in accordance with the terms of this Agreement.

12.2 To avoid doubt, the obligations in Clauses 12.1.1, 12.1.2, 12.1.3, 12.1.4, 12.1.5 and 12.1.6 are independent obligations. In particular:

12.2.1 the fact that Project Co has complied with Project Co's Proposals and/or the Quality Plans shall not be a defence to an allegation that Project Co has not satisfied the Authority's Construction Requirements; and

12.2.2 the fact that Project Co has satisfied the Authority's Construction Requirements shall not be a defence to an allegation that Project Co has failed to comply with Project Co's Proposals and/or the Quality Plans,

provided that where there is a conflict between the Authority's Construction Requirements, Project Co's Proposals and/or Quality Plans, the Authority shall be entitled (in its sole discretion) to decide which shall take precedence and shall inform Project Co of its decision and Project Co shall, at its own cost, be obliged to implement the Authority's decision.

Design responsibility

12.3 Project Co warrants that it has used, and will continue to use, the degree of skill and care in the design of the Project Facilities that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works.

12.4 Project Co shall ensure that, subject to the terms of the Design and Certification Procedure, the design of the Works will be carried out by or under the supervision of the Designer and the persons carrying out any design and/or supervision are suitably qualified and experienced to do so and in particular have adequate experience of the part of the design they are carrying out or supervising.

Corporate Identity and Signage

12.5 The parties acknowledge that the Authority may, from time to time during the Construction Phase, be required to procure the erection of hoarding, site boards, plaques and/or other signage in connection with the Project. Accordingly:

- 12.5.1 where requested by the Authority (acting reasonably), Project Co shall procure the erection and maintenance of such hoarding, site boards, plaques and/or other signage as the Authority may require; and
- 12.5.2 the size, design, information disclosed, position and materials used in connection with such hoarding, site boards, plaques or other signage shall be approved by the Authority, such approval not to be unreasonably withheld; and
- 12.5.3 for the purposes of this Clause 12.5 (*Corporate Identity and Signage*), the Authority shall be deemed to be acting reasonably where any proposals made by it and/or any approvals exercised by it conform with the Welsh Language Standards and any further relevant guidance, amendments or supplements issued by the Welsh Government from time to time in connection with bilingual use of the Welsh and English language.

Design and Certification Procedure

12.6 Project Co shall procure that:

- 12.6.1 the Contractor shall prepare or supervise any preparation of all Design Data in respect of the Works (including Preliminary Design and Detailed Design) in accordance with the Authority's Construction Requirements and that in respect of Project Co's Proposals, the Contractor shall comply with the Design and Certification Procedure; and
- 12.6.2 without prejudice to Clause 12.6.1 (*Design and Certification Procedure*), where in accordance with Appendix 3 (*Design and Certification Procedure*) of Schedule 8 (*Review Procedure*):
- (a) Design Data is prepared by the Designer, the Designer shall prepare such Design Data in accordance with the Authority's Construction Requirements and shall comply with the Design and Certification Procedure;
 - (b) Design Data is prepared by the Archaeologist, the Archaeologist shall prepare such Design Data in accordance with the Authority's Construction Requirements and shall comply with the Design and Certification Procedure;
 - (c) Design Data is prepared by the Landscape Architect, the Landscape Architect shall prepare such Design Data in accordance with the Authority's Construction Requirements and shall comply with the Design and Certification Procedure; and
 - (d) Design Data is prepared by the Ecologist, the Ecologist shall prepare such Design Data in accordance with the Authority's Construction Requirements and shall comply with the Design and Certification Procedure.

12.7 Project Co shall procure that the certification procedures referred to in the Design and Certification Procedure are complied with by the appropriate persons referred to therein, and that such persons are at all relevant times duly authorised to carry out such procedures and to sign the relevant Certificates.

12.8 Project Co shall procure that the checking procedures referred to in the Design and Certification Procedure are complied with by the appropriate persons referred to therein, and that such persons are at all relevant times duly appointed to carry out such procedures.

- 12.9 Without limitation to Clause 12.3 (*Design Responsibility*), any failure by any person referred to in the Design and Certification Procedure to fulfil the obligations required of such person under the Design and Certification Procedure shall be a breach of Project Co's obligations under this Agreement.
- 12.10 Design Data the subject of a Certificate which has been submitted to the Authority's Representative in accordance with the Design and Certification Procedure shall not be departed from otherwise than pursuant to a Project Co Change or an Authority Change.

Review of Design Data and Certificates

- 12.11 Subject to Clause 12.13 (*Review of Design Data and Certificates*), where the Review Procedure applies, Project Co shall not commence or permit the commencement of construction of any part of the Works (other than the Temporary Works which shall be dealt with in accordance with Clause 12.12 (*Review of Design Data and Certificates*)) until there has been no objection under the Review Procedure to all relevant Key Design Data and all relevant Certificates required in respect of such part of the Works.
- 12.12 Subject to Clause 12.13 (*Review of Design Data and Certificates*), Project Co shall not commence or permit the commencement of construction or implementation of any Temporary Works for which a Temporary Works Check Certificate is required under the provisions of Appendix 3 of Schedule 8 (*Review Procedure*) until there has been no objection under the Review Procedure to that Certificate and the relevant Key Design Data.
- 12.13 If any Key Design Data or Certificate has been submitted by Project Co under the Review Procedure and returned with the endorsement "received with comments" or "comments" or "objections" as referred to in Schedule 8 (*Review Procedure*), and Project Co does not agree that the Authority's Representative is entitled to make such an endorsement, Project Co may (subject to the provisions of Clause 12.14 (*Review of Design Data and Certificates*)) proceed at its own risk with the construction or implementation of the Temporary Works to which Clause 12.12 relates to and/or Works described in that Key Design Data or Certificate, provided that the requirements of Clause 12.1 (*Overall Responsibility*) have been complied with and Project Co continues to comply with Paragraph 1.3 of Schedule 8 (*Review Procedure*).
- 12.14 If Project Co has chosen to proceed with construction or implementation of the Works in the circumstances referred to in Clause 12.13 (*Review of Design Data and Certificates*) and it is determined or agreed that the Authority's Representative was entitled to make the disputed endorsement, Project Co shall at its own cost promptly undo and remove or redo any such Temporary Works and/or Works which have been constructed or implemented.

Breaches of Design and Certification Procedure

- 12.15 In the event that Project Co becomes aware of a breach of any of 12.6 (*Design and Certification Procedure*) or Clause 12.11 (*Review of Design Data and Certificates*), Project Co shall:
- 12.15.1 forthwith notify the Authority's Representative of the fact of such breach and the subject matter thereof; and
- 12.15.2 as soon as reasonably practicable make a submission in respect of such breach to the Review Procedure, including in such submission:
- (a) a full statement of the circumstances in which such breach took place together with a full explanation of the reasons for such

breach and, if appropriate, for any delay in providing notice under Clause 12.15.1 (*Breaches of Design and Certification Procedure*);

- (b) a full statement of the measures, if any, which Project Co proposes to adopt in order to rectify such breach and/or to preclude or mitigate the consequences thereof (if any); and
- (c) if to remedy such breach a variation in the design, quality or quantity of the Works is required, an application for a Project Co Change.

12.16 The Authority's Representative shall deal with a submission pursuant to Clause 12.15 (*Breaches of Design and Certification Procedure*) as soon as reasonably practicable (but without being subject to any specific time limit). The Authority shall be entitled to:

12.16.1 raise comments in respect of such submission in its absolute discretion; and

12.16.2 require Project Co to carry out remediation in accordance with such comments provided that such remediation is carried out in accordance with the requirements of this Agreement.

The Authority's Design Data

12.17 Save as expressly provided for in this Agreement, Project Co shall not seek to recover from the Authority or any Authority Party (excluding any Warranty Party) and shall indemnify the Authority or any Authority Party (excluding any Warranty Party) against any Direct Losses or claim which may arise from the adoption, use or application by or on behalf of Project Co, any Project Co Party or any other person for whom Project Co is responsible in the design, construction, testing, commissioning and completion of the Works, or the operation and maintenance of the Project Facilities, of any Design Data and other data or documents made available to it or its representatives in connection with the Project by or on behalf of the Authority or any Authority Party whether before or after the date of this Agreement.

Rectification of Project Co's Proposals

12.18 Without prejudice to Clause 12.1 (*Overall Responsibility*), if it should be found that Project Co's Proposals do not meet the requirements of the Authority's Construction Requirements, Project Co shall at its own expense, and in accordance with Clause 12.19 (*Rectification of Project Co's Proposals*) below, amend Project Co's Proposals and rectify the Works or any part affected. Such amendment and rectification shall have the effect that:

12.18.1 Project Co's Proposals shall satisfy the Authority's Construction Requirements; and

12.18.2 following the amendment or rectification, the structural, mechanical and electrical performance of the Project Facilities will be of an equivalent standard of performance to that set out in Project Co's Proposals prior to their amendment or rectification (for the purpose of this comparison disregarding the fault which required the amendment or rectification to be made).

12.19 Where Clause 12.18 (*Rectification of Project Co's Proposals*) applies, Project Co shall submit its proposal for amending Project Co's Proposals and rectifying the Works (or any part affected) to the Authority's Representative for review under Schedule 8 (*Review Procedure*) and shall not amend Project Co's Proposals or commence or allow the commencement of the rectification of the Works (or any part

affected) until it is permitted to proceed in accordance with Schedule 8 (*Review Procedure*).

Construction Skills Certification Scheme

12.20 Project Co shall ensure that all persons engaged in carrying out the Works (or part thereof) on the Site are accredited under the Construction Skills Certification Scheme or an equivalent scheme and where Project Co enters into a sub-contract for the purposes of carrying out the Works, Project Co shall cause a term to be included in such sub-contract:

12.20.1 which requires the sub-contractor to ensure that such persons are accredited under the Construction Skills Certification Scheme or an equivalent scheme; and

12.20.2 in the same terms as that set out in this Clause 12.20 (*Construction Skills Certification Scheme*) (including for the avoidance of doubt this Clause 12.20.2) subject only to modification to refer to the correct designation of the equivalent party as Project Co and sub-contractor as the case may be.

Building Information Model

12.21 The Authority and Project Co shall:

12.21.1 comply with their respective obligations set out in the BIM Protocol;

12.21.2 have the benefit of any rights granted to them in the BIM Protocol; and

12.21.3 have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol.

Side Roads Works

12.22 The parties agree to comply with the provisions of Schedule 36 (*Side Roads Works*).

Early Works

12.23 [REDACTED].

13 RIGHT OF ACCESS OF AUTHORITY'S REPRESENTATIVE

Access to the Site

13.1 Project Co shall procure that:

13.1.1 subject to complying with all relevant safety procedures, which shall include any relevant construction phase plans and health and safety plans for the construction of the Project Facilities, the Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Site Manager from time to time, the Authority's Representative (together with any specialist advisers) shall have unrestricted access at all reasonable times during normal working hours to:

- (a) monitor and view the Works at the Site on reasonable prior notice appropriate to the circumstances, provided that the notice procedures in this Clause 13.1.1(a) shall not apply to the right of

access for the Authority's Representative and his staff and visitors to the office and other facilities provided at the Site for his use; and

- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co agrees to use all reasonable endeavours to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Works for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works;

13.1.2 the Authority's Representative shall have such rights of access to the Site in an emergency as he (acting reasonably) considers suitable in the circumstances;

13.1.3 monthly progress meetings and site meetings are held and that the Authority's Representative shall have the right to attend such monthly progress meetings and site meetings and to attend such other meetings as the Authority's Representative may reasonably request; and

13.1.4 satisfactory facilities are made available to accommodate the Authority's Representative and his staff or visitors (when accompanied by a representative of the Authority) for the purposes of Clause 13.1.1(a) and (b) (*Access to the Site*), subject to Project Co and the Contractor's construction obligations not being adversely affected and the Authority reimbursing Project Co for any reasonable costs or expenses incurred in connection with the accommodation of the Authority under this Clause 13.1 (*Access to the Site*).

Increased monitoring

13.2 If, following any viewing, visit or inspection made pursuant to Clause 13.1.1, it is discovered that there are Defects in the Works or that Project Co has failed to comply with the Authority's Construction Requirements or Project Co's Proposals, the Authority's Representative may (without prejudice to any other right or remedy available to the Authority) by notice to Project Co increase the level of monitoring of Project Co until such time as Project Co shall have demonstrated to the satisfaction of the Authority that it is capable of performing and will perform all its obligations to the Authority under this Agreement. Project Co shall compensate the Authority for any reasonable additional costs incurred as a result of such increased monitoring.

Right to Open Up

13.3 Subject to Clause 13.4 (*Right to Open Up*), the Authority's Representative shall have the right at any time prior to a Phase Actual Completion Date to request Project Co to open up and inspect any part or parts of the Works relating to the relevant Phase where the Authority's Representative reasonably believes that such part or parts of the Works relating to the relevant Phase is or are defective and Project Co shall comply with such request.

13.4 Prior to exercising his right pursuant to Clause 13.3 (*Right to Open Up*) above, the Authority's Representative shall notify Project Co of his intention to exercise such right, setting out detailed reasons.

13.5 If, following the exercise by the Authority's Representative of his right pursuant to Clause 13.3 (*Right to Open Up*), the inspection shows that the relevant part or parts of the Works are not defective then Clause 34.3.4 shall apply.

- 13.6 If, following the exercise by the Authority's Representative of his right pursuant to Clause 13.3 (*Right to Open Up*), the inspection shows that the relevant part or parts of the Works is or are defective, Project Co shall rectify and make good such Defect(s) and any consequence of such rectification and/or making good Defect(s) shall be carried out by Project Co at no cost to the Authority and Project Co shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- 13.7 If, following the exercise by the Authority's Representative of his right pursuant to Clause 13.3 (*Right to Open Up*), the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and Project Co does not agree with such opinion, the matter shall be determined in accordance with Schedule 20 (*Dispute Resolution Procedure*).
- 13.8 Without prejudice to the rights of the Authority's Representative pursuant to this Clause 13 (*Right of Access of Authority's Representative*) the parties acknowledge that the exercise of such rights shall not in any way affect the obligations of Project Co under this Agreement save as expressly set out in this Clause 13 (*Right of Access of Authority's Representative*).

Safety during Construction

- 13.9 The provisions of Section 2 (*Safety During Construction*) of Schedule 6 (*Construction Matters*) shall apply to matters of safety.

14 PROGRAMME AND DATES FOR COMPLETION

Dates for Completion

- 14.1 Project Co shall complete the Works relating to each Phase by the relevant Phase Completion Date. Without prejudice to Clause 44 (*Project Co Event of Default*), 46 (*Authority Voluntary Termination*), 50 (*Compensation on Termination*) and 51 (*Consequences of Termination*) the Authority shall not be entitled to claim liquidated or general damages in respect of any delay which elapses between the relevant Phase Completion Date and the relevant Phase Actual Completion Date.
- 14.1A Project Co shall manage the Works to ensure that:
- 14.1A.1 each Taking Over Certificate is issued on or before the relevant Temporary Highways Area Target Date; and
 - 14.1A.2 each Handing Over Certificate is issued on or before the relevant Temporary Use Area Target Date.
- 14.1B Without prejudice to Clause 44 (*Project Co Event of Default*), Clause 46 (*Authority Voluntary Termination*), Clause 50 (*Completion on Termination*) and Clause 51 (*Consequences of Termination*), the Authority shall not be entitled to claim liquidated or general damages in respect of any delay which elapses between (as applicable):
- 14.1B.1 the relevant Temporary Highways Area Target Date and the issuance of the applicable Taking Over Certificate; or
 - 14.1B.2 the relevant Temporary Use Area Target Date and the issuance of the applicable Handing Over Certificate.

The Programme

- 14.2 Any Programme submitted in accordance with the provisions set out below shall be prepared in accordance with Good Industry Practice and the requirements specified in Appendix 1/13 (*Form of Programme*) of Part 4 (*Specification*) of Section 3

(*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*) and shall be in sufficient detail so as to enable the Authority's Representative to monitor the progress including all commissioning activities and likely future progress of the Works.

14.3 The initial Programme is set out at Schedule 7 (*The Programme*). Any change to the Programme shall only be made in accordance with this Clause 14 (*Programme and Dates for Completion*) and Schedule 8 (*Review Procedure*). Project Co shall promptly submit to the Authority's Representative a copy of any version of the Programme varied in accordance with this Clause 14 (*Programme and dates for Completion*) and Schedule 8 (*Review Procedure*).

14.4 If it appears to the Authority's Representative at any time that the actual progress of the Works has significantly fallen behind the Programme, then the Authority's Representative shall be entitled to require Project Co to submit to the Authority's Representative a report identifying the reasons for the delay and, unless the event causing the delay is still subsisting and it is not possible to predict with any certainty when the delay might come to an end, require Project Co (at the Authority's option):

14.4.1 to produce and submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) a revised Programme showing the manner and the periods in which the Works will be carried out to ensure completion; and/or

14.4.2 to produce and submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) a revised Programme showing the steps which are to be taken to eliminate or reduce the delay.

Early completion

14.5 Notwithstanding that the Works relating to a Phase may have been completed in accordance with this Agreement, the relevant Phase Actual Completion Date may only occur on a date on or after the relevant Phase Completion Date unless the Authority, in its absolute discretion, agrees otherwise in writing.

14.6 Project Co shall notify the Authority's Representative if at any time the actual progress of the Works relating to a Phase is significantly ahead of the Programme such that Project Co anticipates that the relevant Phase Actual Completion Date could occur earlier than the relevant Phase Completion Date in which case the Authority's Representative shall be entitled to require Project Co to produce and submit to the Authority's Representative a revised Programme showing the manner and the periods in which the Works relating to the relevant Phase will be carried out and what the revised date for completion would be to enable:

14.6.1 the Authority to consider (at its absolute discretion) whether to agree an earlier date for completion if requested by Project Co to do so; and

14.6.2 the parties to consider what modifications (if any) will be required to the Agreement in order to accommodate such earlier date for completion if agreed to by the Authority pursuant to Clause 14.5 (*Early Completion*).

15 **NOT USED**

16 **PERMITS TO USE**

16.1 The Works shall be carried out in [REDACTED] Phases in accordance with Section 2 (*Phasing*) of Schedule 7 (*The Programme*).

16.2 Project Co shall notify the Authority of the date when Project Co (acting reasonably) considers that a Phase of the Works will be complete in accordance with the PTU

Criteria not less than thirty (30) Business Days prior to such anticipated completion ("**Expected PTU Date**"). Such notice shall be accompanied by Project Co's detailed programme of activities (including Works) that Project Co intends to complete to ensure that the PTU Criteria are satisfied by the Expected PTU Date for that Phase.

- 16.3 Following receipt of the notice specified in Clause 16.2 (*Permits to Use*) the Authority shall be entitled to inspect the Works relating to the relevant Phase on the date or dates reasonably specified by Project Co in accordance with Clause 16.2 (*Permits to Use*), and to attend any of the tests on completion. Project Co shall, if so requested, accompany the Authority on any such inspection.
- 16.4 Subject to Clauses 16.9 to 16.11 (*Snagging Items*), within fifteen (15) Business Days of the Expected PTU Date the Authority shall:
- 16.4.1 issue the Permit to Use in respect of the relevant Phase if it is satisfied that the relevant Phase is complete in accordance with the PTU Criteria; or
- 16.4.2 subject to Clause 16.5 (*Permits to Use*), notify Project Co that in its opinion Project Co has not satisfied the PTU Criteria for the relevant Phase, giving reasons for such refusal in writing to Project Co.
- 16.5 The parties acknowledge that the Authority may refuse to issue the Permit to Use only if one or more of the PTU Criteria for that Phase have not been satisfied.
- 16.6 If the Authority serves a notice under Clause 16.4.2, then Project Co shall at its own cost perform such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue the Permit to Use, and shall notify the Authority on completion of such further works or measures. The Authority shall inspect such further works or measures within five (5) Business Days of such notices. Project Co shall, if so requested, accompany the Authority on any such inspection. The provisions of Clauses 16.4 to this 16.6 (*Permits to Use*) shall thereafter apply to such notice, mutatis mutandis.
- 16.7 The issue of the Permit to Use shall:
- 16.7.1 be without prejudice to any obligation of the Project Co under this Agreement;
- 16.7.2 be without prejudice to any warranties given by the Project Co under this Agreement; and
- 16.7.3 in no way signify the Authority's approval of any part of the Works or Services.
- 16.8 Without prejudice to Clauses 16.9 and 16.12 (*Snagging Items*), the issue of the Permit to Use in respect of a Phase shall, in the absence of manifest error, bad faith or fraud, be conclusive evidence (but only for the purpose of ascertaining the relevant Payment Commencement Date), that the Phase was complete in accordance with the PTU Criteria on the date stated in the relevant Permit to Use.
- 16.8A In the event Project Co disagrees with a notice issued by the Authority under Clause 16.4.2 (*Permit to Use*), Project Co shall be entitled to refer the dispute for determination under the Fast Track Dispute Resolution Procedure, by the issue of a Fast Track Dispute Notice subject to and in accordance with the requirements of the Fast Track Dispute Resolution Procedure. If the Fast Track Dispute Resolution Procedure determines that the relevant Phase has satisfied the PTU Criteria, the Fast Track Dispute Resolution Procedure shall determine the date on which the Permit to Use for the relevant Phase should properly have been issued under Clause 16.4.1 (*Permit to Use*) and the failure by the Authority to have issued the Permit to Use on that date shall, subject to the provisions of Clause 34 (*Delay Events and Compensation Events*), be deemed to be a Delay Event and a Compensation Event,

provided that the Project Co's sole remedy in respect of the failure of the Authority to issue the Permit to Use shall be pursuant to Clause 34 (*Delay Events and Compensation Events*).

Snagging Items

16.9 The Authority shall on the same day as the date of issue of the Permit to Use in relation to a Phase issue to Project Co a list of the relevant Snagging Items (the "**Snagging List**"). Within five (5) Business Days after the date of receipt from the Authority of the Snagging List, Project Co will provide to the Authority a reasonable programme for making good each Snagging Item set out in the Snagging List provided that the Snagging Programme will require that each Snagging Item will be made good within:

16.9.1 in the case of Snagging Items other than the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting, twenty (20) Business Days after the date of provision of the Snagging Programme or, where it is not reasonably practicable to make good within twenty (20) Business Days due to the lead times for supplies or materials, within such time as is reasonably practicable; or

16.9.2 in the case of the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting, three hundred and sixty five (365) days after the date of provision of the Snagging Programme.

The parties will seek to agree the Snagging Programme or in default of agreement will refer the matter for determination under Clause 60 (*Dispute Resolution Procedure*). The programme agreed or determined in accordance with Clause 16.9 (*Snagging Items*) will be the "**Snagging Programme**".

16.10 Project Co shall, in consultation with the Authority's Representative and in such a manner as to cause as little disruption as reasonably practicable to the Users of the Project Facilities, make good each Snagging Item in accordance with the Snagging Programme and the PTU Criteria, in each case to the satisfaction of the Authority.

Interim Snagging Items Completion Certificate

16.10A Project Co shall notify the Authority when Project Co considers that the Snagging Items (other than the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting) in respect of a Phase have been rectified. Within fifteen (15) Business Days of receipt of such notice from Project Co, the Authority shall:

16.10A.1 issue an Interim Snagging Items Completion Certificate if it is satisfied that the Snagging List (other than the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting) in respect of the relevant Phase has been completed; or

16.10A.2 subject to Clause 16.10B (*Snagging Items*), notify Project Co that in its opinion Project Co has not completed the Snagging List (other than the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting) in respect of the relevant Phase, giving reasons in writing.

16.10B The parties acknowledge that the Authority may refuse to issue the Interim Snagging Items Completion Certificate only if one or more of the Snagging Items (other than the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting) in respect of a Phase has not been completed.

Phase Snagging Items Completion Certificate

16.10C Project Co shall notify the Authority when Project Co considers that all Snagging Items in respect of a Phase have been rectified. Within fifteen (15) Business Days of receipt of such notice from Project Co, the Authority shall:

16.10C.1 issue a Phase Snagging Items Completion Certificate if it is satisfied that the Snagging List in respect of the relevant Phase has been completed; or

16.10C.2 subject to Clause 16.10D (*Snagging Items*), notify Project Co that in its opinion Project Co has not completed the Snagging List in respect of the relevant Phase, giving reasons in writing.

16.10D The parties acknowledge that the Authority may refuse to issue the Phase Snagging Items Completion Certificate only if one or more of the Snagging Items in respect of a Phase has not been completed.

Final Snagging Items Completion Certificate

16.10E Project Co shall notify the Authority when Project Co considers that all Snagging Items in respect of all Phases have been rectified. Within fifteen (15) Business Days of receipt of such notice from Project Co, the Authority shall:

16.10E.1 issue the Final Snagging Items Completion Certificate if it is satisfied that the Snagging List in respect of all Phases has been completed; or

16.10E.2 subject to Clause 16.10F (*Snagging Items*), notify Project Co that in its opinion Project Co has not completed the Snagging List in respect of all Phases, giving reasons in writing.

16.10F The parties acknowledge that the Authority may refuse to issue the Final Snagging Items Completion Certificate only if one or more of the Snagging Items has not been completed.

16.11 If any Snagging Item has not been rectified:

16.11.1 in the case of Snagging items other than the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting within twenty (20) Business Days after issue of the Snagging Programme (or such longer period as is agreed in the Snagging Programme pursuant to Clause 16.9 (*Snagging Items*));

16.11.2 in the case of the items referred to in limb (a) of the definition of Snagging Items or Seasonal Planting three hundred and sixty five (365) days after issue of the Snagging Programme

then the Authority will be entitled to effect such repairs as may be necessary to rectify the Snagging Item(s) and recover the costs of effecting such repairs from Project Co as a debt.

16.12 The identification of any Snagging Items which in the sole opinion of the Authority would not prejudice the safe use of the Project Road in respect of a Phase shall in no way affect the obligations of Project Co under this Agreement including in respect of any Defects, any liability for Deductions in accordance with Schedule 14 (*Payment Mechanism*) or otherwise diminish the obligations of Project Co under this Agreement.

16.12A In the event Project Co disagrees with a notice issued by the Authority under Clause 16.10E.2 (*Snagging Items*), Project Co shall be entitled to refer the dispute for determination under the Fast Track Dispute Resolution Procedure by the issue of a Fast Track Dispute Notice subject to and in accordance with the requirements of the

Fast Track Dispute Resolution Procedure. If the Fast Track Dispute Resolution Procedure determines that the Snagging Items have been completed, the Fast Track Dispute Resolution Procedure shall determine the date on which the Final Snagging Items Completion Certificate should properly have been issued under Clause 16.10E.1 (*Snagging Items*) and the failure by the Authority to have issued the Final Snagging Items Completion Certificate on that date shall, subject to the provisions of Clause 34 (*Delay Events and Compensation Events*), be deemed to be a Delay Event and a Compensation Event, provided that Project Co's sole remedy in respect of the failure of the Authority to issue the Final Snagging Items Completion Certificate shall be pursuant to Clause 34 (*Delay Events and Compensation Events*).

As-built specification

- 16.13 Within forty-five (45) days after the issue of the Permit to Use in relation to a Phase, Project Co shall provide to the Authority an electronic copy (in accordance with the BIM Protocol) of the "as-built" drawings, "as-built" building specification, all "final issue" construction drawings relating to that Phase of the Works, and all information and records required pursuant to paragraph 3.2.1 (*As Constructed Records*) of Part 6 (*Reports, Information and Records*) of Section 3 (*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*) together with a written statement from Project Co's Representative to the Authority's Representative certifying that all such items are true and accurate.
- 16.13A Within ten (10) days after issue of the Permit to Use in relation to a Phase, Project Co shall provide to the Authority an electronic copy of drafts of the information required pursuant to Clause 16.13 (*As-built Specification*).
- 16.13B Project Co shall provide hard copies of the documents referred to in clauses 16.13 and 16.13A where requested by the Authority (acting reasonably).
- 16.13C Where a remedy period for a Snagging Item exceeds a time period of forty-five (45) days after issue of the Permit to Use in relation to a Phase (as agreed in the Snagging Programme), Project Co shall, on completion of the Snagging Item, provide the documents referred to in clause 16.13 as amended or updated to reflect the resolution of the Snagging Item.

Taking Over Certificate

- 16.14 Prior to commencing any Works in relation to a Temporary Highways Area Project Co shall undertake a survey of the state and condition of the any Structures within the Temporary Highways Area and shall agree the contents of such survey with the relevant TOC Person. Project Co shall provide a copy of the condition survey to the Authority within five (5) Business Days of agreeing the same with the relevant TOC Person.
- 16.15 Not later than thirty (30) Business Days prior to the date upon which Project Co anticipates that part of the Works in respect of any Temporary Highways Area will be completed to such an extent so as to satisfy the relevant Taking Over Certificate Criteria for that Temporary Highways Area, Project Co shall issue a notice to that effect to the Authority copied to the relevant TOC Person indicating the date upon which, in its opinion, the relevant Taking Over Certificate Criteria will be satisfied ("**Expected Temporary Highways Area Completion Date**"). Such notice shall be accompanied by Project Co's detailed programme of activities (including Works) (prepared by reference to Project Co's Programme) that Project Co intends to complete to ensure that the relevant Taking Over Certificate Criteria, for that Temporary Highways Area, are satisfied by the Expected Temporary Highways Area Completion Date.
- 16.16 As soon as reasonably practicable following issue of the notice under Clause 16.15 (*Taking Over Certificate*), the Authority shall commence an inspection of such

Temporary Highways Area to assess whether the relevant Taking Over Certificate Criteria have been satisfied, and each of Project Co's Representative and a representative of the relevant TOC Person, shall be entitled to make joint inspections with the Authority.

- 16.17 The Authority shall not later than the relevant Expected Temporary Highways Area Completion Date either:

16.17.1 issue a Taking Over Certificate in respect of that Temporary Highways Area;
or

16.17.2 subject to Clause 16.18 (*Taking Over Certificate*), notify Project Co that it does not intend to issue the Taking Over Certificate for that Temporary Highways Area, giving reasons for such refusal in writing to each of Project Co and the relevant TOC Person.

- 16.18 The Authority may refuse to issue a Taking Over Certificate in accordance with clause 16.17.2 only if one or more of the relevant Taking Over Certificate Criteria applicable to that Temporary Highways Area have not been satisfied.

- 16.19 With effect from the date specified in a Taking Over Certificate in respect of a Temporary Highways Area issued by the Authority:

16.19.1 the Authority shall procure that the relevant TOC Person assumes, or the Authority shall itself assume, responsibility for the operation and maintenance of such Temporary Highways Area;

16.19.2 such Temporary Highways Area the subject of that Taking Over Certificate shall be excluded from the definition of "Temporary Areas" and "Project Road" and the assets included in such Temporary Highways Areas shall be excluded from the definition of "Project Facilities" for all purposes of this Agreement save for the purpose of giving effect to the provisions of Clauses 16.14 to 16.23 (*Taking Over Certificate*); and

16.19.3 Without prejudice to Project Co's obligations to comply with the EPMEMP in respect of Temporary Highways Areas, Project Co shall, at its own expense, execute all such work of amendment, reconstruction and remedying of Defects as the Authority may reasonably instruct Project Co to execute and within such time periods as the Authority may specify (acting reasonably) to bring or return the relevant part of the Works carried out on such Temporary Highways Area to the standard required by the Authority's Construction Requirements such instruction to be issued either:

(a) during the period of twelve (12) months or in the case of trees and shrubs, sixty (60) months, following the date of issue of the relevant Taking Over Certificate; or

(b) within ten (10) Business Days after the expiration of such period, as a result of an inspection carried out by or on behalf of the Authority prior to its expiration.

- 16.20 If the Authority serves a notice under Clause 16.17.2 (*Taking Over Certificate*), then Project Co shall, at its own cost, perform such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue a Taking Over Certificate, and shall notify each of the Authority and the relevant TOC Person on completion of such further works or measures. The Authority shall inspect such further works or measures within five (5) Business Days of such notice and each of Project Co's Representative, and a representative of the relevant TOC Person, shall be entitled to make joint inspections with the Authority. The provisions

of Clauses 16.17 (*Taking Over Certificate*) to 16.20 (*Taking Over Certificate*) (inclusive) shall thereafter apply to such notice, mutatis mutandis.

- 16.20A In the event that Project Co disagrees with a notice issued by the Authority under Clause 16.17.2 (*Taking Over Certificate*), Project Co shall be entitled to refer the dispute for determination under the Fast Track Dispute Resolution Procedure by the issue of a Fast Track Dispute Notice subject to and in accordance with the requirements of the Fast Track Dispute Resolution Procedure.
- 16.21 If the relevant TOC Person assumes the responsibility for the operation and maintenance of a Temporary Highways Area in accordance with Clause 16.19 (*Taking Over Certificate*) or otherwise, then Project Co acknowledges and agrees that following the expiry of the relevant period referred to in Clause 16.19.3, such TOC Person shall be entitled to the benefit of any warranties to be given and undertakings made by Project Co under this Agreement to the extent applicable to the Works in respect of that relevant Temporary Highways Area. Without prejudice to the generality of Clause 78 (*Further Assurances*) Project Co shall execute such further documents and do all such other things as may be reasonably requested by the Authority for the purposes of giving full effect to this Clause 16.21 (*Taking Over Certificate*).
- 16.22 As soon as practicable following the issue of a Taking Over Certificate Project Co shall, to the extent not already done so, leave the Temporary Highways Area to the reasonable satisfaction of the Authority, free and clear from such debris, construction materials, construction plant and the like as may have arisen in that Temporary Highways Area from the carrying out of the Works. If Project Co fails to leave the relevant Temporary Highways Area to the reasonable satisfaction of the Authority, the Authority shall be entitled to employ an alternative contractor to clear the relevant Temporary Highways Area and the Authority shall be entitled to be reimbursed by Project Co for the reasonable costs incurred by the Authority in clearing or procuring the clearing of the relevant Temporary Highways Area. Project Co shall apply such sums as are specified as being due to the Authority under this clause 16.22 (or such sums as are otherwise determined as being due and payable by Project Co in accordance with the Disputes Resolution Procedure) as a negative figure in the Monthly Invoice pursuant to Clause 39.2.6(c) and the terms of Clause 39.2.7 shall apply in respect of such Monthly Invoice
- 16.23 If the Authority assumes responsibility for the operation and maintenance of any Temporary Highways Area in accordance with Clause 16.19.1 then it may at its option by notice to Project Co (such notice to be treated as an Authority Change) require Project Co to perform such obligations as may be specified in such notice in respect of the operation and maintenance of such Temporary Highways Area for such period and on such terms as may be specified in such notice.

Handing Over Certificate

- 16.24 Prior to commencing any Works in relation to a Temporary Use Area Project Co shall undertake a survey of the state and condition of the Temporary Use Area (including any Structures within that Temporary Use Area) and shall agree the contents of such survey with the relevant Third Party. Project Co shall provide a copy of the condition survey to the Authority within five (5) Business Days of agreeing the same with the relevant Third Party.
- 16.25 Not later than thirty (30) Business Days prior to the date upon which Project Co anticipates that use of any Temporary Use Area will have ceased and such Temporary Use Area will be vacated to such an extent so as to satisfy the relevant Handing Over Certificate Criteria for that Temporary Use Area, Project Co shall issue a notice to that effect to the Authority copied to the relevant Third Party indicating the date upon which, in its opinion, the relevant Handing Over Certificate Criteria will be satisfied ("**Expected Temporary Use Area Completion Date**"). Such notice shall

be accompanied by Project Co's detailed programme of activities (including Works) that Project Co intends to complete to ensure that the relevant Handing Over Certificate Criteria for that Temporary Use Area, are satisfied by the Expected Temporary Use Area Completion Date.

- 16.26 As soon as reasonably practicable following issue of the notice under Clause 16.25 (*Handing Over Certificate*), the Authority shall commence an inspection of such Temporary Use Area to assess whether the relevant Handing Over Certificate Criteria have been satisfied. Each of Project Co's Representative and a representative of the relevant Third Party shall be entitled to make joint inspections with the Authority.
- 16.27 The Authority shall no later than the relevant Expected Temporary Use Area Completion Date either:
- 16.27.1 issue a Handing Over Certificate in respect of that Temporary Use Area; or
- 16.27.2 subject to Clause 16.28 (*Handing Over Certificate*), notify Project Co that it does not intend to issue the Handing Over Certificate for that Temporary Use Area, giving reasons for such refusal in writing to each of Project Co and the relevant Third Party.
- 16.28 The Authority may refuse to issue a Handing Over Certificate in accordance with Clause 16.27.2 only if one or more of the relevant Handing Over Certificate Criteria applicable to that Temporary Use Area have not been satisfied.
- 16.29 With effect from the date specified in a Handing Over Certificate in respect of a Temporary Use Area issued by the Authority:
- 16.29.1 the Authority shall procure that the relevant Third Party assumes, or the Authority shall itself assume, responsibility for such Temporary Use Area;
- 16.29.2 such Temporary Use Area the subject of that Handing Over Certificate shall be excluded from the definition of "Temporary Areas" and "Project Road" and the assets included in such Temporary Use Areas shall be excluded from the definition of "Project Facilities" for all purposes of this Agreement save for the purpose of giving effect to the provisions of Clauses 16.24 to 16.32 (*Handing Over Certificate*); and
- 16.29.3 Project Co shall at its own expense execute all such work of amendment, reconstruction and remedying of Defects as the Authority may reasonably instruct Project Co to execute and within such time periods as the Authority may specify (acting reasonably) to bring or return the relevant Temporary Use Area to the standard required by the Authority's Construction Requirements and the relevant Third Party Requirements.
- 16.30 If the Authority serves a notice under Clause 16.27.2 (*Handing Over Certificate*), then Project Co shall, at its own cost, perform such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue a Handing Over Certificate, and shall notify each of the Authority and the relevant Third Party on completion of such further works or measures. The Authority shall inspect such further works or measures within five (5) Business Days of such notice and each of Project Co's Representative and the relevant Third Party shall be entitled to make a joint inspection with the Authority. The provisions of Clauses 16.27 (*Handing Over Certificate*) to 16.30 (*Handing Over Certificate*) (inclusive) shall thereafter apply to such notice, mutatis mutandis.
- 16.30A In the event that Project Co disagrees with a notice issued by the Authority under Clause 16.27.2 (*Handing Over Criteria*), Project Co shall be entitled to refer the dispute for determination under the Fast Track Dispute Resolution Procedure by the

issue of a Fast Track Dispute Notice subject to and in accordance with the requirements of the Fast Track Dispute Resolution Procedure.

16.31 As soon as practicable following the issue of a Handing Over Certificate Project Co shall, to the extent not already done so, leave the Temporary Use Area to the reasonable satisfaction of the Authority, free and clear from such debris, construction materials, construction plant and the like as may have arisen in that Temporary Use Area. If Project Co fails to leave the relevant Temporary Use Area to the reasonable satisfaction of the Authority, the Authority shall be entitled to employ an alternative contractor to clear the relevant Temporary Use Area and the Authority shall be entitled to be reimbursed by Project Co for the reasonable costs incurred by the Authority in clearing or procuring the clearing of the relevant Temporary Use Area. Project Co shall apply such sums as are specified as being due to the Authority under this Clause 16.31 (or such sums as are otherwise determined as being due and payable by Project Co in accordance with the Disputes Resolution Procedure) as a negative figure in the Monthly Invoice pursuant to Clause 39.2.6(c) and the terms of Clause 39.2.7 shall apply in respect of such Monthly Invoice.

16.32 If the Authority assumes responsibility for the operation and maintenance of any Temporary Use Area in accordance with Clause 16.29.1 then it may at its option by notice Project Co (such notice to be treated as an Authority Change) to perform such obligations as may be specified in such notice in respect of the operation and maintenance of such Temporary Use Area for such period and on such terms as may be specified in such notice.

17 FOSSILS AND ANTIQUITIES

Property

17.1 As between the parties, all fossils, antiquities, and other objects having artistic, historic or monetary value and human remains which may be found on or at the Site are or shall become, upon discovery, the absolute property of the Authority.

Discovery

17.2 Upon the discovery of any such item during the course of the Works, Project Co shall:

17.2.1 immediately notify the Authority's Representative of such discovery;

17.2.2 take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and

17.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

Action

17.3 The Authority shall procure that the Authority's Representative promptly, and in any event within ten (10) Business Days of receipt of notice pursuant to Clause 17.2.1, issues an instruction to Project Co specifying what action the Authority's Representative requires Project Co to take in relation to such discovery.

17.4 Project Co shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in Clause 17.3 (*Action*) above (except and to the extent that such instruction constitutes an Authority Change pursuant to Clause 17.6 (*Action*) below in which case the provisions of Schedule 16 (*Change Protocol*) shall apply), at its own cost.

- 17.5 If directed by the Authority's Representative, Project Co shall allow representatives of the Authority to enter the Site for the purposes of removal or disposal of such discovery provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant construction phase plans and health and safety plans for the construction of the Project Facilities, the Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Site Manager from time to time.
- 17.6 If, in relation to such discovery, the Authority requires Project Co to carry out works (being any work of alteration, addition, demolition or extension or variation in the Works) which are not works which would be necessary for the purpose of compliance with Law or any Consents, it must issue an Authority Change Notice in accordance with the provisions of Schedule 16 (*Change Protocol*).

PART 4: QUALITY ASSURANCE

18 QUALITY ASSURANCE

Quality Plans and Systems

- 18.1 Project Co shall procure that all aspects of the Project Operations are the subject of quality management systems in accordance with the provisions of this Clause 18 (*Quality Assurance*).
- 18.2 The quality management systems referred to in Clause 18.1 (*Quality Plans and Systems*) above shall be reflected in appropriate quality plans, the standard of which shall be consistent with BS EN ISO 9001 or 9002 (as the case may be) OHSAS 18001 and BS EN ISO 14001 or any equivalent standard which is generally recognised as having replaced them (or either of them).
- 18.3 Without limitation to the generality of Clause 18.2 (*Quality Plans and Systems*), there shall be:
- 18.3.1 a Design Quality Plan;
- 18.3.2 a Construction Quality Plan;
- 18.3.3 a Services Quality Plan for all of the Services; and
- 18.3.4 a Restricted Services Quality Plan for the Restricted Services,
- provided that the Design Quality Plan and the Construction Quality Plan may be incorporated into one document.
- 18.4 Project Co shall procure that the Project Operations are carried out in compliance with the Quality Plans. All Quality Plans shall be submitted to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) and Project Co shall not be entitled to implement or procure the implementation of any Quality Plan unless Project Co is entitled to proceed with such implementation pursuant to Schedule 8 (*Review Procedure*).
- 18.5 Project Co shall implement the quality management systems referred to in Clause 18.1 (*Quality Plans and Systems*) and shall procure that:
- 18.5.1 the Contractor implements the Design Quality Plan;
- 18.5.2 the Contractor implements the Construction Quality Plan;

18.5.3 the relevant Service Provider implements the Services Quality Plan; and

18.5.4 the relevant Service Provider implements the Restricted Services Quality Plan.

18.6 Where any aspect of the Project Operations is performed by more than one contractor or subcontractor, then the provisions of this Clause 18 (*Quality Assurance*) (in so far as relevant or appropriate to the activities to be performed by such contractor or subcontractor) shall apply in respect of each of such contractors or subcontractors, and references in this Clause 18 (*Quality Assurance*) to the "**Contractor**" or the "**Service Provider**" shall be construed accordingly. To avoid doubt, this Clause shall not be construed as requiring subcontractors of the Contractor or the Service Provider to have their own quality plans but only to comply with the Design Quality Plan, the Construction Quality Plan, the Restricted Services Quality Plan or the Services Quality Plan (as the case may be).

18.7 Project Co shall from time to time submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) any changes to any of the Quality Plans required for such Quality Plan to continue to comply with the requirements set out in Clause 18.2 (*Quality Plans and Systems*). The Authority's Representative may raise comments on any such proposed change only on the grounds set out in paragraph 3 of Schedule 8 (*Review Procedure*).

18.8 If there is no objection under Schedule 8 (*Review Procedure*) to a change to any Quality Plan proposed pursuant to Clause 18.7 (*Quality Plans and Systems*), the Quality Plan shall be amended to incorporate such change.

Quality Manuals and Procedures

18.9 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 of it shall be submitted to the Authority's Representative at the time that the relevant Quality Plan or part of (or change to) a Quality Plan is submitted in accordance with Schedule 8 (*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 of (or change to) a Quality Plan in accordance with Schedule 8 (*Review Procedure*).

Quality Management

18.10 Project Co shall maintain a quality management system which shall:

18.10.1 ensure the effective operation of the quality systems described in this Clause 18 (*Quality Assurance*);

18.10.2 cause an audit of the quality systems at regular intervals and the findings of such audit will be reported to the Authority's Representative;

18.10.3 require review of all quality systems at intervals agreed with the Authority's Representative to ensure their continued suitability and effectiveness;

18.10.4 require liaison with the Authority's Representative on all matters relating to quality management; and

18.10.5 require production of reports and their delivery to the Authority's Representative.

Quality Monitoring

18.11 The Authority's Representative may carry out audits of Project Co's quality management system (including all relevant Quality Plans and any quality manuals

and procedures) to establish that Project Co is complying with Clauses 18.1 and 18.3 (*Quality Plans and Systems*). The Authority's Representative may carry out such audits at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of Project Co's quality management systems. Project Co shall procure that the Authority's Representative shall have an equivalent right in respect of the Contractor's and the Service Providers' quality management systems. Project Co shall cooperate, and shall procure that any Sub-Contractor co-operates, with the Authority's Representative including providing him with all information and documentation which he reasonably requires in connection with his rights under this Clause.

PART 5: NOT USED

19 **NOT USED**

PART 6: SERVICES

20 THE SERVICES

General obligations

- 20.1 Throughout the Operational Term Project Co shall provide (or procure that the Service Provider provides) the Services in accordance with:
- 20.1.1 the Service Level Specification;
 - 20.1.2 the Method Statements;
 - 20.1.3 the Quality Plans;
 - 20.1.4 the requirements and obligations set out in the Environmental Assessment Documents; and
 - 20.1.5 the terms of this Agreement.
- 20.2 To avoid doubt the obligations in Clauses 20.1.1, 20.1.2, 20.1.3, 20.1.4 and 20.1.5 are independent obligations and:
- 20.2.1 the fact that Project Co has complied with the Method Statements and/or Quality Plans shall not be a defence to an allegation that Project Co has not satisfied the Service Level Specification; and
 - 20.2.2 the fact that Project Co has complied with the Service Level Specification shall not be a defence to an allegation that Project Co has not satisfied the Method Statements and/or Quality Plans;

provided that where there is any conflict between the Service Level Specification, the Method Statements and/or Quality Plans the Authority shall be entitled (in its sole discretion) to decide which shall take precedence and inform Project Co of its decision and Project Co shall, at its own cost, be obliged to implement the Authority's decision.

Commencement and phase in of Services

- 20.3 Project Co shall procure that the provision of the Services in respect of a Phase commences on the relevant Phase Actual Completion Date.

Project Co Services Changes

- 20.4 Project Co may at any time submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) proposals for amendments to or substitution for the Method Statements or any part of them. If there is no comment on such proposed amendment or substitution (on the grounds set out in paragraph 3 of Schedule 8 (*Review Procedure*)), then the Method Statements as so amended or substituted shall be the Method Statements for the purposes of this Agreement, subject to any further amendment or substitution to which there has been no comment in accordance with Schedule 8 (*Review Procedure*).
- 20.5 To avoid doubt, an amendment to or substitution for the Method Statements proposed pursuant to Clause 20.4 (*Project Co Services Changes*) shall not be a Qualifying Change entitling Project Co to any payment (or other compensation) or to any relief from the performance of its obligations under this Agreement.

No disruption

- 20.6 Project Co shall perform the Services so as to co-ordinate with the Authority's operations on the Site and shall take all reasonable care to ensure that it does not interfere with the operations of the Authority or any Authority Party.

Traffic Operations

- 20.7 The parties shall comply with the provisions of Section 1 (*Service Level Specification*) of Schedule 12 (*Service Requirements*), Schedule 24 (*Liaison Procedure*) and Schedule 35 (*Network Management*).
- 20.8 Without prejudice to Clause 20.9 (*Emergencies*) and Schedule 35 (*Network Management*), and the terms of any relevant Roads Liaison Procedure, Project Co shall be responsible for ensuring compliance with the reasonable requirements of the Statutory Authority and the police with regard to the management of traffic on or in the vicinity of the Site.

Emergencies

20.9

- 20.9.1 Project Co shall, in the event of an emergency or incident, comply with all instructions of the police, the emergency services or any Relevant Authority having authority in respect of the emergency or incident. Project Co shall at all times be responsible for implementing any such instruction so as to achieve the objective of the instruction in a manner that is safe for Users, other members of the public and the workforce involved with the Project Facilities.
- 20.9.2 Subject to Clause 20.7 (*Traffic Operations*) and the terms of any relevant Roads Liaison Procedure but notwithstanding any other provision of this Agreement, Project Co shall and shall be entitled to take (at its own cost) such steps as may be necessary in an emergency for the protection of the public.

Traffic Management

- 20.10 Subject to 20.9 (*Emergencies*) general management of traffic using the Project Road shall be the responsibility of Project Co.
- 20.11 The parties acknowledge that Users shall be subject to the same Laws as those using the remainder of the public highway network, and the enforcement of those Laws shall be the responsibility of the police.

Temporary Traffic Management Measures

- 20.12 Without prejudice to any authorisations required under any Law and to any other requirement of this Agreement, Project Co shall only implement any Temporary Traffic Management Measures in accordance Schedule 35 (*Network Management*).

Information

- 20.13 Project Co shall provide such information as the Authority or Statutory Authority may require in respect of each Temporary Traffic Management Measure on the Project Road (whether planned, current or completed and whether proposed by Project Co, the Authority, the Statutory Authority or by any Relevant Authority). Such information shall be provided in a timely manner and in such electronic or other format as the Authority or Statutory Authority (as the case may be) may require from time to time.

Traffic Signs Provisions

20.14

20.14.1 Subject to Clause 20.14.2 (*Traffic Signs Provisions*) Project Co shall procure that all Traffic Signs:

- (a) on the Project Road; or
- (b) otherwise provided by Project Co or any Project Co Party in connection with the Project Operations,

shall be in accordance with the Traffic Signs Provisions and the Traffic Signs Manual.

20.14.2 Clause 20.14 (*Traffic Signs Provisions*) shall not apply:

- (a) to the extent required otherwise by any contrary provision in the Authority's Construction Requirements; or
- (b) to any existing Traffic Signs on the Project Road on the date of this Agreement, provided that any such Traffic Signs which under the Traffic Signs Provisions are required by a specified time to be replaced by signs of a different design or removed shall be so replaced or removed.

New Signs

20.15 Save to the extent that any of the same are specified by the Authority's Construction Requirements or any Authority's Change and notwithstanding and without prejudice to any obligation to obtain any necessary authorisations in accordance with the Traffic Signs Provisions, Project Co shall submit the proposed layout, location, type, size, colour and content of all Traffic Signs or other signs to be located on or near the Project Road to the Authority in accordance with the Review Procedure.

20.16 In relation to a submission under the Review Procedure pursuant to Clause 20.15 (*New Signs*) the Authority may raise comments in accordance with the Review Procedure and also on the additional grounds:

20.16.1 in respect of any Traffic Signs, or other signs, that the proposals do not satisfy the requirements of Clause 20.14 (*Traffic Signs Provisions*); and/or

20.16.2 in respect of any signs of safety, taking into account, inter alia, the nature of the Project Road and the proposed location of the relevant sign; and/or

20.16.3 in respect of Traffic Signs, of the efficiency of strategic routing for the public highway network or any part thereof.

Other Roads

20.17 Signing on roads outside the Project Road shall be subject to agreement between Project Co and the Statutory Authority (or, in the case of signs on roads not under the jurisdiction of the Statutory Authority, between Project Co and the relevant Highway Authority).

20.18 For the avoidance of doubt, the Authority may require Project Co to place Traffic Signs (other than those required in accordance with the Authority's Construction Requirements) on or near the Project Road or to remove any such Traffic Signs. Where the Authority does so, such requirement shall be treated as an Authority

Change, except insofar as such requirement is necessary due to Project Co's breach of its obligations under this Agreement, in which case all costs incurred in meeting such requirement shall be borne by Project Co.

Commercial Signs

20.19 Project Co shall not install or permit the installation of any signs having a commercial character on the Project Facilities without the prior written approval of the Authority.

21 THE RESTRICTED SERVICES

Notice

21.1 When Project Co is of the opinion that it has achieved the Restricted Services Readiness Criteria it shall give notice to that effect to the Authority accompanied by a completed and signed Restricted Services Readiness Certificate.

Review

21.2 Following issue of such notice Project Co shall give the Authority such reasonable opportunities as the Authority may require to confirm the validity of the notice.

The Authority's Obligations

21.3 The Authority shall within ten (10) Business Days of receipt of a Restricted Services Readiness Certificate either:

21.3.1 issue a notice to Project Co and the Authority confirming that it accepts that the Restricted Services Readiness Criteria have been met (a "**Restricted Services Commencement Notice**"); or

21.3.2 notify Project Co that in its opinion, notwithstanding the issue of the Restricted Services Readiness Certificate, Project Co has not met the Restricted Services Readiness Criteria. In that event the Authority shall state in such notice which of the Restricted Services Readiness Criteria Project Co has not satisfied.

21.3A In the event that Project Co disagrees with a notice issued by the Authority under Clause 21.3.2 (*Restricted Services Commencement Notice*), Project Co shall be entitled to refer the dispute for determination under the Fast Track Dispute Resolution Procedure by the issue of a Fast Track Dispute Notice subject to and in accordance with the requirements of the Fast Track Dispute Resolution Procedure. If the Fast Track Dispute Resolution Procedure determines that Project Co has met the Restricted Services Readiness Criteria, the Fast Track Dispute Resolution Procedure shall determine the date on which the Restricted Services Commencement Notice should have been properly issued under Clause 21.3.1 (*Restricted Services Commencement Notice*) and the failure by the Authority to have issued the Restricted Services Commencement Notice on that date shall, subject to the provisions of Clause 55.1, be deemed to be a Restricted Services Exception, provided that Project Co's sole remedy in respect of a failure by the Authority to issue the Restricted Services Commencement Notice shall be a Restricted Services Exception.

Further Works

21.4 If the Authority notifies Project Co under Clause 21.3.2, Project Co shall carry out such further works or other measures necessary or appropriate to meet the Restricted Services Readiness Criteria and on its completion, Project Co shall give notice to the Authority that such further works have been carried out or measures taken. The provisions of Clauses 21.2 (*Review*) and 21.3 (*The Authority's Obligations*) shall then apply mutatis mutandis as if receipt by the Authority of such notice were receipt of a Restricted Services Readiness Certificate.

General obligations

21.5 Throughout the Restricted Services Period Project Co shall provide (or procure that the Service Provider provides) the Restricted Services in accordance with:

21.5.1 the Restricted Services Service Level Specification;

21.5.2 the Restricted Services Method Statements;

21.5.3 the Restricted Services Quality Plans,

all as set out in Section 1 (*Restricted Services Activities*) of Schedule 33 (*Restricted Services*);

21.5.4 the requirements and obligations set out in the Environmental Assessment Documents; and

21.5.5 the terms of this Agreement.

21.6 To avoid doubt the obligations in Clauses 21.5.1, 21.5.2, 21.5.3, 21.5.4 and 21.5.5 are independent obligations and:

21.6.1 the fact that Project Co has complied with the Restricted Services Method Statements and/or Restricted Services Quality Plans shall not be a defence to an allegation that Project Co has not satisfied the Restricted Services Service Level Specification; and

21.6.2 the fact that Project Co has complied with the Restricted Services Service Level Specification shall not be a defence to an allegation that Project Co has not satisfied the Restricted Services Method Statements and/or Restricted Services Quality Plans;

provided that where there is any conflict between the Restricted Services Service Level Specification, the Restricted Services Method Statements and/or Restricted Services Quality Plans the Authority shall be entitled (in its sole discretion) to decide which shall take precedence and inform Project Co of its decision and Project Co shall, at its own cost, be obliged to implement the Authority's decision.

Commencement and phase in of Restricted Services

21.7 Project Co shall procure that it has met the Restricted Services Readiness Criteria, obtained the Restricted Services Commencement Notice and is undertaking the provision of the Restricted Services by Project Co's RS Target Date.

Project Co Services Changes

21.8 Project Co may at any time submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) proposals for amendments to or substitution for the Restricted Services Method Statements or any part of them. If there is no comment on such proposed amendment or substitution (on the grounds set out in paragraph 3 of Schedule 8 (*Review Procedure*)), then the Restricted Services Method Statements as so amended or substituted shall be the Restricted Services Method Statements for the purposes of this Agreement, subject to any further amendment or substitution to which there has been no comment in accordance with Schedule 8 (*Review Procedure*).

21.9 To avoid doubt, an amendment to or substitution for the Restricted Services Method Statements proposed pursuant to Clause 21.8 (*Project Co Services Changes*) shall

not be a Change entitling Project Co to any payment (or other compensation) or to any relief from the performance of its obligations under this Agreement.

No disruption

- 21.10 Project Co shall perform the Restricted Services so as to co-ordinate with the Authority's operations on the Site and/or in respect of the Project Facilities and shall take all reasonable care to ensure that it does not interfere with the operations of the Authority or any Authority Party.
- 21.11 The provisions of Clauses 20.7 (to the extent that obligations under Clause 20.7 relate to traffic management and operations) to Clause 20.19 shall apply during the Restricted Services Period.
- 21.12 The Authority shall bear all excesses or deductibles in respect of claims under the insurances set in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) of Schedule 15 (*Insurance Requirements*) made prior to the Authority's RS Target Date, to the extent that such claim is due to the act or omission of the South Wales Trunk Road Agent (SWTRA). The burden of proof in determining whether a claim is due to the act or omission (in the case of an omission only to the extent that such omission is also a breach of this Agreement) of the South Wales Trunk Road Agent (SWTRA) shall lie with and be borne by Project Co and in the absence of Project Co demonstrating that such claim is due to the act or omission (in the case of an omission to the extent that such omission is also a breach of this Agreement), Project Co shall bear all excesses and deductibles in respect of claims made under the aforementioned insurances.

22 MAINTENANCE

Programmed Maintenance Works

- 22.1 No later than three (3) months prior to the first Phase Completion Date Project Co shall submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) an Asset Management Plan which includes the Schedule of Programmed Maintenance for the period from the first Phase Completion Date to the expiry of that Contract Year.
- 22.2 Not later than three (3) months prior to the commencement of each subsequent Contract Year Project Co shall submit to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*) an Asset Management Plan which includes the Schedule of Programmed Maintenance for the next succeeding Contract Year in respect of all Phases completed prior to, and all Phases scheduled to be completed in, that Contract Year.
- 22.3 Each Schedule of Programmed Maintenance shall contain the following information (the "**Programmed Maintenance Information**"):
 - 22.3.1 details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of work;
 - 22.3.2 details of any effect of the Programmed Maintenance on the delivery of any of the Services and/or the activities of the Authority; and
 - 22.3.3 a proposed Lifecycle Schedule, together with a report on any differences between the Lifecycle Profile and Lifecycle Spend for the previous Contract Year and a prediction of any differences between the Lifecycle Profile and Lifecycle Spend for that Contract Year.
- 22.4 Not later than twenty (20) Business Days prior to the commencement of any quarter (being a three (3) month period commencing on 1 April, 1 July, 1 October or

1 January), Project Co may submit to the Authority's Representative for approval in accordance with Schedule 8 (*Review Procedure*) a revision to the Schedule of Programmed Maintenance for the Contract Year in which the relevant quarter falls showing the effect of the proposed changes to the Programmed Maintenance Information. If the Authority's Representative does not raise comments on such proposed revision in accordance with Schedule 8 (*Review Procedure*), the Schedule of Programmed Maintenance as revised shall become the Schedule of Programmed Maintenance in respect of that quarter.

- 22.5 Where the Authority's Representative raises comments in respect of any Programmed Maintenance periods and/or hours of work shown in a Schedule of Programmed Maintenance in accordance with paragraph 3 of Schedule 8 (*Review Procedure*), he shall indicate whether, and if so when, the Programmed Maintenance can be re-scheduled and Project Co shall amend the relevant Schedule of Programmed Maintenance accordingly.

Programmed and Unprogrammed Maintenance

- 22.6 Project Co shall not carry out any Programmed Maintenance or Unprogrammed Maintenance Work or Lifecycle Replacement save:

22.6.1 in accordance with a Schedule of Programmed Maintenance to which no objection has been made under Schedule 8 (*Review Procedure*) or, where comment has been raised in respect of the Programmed Maintenance or Lifecycle Replacement periods and/or time, the Schedule of Programmed Maintenance has been amended pursuant to the Service Level Specification;

22.6.2 in accordance with the procedures set out in Clause 22.8 (*Programmed and Unprogrammed Maintenance*); or

22.6.3 in an emergency, in accordance with Clause 22.9 (*Programmed and Unprogrammed Maintenance*).

- 22.7 Notwithstanding that there has been no objection to a Schedule of Programmed Maintenance, the Authority's Representative may, at any time, require Project Co to accelerate or defer any Programmed Maintenance or Lifecycle Replacement by giving written notice to Project Co, (unless otherwise agreed) not less than twenty (20) Business Days prior to the scheduled date for carrying out such Programmed Maintenance or Lifecycle Replacement, which notice shall set out the time and/or periods at or during which the Authority requires the Programmed Maintenance or Lifecycle Replacement to be performed. Project Co shall notify the Authority of the amount of any additional reasonable costs which it will incur as a direct consequence of such acceleration or deferment (the "**Estimated Increased Maintenance Costs**") within five (5) Business Days of the receipt of the written notice advising of the requirement for an acceleration or deferment of the Programmed Maintenance. The Authority shall, within a further period of five (5) Business Days following receipt by the Authority of notification of the amount of the Estimated Increased Maintenance Costs, at the Authority's option, either confirm or withdraw its request to accelerate or defer the Schedule of Programmed Maintenance. If the Authority does not respond within this five (5) Business Day period, the request shall be deemed to have been confirmed. The Authority shall reimburse Project Co the direct and reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferment up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

- 22.8 If, in circumstances other than an emergency or in relation to Category 1 Defects, the need arises for Maintenance Works or Lifecycle Replacement (excluding any works of a *de minimis* nature in respect of which the parties have agreed this Clause 22.8 (*Programmed and Unprogrammed Maintenance*)) shall not apply and excluding works carried out for the purpose of rectification during any Service Rectification Period, which shall take place in accordance with the provisions of Schedule 14 (*Payment*

Mechanism)), which are not scheduled to be carried out as part of the Programmed Maintenance or Lifecycle Replacement ("**Unprogrammed Maintenance Work**"), Project Co shall not carry out any Unprogrammed Maintenance Work unless and until the Authority's Representative has approved the proposed commencement date, the proposed hours of work and estimated duration of the requisite Unprogrammed Maintenance Work in accordance with the provisions of paragraph 3.7 of Schedule 8 (*Review Procedure*). Nothing in this Clause 22.8 (*Programmed and Unprogrammed Maintenance*) (including any approval of the Authority pursuant to Schedule 8 (*Review Procedure*)) shall prevent the Authority from making any deductions in calculating the Monthly Service Payments pursuant to the Payment Mechanism.

- 22.9 If, as a result of an emergency, the need arises for Unprogrammed Maintenance Work, Project Co may carry out such Unprogrammed Maintenance Work provided that Project Co shall notify the Authority's Representative as soon as possible (and in any event within two (2) Business Days of the occurrence of the emergency) of the extent of the necessary Unprogrammed Maintenance Work and the reasons for them. Project Co shall take all reasonable steps to minimise the duration of such Unprogrammed Maintenance Work. Nothing in this Clause 22.9 (*Programmed and Unprogrammed Maintenance*) shall prevent the Authority from making any deductions in calculating the Monthly Service Payments pursuant to the Payment Mechanism.
- 22.10 Where Programmed Maintenance or Lifecycle Replacement scheduled to be carried out in accordance with the Schedule of Programmed Maintenance has been deferred by the Authority's Representative under Clause 22.7 (*Programmed and Unprogrammed Maintenance*), Project Co shall not be treated as having failed to perform the relevant Service on account of the condition of the Project Facilities or any part of them from the time the Programmed Maintenance or Lifecycle Replacement was scheduled to have been completed until the time the deferred Programmed Maintenance or Lifecycle Replacement was scheduled to have been completed, but not afterwards, provided always, to avoid doubt, that Project Co shall not be relieved from the consequences of any failure to maintain the Project Facilities in respect of any period prior to the period for performing the particular work according to the Schedule of Programmed Maintenance.

5 Year Maintenance Plan

- 22.11 Project Co shall deliver to the Authority's Representative not less than sixty (60) Business Days prior to the first Phase Completion Date, and thereafter not less than sixty (60) Business Days prior to the commencement of each Contract Year the latest version of the 5 Year Maintenance Plan.
- 22.12 The Authority shall have a right to inspect the Project Facilities, the Maintenance Works and the Lifecycle Replacement to ensure that the Project Facilities are being maintained in accordance with the Service Level Specification and that the Project Facilities comply with the Authority's Construction Requirements and Project Co's Proposals throughout the Project Term. The Authority may appoint an independent third party for the purposes of carrying out any such inspection and shall make known the findings to Project Co and the Funders. The parties shall then meet to discuss any implications of such findings and any steps that are necessary to remedy any failure to comply with such obligations. Project Co shall (subject to Clause 38 (*Change Protocol*)) take into account such discussions in the next Schedule of Programmed Maintenance so that any failure to comply with such obligations shall be remedied.

23 LIFECYCLE REPLACEMENT

- 23.1 Project Co shall undertake Lifecycle Replacement at the Project Facilities in accordance with a Lifecycle Schedule which has been approved or not commented on by the Authority under the Review Procedure.

- 23.2 No later than forty (40) Business Days before each occasion on which any part of the Project Facilities is due for replacement (as identified in the Lifecycle Schedule), where Project Co does not believe it is necessary to undertake such replacement, Project Co shall submit to the Authority (under the Review Procedure) a written statement detailing:
- 23.2.1 the replacement(s) which the Lifecycle Schedule records as being due; and
 - 23.2.2 why Project Co does not believe it is necessary to undertake such replacement having regard to the condition of the relevant part and Project Co's obligations under this Agreement.
- 23.3 If the Authority approves in accordance with the Review Procedure (or it is determined in accordance with the Dispute Resolution Procedure) that the replacement should be deferred, Project Co shall amend the Lifecycle Schedule to reflect such deferral.
- 23.4 Without prejudice to Clause 23.3 (*Lifecycle Replacement*) Project Co shall replace any items listed in the Lifecycle Schedule with parts of at least equivalent standard to those at the Actual Completion Date measured by reference to the standards set out in the Service Level Specification, measured in each case against the current standards for the relevant part so that any replacement part should have an equivalent or greater anticipated lifespan at the same quality as the original part provided that nothing in this Clause 23.4 (*Lifecycle Replacement*) shall require the relevant elements of the Project Facilities to have a longer working life than required by Part 4 (*Programmed Maintenance (including Lifecycle Replacement)*) of Section 1 (*Service Level Specification*) Schedule 12 (*Service Requirements*) of the Service Level Specification.
- 23.5 In the event that Project Co fails to either:
- 23.5.1 replace any part of the Project Facilities by the date that it is due for replacement (as identified in the Lifecycle Schedule); or
 - 23.5.2 comply with Clause 23.4 (*Lifecycle Replacement*),
- and such failure is not remedied within one (1) month of receipt of written notice by Project Co of such failure from the Authority, the Authority may remedy such failure itself and recover the cost from Project Co as a debt provided that, where the Authority has not approved the deferral or replacement pursuant to Clause 23.3 and such matter has been referred to the Dispute Resolution Procedure, the Authority shall not exercise its rights pursuant to this Clause 23.5 until the deferral or replacement has been agreed or determined.

Lifecycle Profile and Spend

- 23.6 Project Co shall keep detailed records of the Lifecycle Replacement and Lifecycle Spend.
- 23.7 Project Co shall upon written request permit the Authority access to all Project Co's records, receipts, invoices, reports, drawings, technical specifications and performance logs relating to any Lifecycle Asset and Lifecycle Spend, so as to enable the Authority to obtain an accurate assessment of the figures quoted. Project Co shall provide all reasonable co-operation and assistance to the Authority to allow it access to such documents and information and shall in a bona fide manner respond promptly to all reasonable requests for further documents and information made by the Authority in respect of any Lifecycle Asset and the condition of the same and Lifecycle Spend.

- 23.8 At least sixty (60) Business Days prior to a Lifecycle Review Date, Project Co shall submit to the Authority a report containing:
- 23.8.1 a survey of the state and condition of the Project Facilities and Lifecycle Assets by comparison to Project Co's maintenance and lifecycle obligations under this Agreement;
 - 23.8.2 a revised projection for any alteration to anticipated replacement or renewal of Lifecycle Assets in respect of:
 - (a) the period from the relevant Lifecycle Review Date until the next Lifecycle Review Date; and
 - (b) the period from the relevant Lifecycle Review Date until the Expiry Date;
 - 23.8.3 confirmation of any differences between the Lifecycle Profile and Lifecycle Spend and transactions that have taken place since the previous Lifecycle Review Date;
 - 23.8.4 confirmation of the Lifecycle Profile for the period up to the next Lifecycle Review Date;
 - 23.8.5 confirmation of the Lifecycle Profile from that Lifecycle Review Date to the Expiry Date;
 - 23.8.6 a summary of how Project Co has achieved the Lifecycle Efficiencies Plan in the period since the previous Lifecycle Review Date; and
 - 23.8.7 details of Lifecycle Assets to be replaced and commentary on how this has been determined which means that a like for like replacement of Lifecycle Assets may not be appropriate or represent best value for money for the Authority,
- (to be referred to as the "**Lifecycle Report**").
- 23.9 On the Lifecycle Review Date, the parties shall discuss the contents of the Lifecycle Report, and Project Co shall make such revisions to the Lifecycle Report as the parties agree are necessary and supply the Authority with a copy of the same within twenty (20) Business Days of the Lifecycle Review Date.

24 BIENNIAL REVIEWS AND REPORTING

Biennial Reviews

- 24.1 Project Co shall work with the Authority to identify opportunities for improving the performance, efficiency and effectiveness of the Project Facilities and the Services. This shall be termed a "**Biennial Review**".
- 24.2 On the date falling two (2) years after the Actual Completion Date and every two (2) years thereafter, during the Operational Term (each a "**Contract Review Date**"), Project Co and the Authority shall conduct a Biennial Review in order to ensure that the Services and the Project Facilities are providing a suitable and cost effective solution for the Authority.
- 24.3 The Biennial Review shall include a meeting held between the Authority and Project Co, where both parties shall present their overview of the effectiveness of the Agreement. During each Biennial Review a discussion shall take place concerning the improvements to be made, and Project Co shall record the decisions taken.

- 24.4 Project Co shall produce a "**Biennial Review Report**" and submit this for review by the Authority no less than thirty (30) days prior to the relevant Contract Review Date.
- 24.5 The Biennial Review Report shall identify any activities undertaken by Project Co to improve the effectiveness of the Services, and any further opportunities for improvement of the Agreement through prospective changes in the Services, and/or behaviour or usage changes by either party; and it shall include as a minimum:
- 24.5.1 a trend analysis of performance against performance and availability standards over the years to date to identify areas of performance that can be improved, and steps taken by Project Co to address performance issues. Where the performance trend analysis identifies a deteriorating trend in performance, repeat failures, or significant failures that impact on the Authority, Project Co shall produce an action plan to identify how performance is to be improved;
 - 24.5.2 a summary of energy consumption over the period since the last Biennial Review and identification of measures that may be taken to improve energy performance and efficiency;
 - 24.5.3 a review of Programmed Maintenance and Unprogrammed Maintenance Work, in the form of a risk based maintenance analysis (in line with ISO55000 requirements or equivalent);
 - 24.5.4 any alterations to the Project Facilities which may lead to improvements in the performance and availability of the Project Facilities and whether or not this may require capital expenditure on the part of the Authority;
 - 24.5.5 a financial summary identifying the cost impact of all the efficiency improvement opportunities identified separated into:
 - (a) improvements that can be achieved without instigating a Change under Schedule 16 (*Change Protocol*) of the Agreement including changes made by changes in User behaviour and/or changes in Authority or Project Co working which would not require an Authority Change Notice; and
 - (b) other changes to the Services or the Project Facilities that can improve efficiency but which would require an Authority Change Notice.
- 24.6 Any proposed Change set out in a Biennial Review Report which is approved by the Authority shall be subject to Schedule 16 (*Change Protocol*).

Provision of an Independent Biennial Review and Biennial Review Report

- 24.7 Where Project Co fails to either provide the Biennial Review Report, or it is not to a standard acceptable to the Authority acting reasonably or the Authority has reasonable ground for questioning the accuracy of the analysis undertaken by Project Co, then the Authority may appoint suitable competent independent advisors to carry out an independent review and produce an independent Biennial Review Report.
- 24.8 Project Co shall cooperate fully with any independent advisors and provide access to systems, copies or reports and any relevant data to enable such independent advisors to complete their report.
- 24.9 The costs of the independent advisor shall be borne by Project Co.

25 DEFECTS IN THE PROJECT FACILITIES

Latent Defects

25.1 For the purposes of this Agreement, the term "Latent Defect" shall mean:

25.1.1 any Key Structure Latent Defect; and/or

25.1.2 any other defect in the Project Facilities (including any Key Structure) at the date hereof which was not apparent and could not reasonably have been ascertained by a competent person acting in accordance with Good Industry Practice during the inspection referred to in Clause 10.1.1 or from an analysis of all relevant information available to Project Co prior to the date of this Agreement (including the information referred to in Clause 7 (*Authority's Data*)).

Reporting of Latent Defects

25.2 In the event that a material Latent Defect shall become apparent, Project Co shall promptly and in any event within five (5) Business Days of becoming aware of such Latent Defect, give notice to the Authority identifying such defect and shall provide details of the accrued value of LD Rectification Costs to date. Project Co shall as soon as reasonably practicable provide such further information regarding such Latent Defect as the Authority may request (acting reasonably).

Key Structure Latent Defects – Initial Action

25.2A Without prejudice to its obligations under this Clause 25, upon becoming aware of any Key Structure Latent Defect, Project Co shall, at its own cost (subject to Clause 25.7), take such minimum steps as are reasonably necessary to:

25.2A.1 prevent further deterioration of the Key Structure Latent Defect; and

25.2A.2 ensure the safety of users of the relevant Key Structure, the public and the Key Structure

("Initial Action").

Reporting of Key Structure Latent Defects

25.2B Where the Latent Defect notified to the Authority pursuant to Clause 25.2 is a Key Structure Latent Defect the notice issued by Project Co pursuant to Clause 25.2 shall be a "**Key Structure Defect Notice**" and shall be accompanied by the following information:

25.2B.1 the nature of the Key Structure Latent Defect;

25.2B.2 details of the affected Key Structure and the affected parts of such Key Structure;

25.2B.3 any measures adopted and/or to be adopted by Project Co to prevent the Key Structure Latent Defect from deteriorating in the period before the LD Rectification Plan is agreed or determined;

25.2B.4 measures adopted and/or to be adopted by Project Co whereby Project Co will ensure the safety of users of the Project Road, the public and the Key Structure; and

- 25.2B.5 traffic management measures that Project Co has taken or will be taken in the period before the LD Rectification Plan is agreed or determined.
- 25.2C Project Co shall provide such additional or supporting information as the Authority may require (acting reasonably) in respect of the matters identified in the Key Structures Defects Notice within three (3) Business Days' of the Authority's request.
- 25.2D If any of the information in the Key Structure Defect Notice changes in any material way during the period between the issue of the Key Structure Defect Notice and the date on which the LD Rectification Plan is agreed or determined in accordance with Clauses 25.16 to 25.19, Project Co shall notify the Authority of the changed information as soon as reasonably practicable (and in any event within three (3) Business Days of Project Co becoming aware of the same).
- 25.2E Where the Authority does not agree with the Key Structure Defect Notice or any of the information set out therein or any changed information provided pursuant to Clause 25.2D they will notify Project Co within ten (10) Business Days after receipt of the relevant Key Structure Defect Notice or notice pursuant to Clause 25.2D.
- 25.2F If the parties are unable to reach agreement on any of the matters referred to in Clause 25.2E within ten (10) Business Days of the date of the Authority's notification under Clause 25.2E, then either party may refer the matter or matters for resolution under the Dispute Resolution Procedure.
- 25.2G Project Co shall implement the measures and take the actions set out in the Key Structure Defect Notice (as updated pursuant to Clause 25.2D) as agreed between the parties or determined pursuant to Clause 25.2F.

Remediation of defects in the Project Facilities

- 25.3 Without prejudice to the Authority's ability to request an Authority's Change pursuant to Schedule 16 (*Change Protocol*) and without prejudice to Clause 25.4 (*Duty to Mitigate*) and Clause 25.7 (*Limitations on liability*), Project Co shall be responsible for, and shall carry out, any reconstruction, repair, reinstatement, remediation or other works required as a result of any defect in the Project Facilities, including any Latent Defect. Any such works required to be carried out pursuant to this Clause 25.3 shall be carried out to the applicable construction standards required pursuant to the Authority's Construction Requirements, provided that the version of the standards to be applied shall be the current version of the standards at the time the work is completed or as otherwise agreed between the parties.

Duty to Mitigate defects in the Project Facilities

- 25.4 Project Co shall at all times carry out the Project Operations in accordance with Good Industry Practice so as not to exacerbate any known defect, including any Latent Defect and shall:
- 25.4.1 following becoming aware of a defect, including any Latent Defect, use all reasonable endeavours to mitigate the effects of such defect; and
- 25.4.2 take all steps to minimise the consequence of any known defect, including any Latent Defect,
- in each case in accordance with Good Industry Practice.

Costs of defects in the Project Facilities

- 25.5 Without prejudice to the Authority's Construction Requirements and the Service Level Specification but subject to Clause 25.7 (*Limitations on liability*), Clause 25.27 (*Relief*) and Clause 35.1.9, all costs of and associated with any defect in the Project

Facilities, including any Latent Defect and any reconstruction, repair, reinstatement, remediation, replacement, renewal or other works in respect thereof shall be borne by Project Co and Project Co shall not be entitled to any extension of time or monetary relief in relation to any defect, including any Latent Defect, or any reconstruction, repair, reinstatement, remediation, replacement, renewal or other works required in respect thereof.

- 25.6 For the avoidance of doubt, the Authority shall have no liability to Project Co in respect of any loss of profit, loss of income, loss of contract or any other losses, or (save as expressly provided in Clause 25.7 or Clauses 25.31 to 25.35) costs or expenses arising out of or in connection with the existence of any defect in the Project Facilities, including any Latent Defect, or any reconstruction, repair, reinstatement, remediation, replacement, renewal or other works required as a result of any defect in the Project Facilities, including any Latent Defect.

Key Structure Latent Defects – Key Structures Costs Cap

- 25.7 Project Co shall be responsible for and shall bear all costs in rectifying any defects in the Project Facilities, including Latent Defects, provided that the Authority shall reimburse Project Co for any LD Rectification Costs reasonably and properly incurred by Project Co (in aggregate in respect of any and all Key Structures Latent Defects) in excess of the Key Structures Costs Cap.

- 25.8 Project Co shall notify the Authority promptly upon becoming aware that its LD Rectification Costs exceed or are likely to exceed the Key Structures Costs Cap. Project Co shall provide a detailed report to the Authority in support of all claims for reimbursement of LD Rectification Costs pursuant to Clause 25.7 setting out:

25.8.1 its total aggregate LD Rectification Costs;

25.8.2 the amount of the claim;

25.8.3 what the LD Rectification Costs relate to (including invoices from suppliers (as appropriate)); and

25.8.4 any other information the Authority reasonably requires to demonstrate to the Authority's satisfaction, acting reasonably, that the costs claimed are LD Rectification Costs.

- 25.8A Project Co shall not be entitled to claim or recover from the Authority any amounts as LD Rectification Costs (and any such amounts shall be disregarded for the purposes of determining whether the Key Structures Costs Cap has been exceeded) to the extent Project Co fails to demonstrate to the satisfaction of the Authority (acting reasonably) that those amounts are LD Rectification Costs which satisfy the requirements of the definition thereof, and (without limitation to the generality of the foregoing) that such amounts:

25.8A.1 do not fall within the descriptions of costs as set out in limbs (a) to (j) (inclusive) of the definition of "LD Rectification Costs";

25.8A.2 are not due to (and the defect or requirement for works to which those amounts relates have not arisen as a result of or in connection with) any failure by Project Co to:

25.8A.2.1 carry out the Works, Services and/or Restricted Services in respect of the Project Facilities in accordance with the requirements of this Agreement; and/or

25.8A.2.2 use all reasonable endeavours to mitigate such costs and matters.

- 25.9 The Authority shall notify Project Co within ten (10) Business Days if it agrees with Project Co's detailed report submitted to it pursuant to Clause 25.8. If the parties are unable to reach agreement on the contents of Project Co's detailed report within twenty (20) Business Days of the receipt of Project Co's detailed report, either party may refer the matter for resolution under the Disputes Resolution Procedure.
- 25.10 Once agreed or determined the LD Rectification Costs shall be invoiced by Project Co and paid for by the Authority on a monthly basis, on an equivalent basis (including timescales for Project Co's application for payment and the Authority's certification and payment in respect of such application) as the payment terms in respect of the Side Roads Works set out in Schedule 36 (*Side Roads Works*), with the value of the LD Rectification Works executed in respect of any month being calculated by reference to the breakdown of the fixed cost for such LD Rectification Works set out in the corresponding agreed LD Rectification Plan.

Key Structure Latent Defects – Initial Plan

- 25.11 As soon as practicable and in any event within twenty (20) Business Days after service of a Key Structure Defect Notice, Project Co shall deliver to the Authority a plan prepared by Project Co (the "**Initial Plan**") setting out:
- 25.11.1 details of any inspections, tests, studies, trials, surveys or investigations to be conducted by Project Co in connection with the relevant Key Structure Latent Defect, being the subject of a Key Structure Latent Defect Notice; and
- 25.11.2 Project Co's programme for as soon as reasonably practicable:
- 25.11.2.1 carrying out the inspections, tests, studies, trials, surveys or investigations referred to in Clause 25.11.1;
- 25.11.2.2 evaluating the options for addressing the Key Structure Latent Defect;
- 25.11.2.3 presenting the LD Rectification Plan to the Authority; and
- 25.11.3 the traffic management measures to be undertaken or implemented by Project Co in order to carry out the inspections, tests, studies, trials, surveys or investigations referred to in Clause 25.11.1.
- 25.12 Project Co shall provide any further information reasonably requested by the Authority and address any representations made by the Authority in respect of the Initial Plan.
- 25.13 If the parties are unable to reach agreement on the Initial Plan within ten (10) Business Days of the date of its receipt by the Authority, either party may refer the matter for resolution under the Disputes Resolution Procedure.
- 25.14 Following agreement or determination of the Initial Plan, Project Co shall as soon as practicable:
- 25.14.1 undertake any inspections, tests, studies, trials, surveys or investigations set out in the Initial Plan ("**Initial Plan Activities**"); and
- 25.14.2 in accordance with the programme set out in the Initial Plan, proceed to evaluate the options for addressing the Key Structure Latent Defect.
- 25.15 If as a consequence of (i) any changes to the Key Structure Defect Notice pursuant to Clauses 25.2D to 25.2F or (ii) any inspections, tests, studies, trials, surveys or investigations carried out pursuant to the Initial Plan, either or both of the parties reasonably considers that further inspections, tests, studies, trials, surveys or

investigations are required, said party shall give notice to the other party as soon as reasonably practicable and the provisions of Clause 25.11 to 25.14 shall thereafter apply mutatis mutandis.

Key Structure Latent Defects – LD Rectification Plan

- 25.16 In accordance with the programme agreed in the Initial Plan, Project Co shall deliver to the Authority a plan (the "**LD Rectification Plan**") setting out:
- 25.16.1 the results of any inspections, tests, studies, trials, surveys or investigations that Project Co has conducted in accordance with the Initial Plan;
 - 25.16.2 the options for addressing the Key Structure Latent Defect, including the advantages and disadvantages of each option;
 - 25.16.3 the most suitable solution for addressing the Key Structure Latent Defect (including any works of reconstruction, repair, reinstatement, remediation, replacement or renewal necessary to implement such solution), including the relative advantages and disadvantages of this solution against the other options set out in Clause 25.16.2;
 - 25.16.4 the terms and timetable upon which the most suitable solution referred to above is to be effected (including the date that the relevant Key Structure will become fully operational);
 - 25.16.5 the traffic management measures to be taken or implemented in order to carry out the LD Rectification Works;
 - 25.16.6 if the Key Structure Latent Defect has become apparent prior to the date of Permit to Use being issued in respect of the relevant Phase:
 - 25.16.6.1 the anticipated delay to the date of Permit to Use being issued in respect of the relevant Phase, beyond the relevant Phase Completion Date, arising as a direct result of the Key Structure Latent Defect (and the LD Rectification Works to be carried out in respect of that Key Structure Latent Defect) ("**Anticipated LD Delay**");
 - 25.16.6.2 the steps to be taken by Project Co to minimise and mitigate such delay;
 - 25.16.7 any change or addition to any of the Construction Phase Required Insurances required (by the relevant insurers or as otherwise reasonably required in accordance with Good Industry Practice) as a result of the discovery of the Key Structure Latent Defect and/or the carrying out of the LD Rectification Works, and the costs thereof ("**LD Insurance Cost**");
 - 25.16.8 the fixed cost for carrying out the LD Rectification Works; and
 - 25.16.9 the means by which payment for LD Rectification Works will be certified by the Authority and a breakdown of the fixed cost for carrying out the LD Rectification Works against completed elements of the works for which Project Co anticipates making monthly applications for payment in accordance with Clause 25.10.
- 25.17 Project Co shall provide any further information reasonably requested by the Authority and address any representations of the Authority in respect of the LD Rectification Plan.

- 25.18 If the parties are unable to reach agreement on the LD Rectification Plan, including the cost of carrying out the LD Rectification Works or the Anticipated LD Delay, within twenty (20) Business Days of the date of its receipt by the Authority, either Party may refer the matter for resolution under the Dispute Resolution Procedure.
- 25.19 Following agreement or determination of the LD Rectification Plan:
- 25.19.1 the works of reconstruction, repair, reinstatement, remediation, replacement or renewal necessary to implement the solution referred to in such LD Rectification Plan shall be the **"LD Rectification Works"**; and
- 25.19.2 the period set out in the timetable for carrying out the LD Rectification Works shall be the **"LD Rectification Period"**; and
- 25.19.3 the Anticipated LD Delay period set out in such LD Rectification Plan shall be the **"LD Delay Period"**.

Key Structure Latent Defects – LD Rectification Works

- 25.20 Following the agreement or determination of the LD Rectification Plan, Project Co shall procure that the LD Rectification Works are carried out in accordance with this Agreement in order that, on completion of the LD Rectification Works, the Authority's Construction Requirements have been met and all other provisions of this Agreement have been complied with.
- 25.21 Project Co shall maintain a record of all costs incurred in carrying out the LD Rectification Works and shall provide the Authority full access to this information at all times.

Key Structure Latent Defects – changes to LD Rectification Plan

- 25.22 If at any time during the carrying out of the LD Rectification Works it becomes apparent, as a result of the opening up of the relevant Key Structure for the purposes of carrying out the LD Rectification Works and as a result of information becoming available or circumstances becoming apparent in relation to the nature and/or extent of the Key Structure Latent Defect that could not have been ascertained and could not reasonably have been foreseen prior to commencement of the LD Rectification Works, that:
- 25.22.1 the solution proposed to address the Key Structure Latent Defect is no longer the most appropriate solution; and/or
- 25.22.2 any additional or alternative works (or, as the case may be, less works) of reconstruction, repair, reinstatement, remediation, replacement or renewal are necessary to address the Key Structure Latent Defect; and/or
- 25.22.3 there is any other material change in the information about or circumstances of the nature and/or extent of the Key Structure Latent Defect which formed the basis on which the LD Rectification Plan was agreed,
- then Project Co shall promptly upon becoming aware of such change notify the Authority of the changed information and (subject to Clause 25.25) provide the Authority with any proposed amendments to the LD Rectification Plan required as a result of such change.
- 25.23 Project Co shall provide any further information reasonably requested by the Authority and address any representations of the Authority in respect of any amendments to the LD Rectification Plan proposed pursuant to Clause 25.22.

- 25.24 If the parties are unable to reach agreement on any proposed amendments to the LD Rectification Plan within ten (10) Business Days of the date of receipt of the same by the Authority, either party may refer the matter for resolution under the Dispute Resolution Procedure.
- 25.25 The amendments which may be made to the LD Rectification Plan to address a change in information or circumstances as described in Clause 25.22 may include (as appropriate):
- 25.25.1 any change to the LD Rectification Works; and/or
- 25.25.2 any change to the LD Rectification Period; and/or
- 25.25.3 any change to the LD Delay Period (if applicable); and/or
- 25.25.4 any change to the fixed cost for carrying out the LD Rectification Works,
- save that no such change shall be proposed by Project Co, or made, to increase the LD Rectification Period or the LD Delay Period, and/or to increase the fixed cost for carrying out the LD Rectification Works, to the extent the change in information or circumstance is due to any act or omission of Project Co (including without limitation any of those matters listed in Clause 25.28 below) and/or could reasonably have been ascertained or foreseen prior to delivery of the original LD Rectification Plan pursuant to Clause 25.16 by a competent person acting in accordance with Good Industry Practice (including in devising and implementing the Initial Plan).
- 25.26 The LD Rectification Plan (including as applicable the LD Rectification Works and/or, subject to Clause 25.25, the LD Rectification Period, any LD Delay Period and the fixed cost for carrying out the LD Rectification Works) shall be amended to reflect any changes agreed between the parties or determined under the Dispute Resolution Procedure pursuant to Clause 25.24.

Key Structure Latent Defects – Relief

- 25.27 Subject to Clause 25.28, Project Co shall be relieved of liability for Deductions where such Deductions arise as a direct consequence of a Key Structure Latent Defect during the period from the date of the Key Structure Defect Notice until the completion of the LD Rectification Works (or, the end of the LD Rectification Period, if earlier).
- 25.28 No such relief shall be given to the extent:
- 25.28.1 Project Co fails to act in accordance with the agreed LD Rectification Plan, Good Industry Practice and/or in an efficient, effective and safe manner;
- 25.28.2 Project Co fails to minimise and mitigate the impact of the Key Structure Latent Defect in accordance with Clause 25.4;
- 25.28.3 the Key Structure Latent Defect (and/or its consequences) have been exacerbated by any act or omission of Project Co (other than Project Co, as required, acting in accordance with this Agreement), including without limitation any failure by Project Co to carry out the Works, Services and/or Restricted Services in accordance with the requirements of this Agreement;
- 25.28.4 Project Co fails to demonstrate to the satisfaction of the Authority, acting reasonably, that the issue giving rise to the need for relief has not been caused or exacerbated by any failure of Project Co to carry out the Works, Services and/or Restricted Services in accordance with the requirements of this Agreement; or

25.28.5 Project Co fails to undertake the steps set out in and in accordance with the Key Structure Defect Notice, Initial Plan and/or the LD Rectification Plan (each as agreed or determined in accordance with the provisions of Clause 25).

Key Structure Latent Defects – Change

25.29 The Authority shall be entitled at any point subsequent to receipt by them of a Key Structure Defect Notice to issue a Authority Change removing the affected Key Structure from the scope of Project Co's obligations under this Agreement and requiring such variation, change or additional works or services as may be required so as to enable Project Co to perform the Project Operations (as varied by such Authority Change).

Payment in respect of any LD Delay Period

25.30 Subject to Clause 25.36, if a Key Structure Latent Defect becomes apparent prior to the date of issue of Permit of Use in respect of the Phase to which the relevant Key Structure relates, and in respect of that Key Structure Latent Defect:

25.30.1 LD Rectification Works are required to be carried out and agreed pursuant to an agreed LD Rectification Plan; and

25.30.2 an LD Delay Period is agreed pursuant to an agreed LD Rectification Plan,

then the following provisions (Clauses 25.31 to 25.35) shall apply in respect of that Key Structure Latent Defect.

25.31 If the circumstances described in Clause 25.30 apply, then:

25.31.1 any non-compliance with the PTU Criteria shall, to the extent such non-compliance is applicable to the relevant Key Structure, be disregarded for the purposes of determining whether the PTU Criteria have been satisfied for the relevant Phase, such that if the Authority is satisfied that the PTU Criteria are satisfied in respect of all other aspects of the relevant Phase, disregarding the relevant Key Structure, Permit to Use shall be issued pursuant to Clause 16.4 (*Permits to Use*) in respect of the relevant Phase ("**Deemed PTU**");

25.31.2 upon achievement of any Deemed PTU in respect of the relevant Phase, for the period from the date of issue of the Deemed PTU until expiry of the LD Extension Period:

25.31.2.1 the Monthly Service Payment shall be calculated in accordance with paragraph 2.1 of Schedule 14 (*Payment Mechanism*), on the basis that Permit to Use has been achieved in respect of the relevant Phase, save that the Capital Expenditure Costs for the relevant Phase to be taken into account in the relevant calculation shall be reduced by an amount equal to the KS Capex Cost for the relevant Key Structure; and

25.31.2.2 the Authority shall pay to Project Co, in addition to the Monthly Service Payment calculated in accordance with Clause 25.31.2.1, the Senior Debt LADs Amount in respect of each Contract Month during the LD Extension Period.

25.32 The Senior Debt LADs Amount in respect of any Contract Month shall be calculated as set out in the table below for each day during the relevant Contract Month which falls within the LD Extension Period.

Nant Ffrwd Viaduct	Financial reference K14 of tab "9. LADs".
Nant (South) Hir Viaduct	Financial reference K15 of tab "9. LADs".
Nant Melyn Viaduct	Financial reference K16 of tab "9. LADs".
Taf Fawr Viaduct	Financial reference K17 of tab "9. LADs".
Taf Fechan Viaduct	Financial reference K18 of tab "9. LADs".

- 25.33 If any Senior Debt LADs Amount is payable by the Authority in accordance with Clause 25.31.2.2, Project Co shall include such amount, clearly identified as such, in the next following Monthly Invoice in accordance with Clause 39.2.6 and the Authority shall pay such amount upon payment of that Monthly Invoice in accordance with Clause 39.2.7.
- 25.34 If the LD Rectification Works are not completed by the end of the LD Rectification Period, and/or the PTU Criteria are not satisfied in respect of the relevant Key Structure by the date of expiry of the LD Extension Period, then upon expiry of the LD Extension Period:
- 25.34.1 the Authority shall be under no further obligation to pay any Senior Debt LADs Amount in respect of any Contract Month following the Contract Month in which the LD Extension Period expires;
- 25.34.2 the Monthly Service Payment shall continue to be calculated in accordance with Clause 25.31.2.1 (by reference to the Capital Expenditure Cost of the relevant Phase reduced by the KS Capex Cost for the relevant Key Structure), but for each Contract Month from (and including) the Contract Month in which the LD Extension Period expires the Authority shall be entitled to apply, and shall be entitled to withhold from payment of any Monthly Service Payment an amount equal to, the LD Retention Amount; and
- 25.34.3 the LD Retention Amount for the purposes of Clause 25.34.2 shall be an amount equal to 2% of the Monthly Service Payment calculated in accordance with Clause 25.31.2.1, applied (in aggregate) for each Key Structure in respect of which the LD Rectification Works are not completed by the end of the LD Rectification Period in the relevant Contract Month, save that the maximum aggregate LD Retention Amount which may be applied by the Authority pursuant to Clause 25.34.2, in any Payment Year, in respect of all Key Structures which are the subject of Key Structure Latent Defects, shall be capped at five per cent (5%) of the total Annual Service Payment for the relevant Payment Year.
- 25.35 Once the Authority is satisfied, in accordance with Clause 16.4, that the PTU Criteria are satisfied in respect of the relevant Key Structure, such that Permit to Use can be issued in respect of the relevant Key Structure (and such that Permit to Use could be

issued in respect of the relevant Phase, without disregarding the relevant Key Structure), from the date of issue by the Authority of that Permit to Use:

25.35.1 the Monthly Service Payment shall be calculated in accordance with paragraph 2.1 of Schedule 14 (*Payment Mechanism*), by reference to the full Capital Expenditure Cost of the relevant Phase, including the KS Capex Cost; and

25.35.2 Project Co shall be entitled to include the LD Retention Amount attributable to the relevant Key Structure, clearly identified as such, in the Monthly Invoice for the next Monthly Service Payment following the issue of that Permit to Use in accordance with Clause 39.2.6 and the Authority shall pay such amount upon payment of that Monthly Invoice in accordance with Clause 39.2.7.

25.36 The provisions of Clauses 25.31 to 25.35 shall not apply (and any LD Extension Period shall be deemed to be reduced) to the extent any period of delay to the achievement of the PTU Criteria for the relevant Key Structure is as a result of any of the matters identified in clauses 25.28.1 to 25.28.5.

Construction Phase Required Insurance Costs

25.37 Upon completion of any LD Rectification Works, Project Co shall take reasonable steps to investigate opportunities for any reduction in cost of any Construction Phase Required Insurance as a result of the carrying out of the LD Rectification Works (including by a change to or replacement of existing insurance policies) and shall promptly notify the Authority of the results of its investigations. If there is such an opportunity for a reduction in the cost of any Construction Phase Required Insurance the Authority shall be entitled to require Project Co to take the steps necessary to procure that reduction in cost as an Authority Change.

26 MONITORING OF PERFORMANCE

Monitoring

26.1 Project Co shall, and shall procure that all Project Co Parties and any other persons for whom it is responsible shall in carrying out:

26.1.1 the Services, comply with the provisions of Schedule 12 (*Service Requirements*); and

26.1.2 the Restricted Services, comply with the provisions of Schedule 33 (*Restricted Services*).

26.2 Project Co shall be responsible for monitoring its performance of this Agreement during the Operational Term and Restricted Services Period, in the manner and at the frequencies set out in Schedule 12 (*Service Requirements*) and Schedule 33 (*Restricted Services*). Project Co shall provide the Authority's Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Agreement (unless otherwise notified in writing by the Authority). The Authority may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the monitoring procedures (including without limitation carrying out sample checks).

Grounds for Warning Notices

26.3 If at any time during the Operational Term (other than by reason of an event of Force Majeure, a Relief Event or an Emergency):

26.3.1 the total Deductions (excluding Construction Phase Deductions) for any Contract Month amount to more than three point five per cent (3.5%) of the Services Fee for the current Contract Year; or

26.3.2 the total Deductions (excluding Construction Phase Deductions) in each of any three (3) Contract Months in any six (6) consecutive Contract Months amount to more than two point five per cent (2.5%) of the Services Fee for the current Contract Year;

the Authority's Representative may serve a Warning Notice on Project Co, provided always that, to give Project Co time to take appropriate rectification measures, the Authority's Representative shall not be entitled:

- (a) to serve more than one (1) Warning Notice in any month;
- (b) to serve a Warning Notice in any two (2) consecutive months to the extent that the same event has contributed to the Authority's right to serve the Warning Notice, but provided that Project Co demonstrates to the Authority that it has taken all reasonable steps to remedy the cause of that event.

Warning Notices Disputes

26.4 If Project Co disputes that the Authority was or is entitled to serve a Warning Notice, Project Co may refer that dispute for determination under the Dispute Resolution Procedure. If, after the Authority's Representative issues a Warning Notice, the parties subsequently agree, or it is determined under the Dispute Resolution Procedure that the Warning Notice was served without justification, that Warning Notice shall be recalled or shall be cancelled and deemed not to have been served.

Authority's remedial rights

26.5 The provisions of Clauses 26.6 to 26.9A (*Authority's remedial rights*) (inclusive) shall apply if the Authority, acting reasonably, considers that it needs to take action in connection with the Services or Restricted Services:

26.5.1 because of an immediate and serious threat to the health or safety of any user of the Project Facilities or to the environment; or

26.5.2 to prevent or address material interruption in the provision of one or more of the Services or Restricted Services; or

26.5.3 because of a risk that the Statutory Authority and/or user's ability to use the Project Facilities is being prejudiced to a material degree; or

26.5.4 to discharge a statutory function or duty; or

26.5.5 in the event of an emergency.

26.6 If any of the circumstances set out in Clause 26.5 (*Authority's remedial rights*) arise (without prejudice to its rights under Clause 44 (*Project Co Event of Default*) or any other express rights under this Agreement) and the Authority wishes to take action (either by itself or by engaging others), the Authority shall notify Project Co in writing of the following:

26.6.1 the action it wishes to take;

26.6.2 the reason for such action;

- 26.6.3 the date it wishes to commence such action;
 - 26.6.4 the time period which it believes will be necessary for such action; and
 - 26.6.5 to the extent practicable, the effect on Project Co and its obligation to provide the Services or Restricted Services during the period such action is being taken.
- 26.7 Following service of such notice, the Authority shall take such action as has been notified under Clause 26.6 (*Authority's remedial rights*) and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and Project Co shall give all reasonable assistance to the Authority while it is taking the Required Action. To the extent that the Authority performs any of the obligations of Project Co hereunder or undertakes tasks that would otherwise be undertaken by Project Co pursuant to this Agreement, the Authority shall perform such obligations or undertake such tasks to the same standard as would be required of Project Co under the terms of this Agreement.
- 26.8 If the Required Action is taken during the Operational Term other than as a result of a breach by Project Co of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any part of the Services:
- 26.8.1 Project Co shall be relieved from its obligations to provide such part of the Services; and
 - 26.8.2 in respect of this period in which the Authority is taking the Required Action and provided that Project Co provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that additional costs are incurred), the Monthly Service Payments due from the Authority to Project Co shall equal the amounts that Project Co would receive if it were satisfying all of its obligations and providing the Services affected by the Required Action in full over that period and the Authority shall indemnify Project Co against all Direct Losses sustained by Project Co as a result of the Authority taking the Required Action.
- 26.8A If the Required Action is taken during the Construction Phase other than as a result of a breach by Project Co of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any of the Restricted Services:
- 26.8A.1 Project Co shall be relieved from its obligations to provide such part of the Restricted Services; and
 - 26.8A.2 in respect of the period in which the Authority is taking the Required Action and provided that Project Co provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that additional costs are incurred) Restricted Services Deductions shall not accrue in respect of the Restricted Services affected by the Required Action and the Authority shall indemnify Project Co against all Direct Losses sustained by Project Co as a result of the Authority taking the Required Action.
- 26.9 If the Required Action is taken during the Operational Term as a result of a breach by Project Co of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any part of the Services:
- 26.9.1 Project Co shall be relieved of its obligations to provide such part of the Services; and

- 26.9.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Service Payments due from the Authority to Project Co shall equal the amounts Project Co would receive if it were satisfying all of its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all of the costs incurred by the Authority in taking the Required Action (including, without limitation, an appropriate sum in respect of general staff costs and overheads).
- 26.9A If the Required Action is taken during the Construction Phase as a result of a breach by Project Co of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Project Co from providing any of the Restricted Services:
- 26.9A.1 Project Co shall be relieved of its obligations to provide such part of the Restricted Services; and
- 26.9A.2 in respect of the period in which the Authority is taking the Required Action, Restricted Services Deductions shall not accrue in respect of the Restricted Services affected by the Required Action, however, an amount equal to all costs incurred by the Authority in taking the Required Action (including, without limitation, an appropriate sum in respect of general staff costs and overheads) shall be applied as a negative figure in the Monthly Invoice issued following the final Permit to Use pursuant to Clause 39.2.6(c) and the terms of Clause 39.2.7 shall apply in respect of such Monthly Invoice.

Emergencies

- 26.10 If an Emergency arises during the Operational Term which cannot be dealt with by performance of the Services, the Authority may instruct Project Co to procure that such additional or alternative services are undertaken by Project Co as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the Project Facilities resumes as soon as is reasonably practicable.
- 26.11 The cost of any additional or alternative services provided by Project Co under Clause 26.10 (*Emergencies*) shall be borne by the Authority and paid in accordance with Clause 39 (*Payment*). The Authority will not be entitled to levy Deductions in respect of any failure to provide the Services to the extent that such failure arises by reason of Project Co's compliance with Clause 26.10 (*Emergencies*).

27 EMPLOYMENT MATTERS

Compliance with Legislation and Authority Policies

- 27.1 Project Co shall comply and shall procure that each Service Provider and all persons employed or engaged by a Service Provider in connection with the provision of any Service shall comply at all times with the Law on health and safety at work and on anti-discrimination and equal opportunities.
- 27.2 Project Co shall procure that each Service Provider takes all reasonable steps to procure that all persons including any employed or engaged by a Service Provider in connection with the provision of any Service shall, so far as applicable, comply with the Authority Policies as regards health and safety at work (including the Authority Policy regarding smoking) and with those relating to anti-discrimination and equal opportunities (including those relating to harassment). Project Co also shall take and shall procure that every Service Provider shall take all such steps as the Authority may reasonably require, which shall include co-operation with action proposed or taken by the Authority, to ensure that the Authority complies with its duty under Section 3(1) Health and Safety at Work Act 1974 regarding the conduct of the undertaking of the Authority.

Project Co Indemnities

27.3 Project Co shall indemnify and keep indemnified in full the Authority and, at the Authority's request, each and every service provider who has or shall provide any service equivalent to any of the Services against:

27.3.1 claims in respect of all emoluments and all other contractual or statutory payments unpaid by Project Co or a Service Provider to any person entitled to such payments from Project Co or a Service Provider who is or has been employed or engaged by Project Co or any Service Provider in connection with the provision of any of the Services which relate to any period of employment or engagement with Project Co or any Service Provider on or after the Relevant Service Transfer Date but on or prior to the date of expiry or termination of this Agreement, and all income tax (or any tax replacing it) and pension and national insurance contributions payable thereon; and

27.3.2 insofar as Clause 27.3.1 does not apply, all Direct Losses incurred by the Authority as a result of any claim against the Authority in respect of any liability to any person who is or has been employed or engaged (whether as a consequence of the Transfer Regulations or of the provisions of this Clause 27 (*Employment Matters*)) by Project Co or any Service Provider in connection with the provision of any of the Services, where such claim arises as a result of any act or omission of Project Co or the Service Provider occurring after the Relevant Service Transfer Date and before the expiry or termination of this Agreement,

provided the indemnities in Clauses 27.3.1 and 27.3.2 shall not apply to the extent that the claim arises from a wrongful act or omission of the Authority or is in respect of sums for which the Authority is liable pursuant to Clause 27.10 (*No Employee Transfer*).

27.4 Clause 53.3 (*Conduct of Claims*) of this Agreement shall apply where any claim is made in respect of the indemnities given by Project Co under Clause 27.3 (*Project Co Indemnities*).

Position on expiry or earlier termination of this Agreement

27.5 On the expiry or earlier termination of this Agreement, the Authority and Project Co agree that it is their intention that the Transfer Regulations shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this Clause is without prejudice to such determination.

27.6 Project Co shall not and shall procure that no Service Provider shall make any material change to the terms and conditions of employment of any person employed in the provision of any Service, transfer any person employed in the provision of any Service to another part of its business, or materially increase or decrease the number of such persons:

27.6.1 within the period of twelve (12) months immediately preceding the expiry of this Agreement, or

27.6.2 within the period of twelve (12) months before the termination of this Agreement or, if shorter, during the period of notice of termination

without the Authority's consent (which shall not be unreasonably withheld), except if such change is required by Law.

27.7 If the Transfer Regulations do not apply on the expiry or earlier termination of this Agreement, the Authority shall ensure that each new provider of a service equivalent

to a Service on or after the expiry or earlier termination of this Agreement (including the Authority) shall offer employment to the persons employed by Project Co or a Service Provider in the provision of the Service immediately before the expiry or earlier termination of this Agreement and shall indemnify Project Co or a Service Provider for Direct Losses any of them may suffer or incur as a result of its failure to do so, and for any costs, claims or liabilities for redundancy payments (whether statutory or contractual).

27.8 If an offer of employment is made in accordance with Clause 27.7 (*Position on expiry or earlier termination of this Agreement*) the employment shall be on the same terms and conditions as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or other new service provider may at its 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 27.6 (*Position on expiry or earlier termination of this Agreement*).

27.9 Project Co shall:

27.9.1 comply with the Ethical Employment Code and any similar applicable schemes or codes of practice which apply to Project Co;

27.9.2 encourage all Sub-Contractors to sign up to the Ethical Employment Code and any similar applicable schemes or codes of practice promoted by the Welsh Government; and

27.9.3 ensure that the Contractor and the Service Provider and all Sub-Contractors who have signed up to the Ethical Employment Code comply with that code of practice and any similar applicable schemes or codes of practice which apply to that sub-contractor.

No Employee Transfer

27.10 The Authority and Project Co agree that there are no individuals presently employed by the Authority or any other sub-contractor or agent of the Authority whose contracts of employment will, by virtue of the transfer to Project Co of responsibility for provision of (or procuring the provision by Service Providers of) any of the Services in accordance with this Agreement and in accordance with the Transfer Regulations, have effect after the date or dates of such transfer as agreed by the parties (each a **"Relevant Service Transfer Date"**) (or at any other time) as if originally made between those persons and the relevant Service Provider.

27.11 If it is subsequently agreed or determined that there are persons presently employed by the Authority or any other sub-contractor or agent of the Authority whose contracts of employment do have effect after the Relevant Service Transfer Date as if originally made between those persons and the relevant Service Provider ("**Transferring Staff**") then:

27.11.1 the Authority shall within ten (10) Business Days of the date on which it was so agreed or determined have the opportunity to offer or procure the offer of a position as an employee of the Authority to some or all of the Transferring Staff;

27.11.2 Project Co shall procure that no person to whom the Authority has offered a position in accordance with Clause 27.11.1 shall be dismissed by reason of redundancy until the period for acceptance of such offer has expired and the person in question has not accepted such offer; and

27.11.3 subject to Clauses 27.11.1 and 27.11.2, Project Co or any Service Provider shall be entitled to dismiss any or all of the Transferring Staff by reason of

redundancy provided that Project Co shall use and shall procure that any Service Provider shall carry out in the required manner any obligation to consult with the Transferring Staff or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of the Transferring Staff or their dismissal.

The Authority shall indemnify Project Co against any costs referred to in Clause 27.11.3 reasonably incurred by Project Co (or by a relevant Service Provider and for which Project Co is responsible) and shall reimburse any costs reasonably and properly incurred by Project Co or the Service Provider in employing any Transferring Staff prior to the expiry of the period referred to in Clause 27.11.2.

28 SITE SECURITY AND PERSONNEL ISSUES

Access

- 28.1 The Authority shall have the right to refuse admittance to, or order the removal from, the Site of any person employed by (or acting on behalf of) Project Co, any Project Co Party or any sub-contractor who, in the reasonable opinion of the Authority, is not a fit and proper person to be on the Site .
- 28.2 Action taken under Clause 28.1 (*Access*) shall forthwith be confirmed in writing by the Authority to Project Co and, to avoid doubt, shall not relieve Project Co of any of its obligations under this Agreement.
- 28.3 If and when so directed in writing by the Authority, Project Co shall within twenty (20) Business Days provide a list of the names and addresses of all persons it expects may require admission in connection with this Agreement, to any premises occupied by the Authority, specifying the capacities in which those persons are concerned with this Agreement and giving such other particulars as the Authority may reasonably require.
- 28.4 The decision of the Authority as to whether any person is to be refused admission shall be final and conclusive.

Safety and security of the Site during Construction

- 28.5 Project Co shall procure at all times prior to the final Phase Actual Completion Date that the Site is maintained in an orderly, safe and secure state and without prejudice to such generality in accordance with the Authority's Construction Requirements. Project Co shall have full regard for the safety of all persons entitled to be upon the Site, and shall, in connection with the Works, provide and maintain at Project Co's own cost, all lights, guards, fencing, warning signs and watching when and where necessary or required by this Agreement or by any Relevant Authority for the protection of the Works or for the safety and convenience of the public or others. Project Co shall take all reasonably practicable steps to prevent unauthorised access to the Site. Project Co shall at all times cooperate with the Authority, the police and other emergency services in planning for, training for and managing any event or situation which may threaten the safety and security of the Project Road or the Site. Project Co will not be deemed to be in breach of this Clause 28.5 (*Safety and security of the new Works site*) to the extent caused by any act or omission of the Authority.

Safety and security of the site during the provision of the Services

- 28.6 Project Co shall procure at all times during the Operational Term that the Site is maintained in an orderly safe and secure state and without prejudice to such generality in accordance with the Service Level Specification. Project Co shall have full regard for the safety of all persons entitled to be upon the Site, and shall, in connection with the Services, provide and maintain at Project Co's own cost all lights,

guards, fencing, warning signs and watching when and where necessary or required by this Agreement or by any Relevant Authority for the protection of the Services or for the safety and convenience of the public or others. Project Co shall take all reasonably practicable steps to prevent unauthorised access to the Site. Project Co shall at all times co-operate with the Authority, the police, and other emergency services in planning for, training for and managing any event or situation which may threaten the safety and security of the Project Road or the Site.

Authority Policies

- 28.7 Project Co shall, and shall procure that all Project Co Parties shall, comply at all times with the Authority Policies.
- 28.8 The Authority shall notify Project Co of any proposed change to the Authority Policies as soon as practicable (and, in any event, prior to such change taking effect) and consult with Project Co. Subject to Clause 28.9 (*Authority Policies*), such change shall take effect as a Change in accordance with Schedule 16 (*Change Protocol*).
- 28.9 The Authority may, at its sole option, notify Project Co that Project Co shall not be obliged to comply with any change to any Authority Policy and that Project Co should continue to comply with the relevant Authority Policy prior to any change in which case such change shall not take effect as a Change in accordance with Schedule 16 (*Change Protocol*).

Convictions and Disciplinary Action

- 28.10 Project Co (to the extent permitted by Law) shall procure that all potential staff or persons performing any of the Project Operations who may reasonably be expected in the course of their employment or engagement to have access to children, the elderly and/or vulnerable adults:
 - 28.10.1 are questioned concerning their Convictions; and
 - 28.10.2 Project Co, the Contractor and/or the Service Provider obtains a check of the most extensive available kind made with the Disclosure and Barring Service of such persons.
- 28.11 Project Co shall procure that no person who discloses any Convictions, or who appears on a Barred List following the results of a Disclosure and Barring Service check, in either case of which Project Co, the Contractor or a Service Provider is aware or ought to be aware is employed or engaged in the provision of the Project Operations without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 28.12 Subject always to having the prior written consent of the relevant individual, Project Co shall procure that the Authority is kept advised at all times of any person employed or engaged by Project Co, the Contractor or any Service Provider in the provision of any of the Project Operations who may reasonably be expected in the course of their employment or engagement to have access to children, the elderly and/or vulnerable adults and who, subsequent to his/her commencement of such employment or engagement, receives a Conviction of which Project Co, the Contractor or a Service Provider becomes aware or whose previous Convictions become known to Project Co, the Contractor or a Service Provider. The Authority shall have the right to refuse admittance to, or require the removal of such person(s). Project Co shall procure the removal of those person(s) from the Project Facilities either:
 - 28.12.1 at the Authority's request (where the relevant information has been provided to the Authority); and

28.12.2 in all cases where the relevant information has not been provided to the Authority.

28.12A In the event that Project Co is notified at any time that any person employed or engaged by Project Co or a Project Co Party in carrying out the Project Operations and who may reasonably be expected in the course of their employment or engagement to have access to children, the elderly and/or vulnerable adults is included on a Barred List, is a barred person, is subject to verification procedures by the Disclosure and Barring Service or, is making representations to the Disclosure and Barring Service (pursuant to the Safeguarding Vulnerable Groups Act 2006), then save where the Authority's consent is obtained pursuant to Clause 28.9, it shall immediately remove or procure the removal of that person or persons from the Project Facilities and shall not permit their return to the Project Facilities in the course of their employment or engagement for, without prejudice to the proceeding provisions of this Clause, so long as such person is no longer on a Barred List, not a barred person and where relevant, verification procedures or representations have concluded with the Disclosure and Barring Service.

28.13 The Authority's Representative (acting reasonably) may instruct Project Co to procure that appropriate disciplinary action is taken against any employee of Project Co or any Sub-Contractor (in accordance with the terms and conditions of employment of the employee concerned) who misconducts himself or is incompetent or negligent in his duties or whose presence or conduct on the Site or at work is otherwise considered by the Authority's Representative (acting reasonably) to be undesirable. The Authority shall co-operate with any such disciplinary proceedings and shall be advised in writing by Project Co of the outcome.

28.14 Project Co shall procure that there are set up and maintained, by it and by all Service Providers, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). Project Co shall procure that the terms and the implementation of such policies and procedures comply with Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Authority.

Management

28.15 Project Co shall consult with the Authority in relation to the selection procedure for Project Co's site manager and/or general manager and such person shall not be appointed (or replaced) without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

28.16 Project Co shall provide, and shall procure that all Service Providers provide, to the Authority upon request details of their respective management organisations.

Lists and Records

28.17 Project Co shall procure that the Authority's Representative shall at all reasonable times have access to all material details in respect of all employees of Project Co or any Service Provider engaged in the provision of the Services including numbers and categories of staff employed to perform the Services and including in respect of each such employee:

28.17.1 details of qualifications; and

28.17.2 details of training undertaken by the employee.

Resources and training

28.18 Project Co shall procure that:

28.18.1 there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. To avoid doubt, this obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Services; and

28.18.2 all staff receive such training and supervision as is necessary to ensure the proper performance of this Agreement and compliance with all health and safety rules, procedures and requirements.

Measures to deal with Protesters and Trespassers

28.19 The management of any Protester Action, including the consequences of any Protester Action on the Project Operations, shall be the responsibility of Project Co.

28.20 If the Sites or any part thereof are occupied by Protesters or Trespassers, or any Protester or Trespasser notifies Project Co of their intention to enter the Site, at any time during the Project Term, then Project Co shall promptly:

28.20.1 notify the Authority as soon as reasonably practicable;

28.20.2 at Project Co's cost and expense, take any measures and use any legal remedies available to Project Co to remove such Protesters or Trespassers; and

28.20.3 at Project Co's cost and expense, take any measures to prevent entry onto the Site or any material interference of any kind with the Project by such Protesters or Trespassers.

Assistance from other Relevant Authorities

28.21 If it appears to Project Co that the powers under any applicable Law which are necessary to enable Project Co to take the measures referred to in Clause 28.20 (*Measures to deal with Protesters and Trespassers*) are not vested in or available to either Project Co or the Authority, but are vested in some other Relevant Authority then Project Co may from time to time give notice to that effect to the Authority, specifying the relevant applicable Law and request the Authority to use reasonable endeavours to procure such assistance and co-operation of the Relevant Authority as is necessary for the effective pursuit by Project Co of such measures as are specified in Clause 28.20 (*Measures to deal with Protesters and Trespassers*).

28.22 The Authority may within five (5) Business Days of receiving notice of a request under Clause 28.21 (*Assistance from other Relevant Authorities*) request from Project Co such further information as the Authority may reasonably require, and Project Co shall promptly provide such information.

28.23 Forthwith upon receipt of a notice given in accordance with Clause 28.21 (*Assistance from other Relevant Authorities*) the Authority and Project Co shall consult with each other with regard to the measures which Project Co proposes.

Proceedings in the name of the Authority

28.24 Where Project Co can demonstrate to the Authority's reasonable satisfaction that there are powers under any applicable Law which are necessary to enable Project Co to take the measures referred to in Clause 28.20 (*Measures to deal with Protesters and Trespassers*) which are not vested in, or available to Project Co but are vested in the Authority, Project Co may from time to time give notice to that effect to the Authority, specifying the relevant legal rights and requesting authority for Project Co

to commence and conduct legal proceedings (including discontinuing or compromising the same) in the name or on behalf of the Authority.

- 28.25 The Authority may within five (5) Business Days of receiving notice of a request under Clause 28.24 (*Proceedings in the name of the Authority*) request from Project Co such further information as the Authority may reasonably require and Project Co shall promptly provide such information.
- 28.26 The Authority shall consider any request made by Project Co in accordance with Clause 28.24 (*Proceedings in the name of the Authority*) and shall, in its absolute discretion, decide whether to grant such request and shall notify Project Co of its decision within ten (10) Business Days of any request in accordance with Clause 28.24 (*Proceedings in the name of the Authority*), or if further information is requested pursuant to Clause 28.25 (*Proceedings in the name of the Authority*) within ten (10) Business Days of receipt of such information.
- 28.27 Where authority is granted by the Authority in accordance with Clause 28.26 (*Proceedings in the name of the Authority*), Project Co may in the name of and for and on behalf of the Authority take the measures which have been authorised, subject always to Clause 28.30 (*Proceedings in the name of the Authority*) and to the following provisions:
- 28.27.1 Project Co shall in doing anything in the name of or on behalf of the Authority, act in accordance with the terms of the relevant authority and in accordance with all applicable Law and all in a manner so as not to cause the Authority to be in breach of any such requirement or any duty upon it;
- 28.27.2 Project Co shall indemnify and keep indemnified the Authority in respect of any claims or losses suffered which may arise out of or in the course of or in connection with the taking of any measures authorised by the Authority pursuant to this Clause 28 (*Site Security and Personnel Issues*), including without limitation the taking of any legal proceedings, enforcement of any court order or enforcement of any applicable Law without a court order or the doing of anything whatsoever taken, enforced or done or purported to be taken, enforced or done in the name of or on behalf of the Authority;
- 28.27.3 Project Co shall keep the Authority fully informed of the progress of all measures being planned or taken by Project Co pursuant to this Clause 28 (*Site Security and Personnel Issues*), and shall promptly provide the Authority with all information (including copies of any documents or evidence of any kind) reasonably requested by it concerning such measures and proposed measures;
- 28.27.4 Project Co shall give at least three (3) Business Days' notice to the Authority (or, in the case of urgency, such shorter period as is reasonably practicable) of any action which has been planned in advance to remove Protestors or Trespassers from the Site or otherwise to deal with Protestor and Trespasser action; and
- 28.27.5 Project Co shall liaise fully with the police in taking action against Protestors and Trespassers and, whenever there is reasonable cause to anticipate disorder or violence, Project Co shall inform the police, giving (so far as practicable) sufficient notice to enable the police to attend the anticipated incident in such numbers as they deem appropriate.
- 28.28 Project Co shall use reasonable endeavours to ensure that there are regular meetings, exchange of information, co-ordination and co-operation between Project Co, the Authority, the police, other Relevant Authorities and others as appropriate in connection with the activities of and measures being taken to deal with Protestors and Trespassers, and for Project Co to take into account any comments made by

either or both of the Authority and other Relevant Authorities concerning Protestors and Trespassers.

28.29 The Authority shall be entitled at any time in its absolute discretion to revoke (in whole or in part including, without limitation, as to any specific proceedings) any authority granted pursuant to Clause 28.26 (*Proceedings in the name of the Authority*) by giving notice to that effect to Project Co and thereupon in respect of the relevant measures:

28.29.1 the authority of Project Co to continue taking the measures in the name of or on behalf of the Authority shall cease;

28.29.2 the Authority shall take over the conduct of any relevant legal proceedings or other matter being conducted in its name or on its behalf and shall be entitled to conduct, compromise or discontinue the same as it sees fit in its absolute discretion;

28.29.3 Project Co shall promptly take all steps necessary to transfer the conduct of such matter to the Authority and shall give to the Authority all documents in Project Co's possession relating to any such legal proceedings or the enforcement of any Law or court order and shall provide such further assistance as the Authority may reasonably require to effect an orderly transfer of the conduct of such matters to the Authority; and

28.29.4 Project Co shall be released from its indemnity under Clause 28.27.2 save to the extent of any accrued or contingent liability thereunder which has arisen before the date of the revocation of authority pursuant to this Clause 28.29 (*Proceedings in the name of the Authority*) and to the extent of any liability which arises as a result of:

- (a) a breach by Project Co of its obligations under this Clause 28 (*Site Security and Personnel Issues*) before or after the date of revocation of authority; or
- (b) the manner in which Project Co has exercised the authority granted (whether or not in breach of such obligations) where such liability ought reasonably to have been avoided by Project Co.

28.30 A decision by the Authority to revoke any authority pursuant to Clause 28.29 (*Proceedings in the name of the Authority*) shall not be subject to review or determination under the Dispute Resolution Procedure.

28.31 The grant of any authority by the Authority to Project Co in accordance with Clause 28.26 (*Proceedings in the name of the Authority*) shall not preclude the Authority from taking any action whether by way of proceedings or otherwise in connection with Protestors or Trespassers or any other matter.

28.32 Where the conditions set out in Clause 28.24 (*Proceedings in the name of the Authority*) are satisfied and the Authority is legally able to authorise Project Co to commence and conduct legal proceedings in the name of and on behalf of the Authority but either (i) elects not to provide such authority pursuant to Clause 28.26 (*Proceedings in the name of the Authority*); or (ii) having provided such authority, revokes it in accordance with Clause 28.29 then, provided always that the Protester Action has not arisen (directly or indirectly) as a result of any wilful default or wilful act of Project Co or any of the Sub-Contractors, the Protester Action shall be deemed to be a Relief Event.

28.33 Where it is in the interests of the Project to deal expeditiously with any Protesters and/or Trespassers, the Authority will use all reasonable endeavours to expedite its

decision making process under Clause 28.26 (*Proceedings in the name of the Authority*).

Project Co to take measures to prevent trespass

28.34 Project Co shall take such measures as are reasonably required to prevent the trespass onto the Site of any person or livestock not entitled to be there.

Responsibility for Protesters and Trespassers

28.35 The Authority shall not be not responsible for:

28.35.1 the presence on or around, or entry onto or around, the Site of any Protester or Trespasser;

28.35.2 any other interference with or affecting the Site or the vicinity of it caused by any Protester or Trespasser; or

28.35.3 any other interference with the Project Operations by or caused by any Protester or Trespasser; or

28.35.4 any act, omission or default of a Protester or Trespasser.

Project Co to Bear Loss

28.36 As between the Authority and Project Co, Project Co shall bear, without recourse to the Authority, any loss suffered by either party and/or any other person which is caused by any Protester or Trespasser, including any damage to property, personal injury, death or loss of income (including any reduction in Monthly Service Payments).

28.37 For the avoidance of doubt, nothing in Clause 28.36 (*Project Co to Bear Loss*) shall affect:

28.37.1 any right of the Authority to make or recover any claim against any Protester or Trespasser for any damage suffered by the Authority or an Authority Party; or

28.37.2 any right of Project Co to make or recover any claim against any Protester or Trespasser for any damage suffered by Project Co or any Project Co Party.

29 STOCKS CONSUMABLES, MATERIALS AND EQUIPMENT

Standards

29.1 All goods, equipment, consumables and materials which are to be used in the provision of the Project Operations shall be of satisfactory quality.

29.2 Project Co shall ensure that the goods, equipment, consumables and materials used by it or any Sub-Contractor in connection with the provision of any of the Services (each as a distinct and separate obligation) are:

29.2.1 maintained in a safe, serviceable and clean condition in accordance with Good Industry Practice;

29.2.2 of the type specified in the Service Level Specification and/or the Method Statements (where appropriate); and

29.2.3 in compliance with any relevant rules, regulations, codes of practice and/or British or European Standards,

and shall, as soon as practicable after receiving a request from the Authority's Representative, supply to the Authority's Representative evidence to demonstrate its compliance with this Clause 29.2 (*Standards*).

29.3 Project Co shall procure that sufficient stocks of goods, consumables, equipment and materials are held in order to comply with its obligations under this Agreement.

Hazardous substances and materials

29.4 Project Co shall not install, keep or use in or on the Project Facilities any materials, equipment or apparatus the installation, keeping or use of which is likely to cause (or in fact causes):

29.4.1 material damage to the Project Facilities;

29.4.2 dust, noise or vibration constituting a nuisance to the owners and/or occupiers of any property adjoining or near to the Project Facilities save where in compliance with any express obligation to carry out the Works and/or Services subject to the terms of this Agreement; or

29.4.3 the generation, accumulation or migration of any hazardous substance in an unlawful manner whether within or outside the Project Facilities,

and shall use all reasonable endeavours to ensure (by directions to staff and otherwise) that all materials, equipment or apparatus in or on the Project Facilities are operated so as to minimise noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any hazardous substance.

29.5 Project Co shall not bring in or on to (or keep or maintain in or on) the Project Facilities any hazardous materials or equipment without the prior written consent of the Authority and unless Project Co has complied with all relevant Law.

29.6 Without prejudice to the generality of its obligations, Project Co shall:

29.6.1 procure that all hazardous materials and equipment used, by it or by a Sub-Contractor or used on behalf of any of them, or stored, by it or by a Sub-Contractor or stored on behalf of any of them, on the Site are kept in accordance with all relevant Law and Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and

29.6.2 use all practicable and reasonable means to:

- (a) prevent or counteract, to the satisfaction of the Authority's Representative, the unlawful emission of any such hazardous substance;
- (b) avoid the unlawful discharge into any conducting media serving the Project Facilities of any hazardous substance;
- (c) prevent the unlawful generation, accumulation or migration of any hazardous substance at or from the Project Facilities; and
- (d) prevent any environmental claims arising or any circumstances arising likely to result in any environmental claims,

in so far as any such hazardous substance is, or should be, under the control of Project Co pursuant to this Agreement.

29.7 The Authority shall:

29.7.1 procure that all hazardous materials and equipment used, by it, or stored, by it on the Site are kept in accordance with all relevant Law and Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and

29.7.2 use all practicable and reasonable means to:

- (a) prevent or counteract the unlawful emission of any such hazardous substance;
- (b) avoid the unlawful discharge into any conducting media serving the Project Facilities of any hazardous substance;
- (c) prevent the unlawful generation, accumulation or migration of any hazardous substance at or from the Project Facilities; and
- (d) prevent any environmental claims arising or any circumstances arising likely to result in any environmental claims,

in so far as any such hazardous substance is, or should be, under the control of the Authority.

29.8 Project Co shall:

29.8.1 maintain or procure that its Sub-Contractors maintain a COSHH register for the Project Facilities, which shall be up-to-date at all times;

29.8.2 ensure that a copy of the COSHH register is kept at the Project Facilities; and

29.8.3 ensure that a further copy of the COSHH register is given to the Authority as often as it is changed.

Community Benefits

29.9 Project Co shall comply with the Authority's Community Benefits Requirements in accordance with Project Co's Community Benefits Method Statements.

29.10 If, in relation to the Works and prior to issue of the final Permit to Use, Project Co does not:

29.10.1 achieve one or more Construction Phase KPI Targets in relation to the relevant CB Target Area then Project Co shall pay to the Authority the corresponding Construction Phase Community Benefits Payment(s);

29.10.2 provide the Authority with quarterly monitoring information in the form required using the Dashboard Template ("**Quarterly Works Monitoring Report**") at the end of each quarter commencing on the Commencement Date and ending on the Actual Completion Date (the "**Quarterly Works Monitoring Date**") then Project Co shall pay to the Authority the sum of [REDACTED] (£[REDACTED]) per report (Indexed); and/or

29.10.3 provide the Authority with an annual report in the form set out in Part 4 of Section 1 of Schedule 29 ("**Annual Works Monitoring Report**") on each anniversary of the Commencement Date ("**Annual Works Monitoring**

Date") then on the occurrence of any such failure Project Co shall pay to the Authority the sum of [REDACTED] (£[REDACTED]) per report (indexed),

provided that:

- (a) in the case of 29.10.2 and 29.10.3 the Authority has first served notice on Project Co notifying it of its non-compliance and Project Co has failed to rectify such non-compliance within twenty (20) Business Days of notice from the Authority;
- (b) Project Co has failed to meet the applicable Construction Phase KPI Target and has failed to rectify such non-compliance on or before Actual Completion Date.

29.10A The parties shall endeavour to agree the contents of each Quarterly Works Monitoring Report within ten (10) Business Days of each Quarterly Works Monitoring Dates in accordance with Clause 29.10, failing which either party may refer the matter to the Dispute Resolution Procedures.

29.10B The parties shall endeavour to agree the contents of each Annual Works Monitoring Report within ten (10) Business Days of each Annual Works Monitoring Date in accordance with Clause 29.10, failing which either party may refer the matter to the Dispute Resolution Procedures.

29.11 The Authority's sole and exclusive remedy in respect of a breach of Clauses 29.10.1 29.10.3 above shall be the payments provided for in Clauses 29.10.1 to 29.10.3 respectively.

29.12 If, in relation to the Services and during the Operational Term, Project Co does not:

29.12.1 achieve one or more Operational Term KPI Targets in relation to the relevant CB Target Area then Project Co shall pay to the Authority the corresponding Operational Term Community Benefits Payment(s); and/or

29.12.2 provide the Authority with an annual report in the form set out in Part 4 of Section 1 of Schedule 29 ("**Annual Operations Monitoring Report**") at the end of the Contract Year falling after the commencement of the Operational Term and each anniversary of such date thereafter ("**Annual Operations Monitoring Date**") then on the occurrence of any such failure Project Co shall pay to the Authority the sum of [REDACTED] (£[REDACTED]) per report (indexed),

provided that:

- (a) in the case of 29.12.2 the Authority has first served notice on Project Co notifying it of its non-compliance and Project Co has failed to rectify such non-compliance within twenty (20) Business Days of notice from the Authority;
- (b) Project Co has failed to meet the applicable Operational Term KPI Target and has failed to rectify such non-compliance on or before each biennial anniversary of the first Payment Commencement Date.

29.12A The parties shall endeavour to agree the contents of each Annual Operations Monitoring Report within ten (10) Business Days of each Annual Operations Monitoring Date in accordance with Clause 29.12 failing which either party may refer the matter to the Dispute Resolution Procedure.

- 29.13 The Authority's sole and exclusive remedy in respect of a breach of Clauses 29.12.1 to 29.12.2 above shall be the payments provided for in Clauses 29.12.1 to 29.12.2 respectively.
- 29.14 All payments due by Project Co to the Authority under this Clause shall become due and payable as a debt as follows:
- 29.14.1 in respect of the Contract Month following the final Quarterly Works Monitoring Date, such sums as are specified as being due to the Authority under each Quarterly Works Monitoring Report submitted by Project Co to the Authority pursuant to Clause 29.10.2 (or such sums as are otherwise agreed, or determined in accordance with the Dispute Resolution Procedure, as being due and payable by Project Co shall be deducted from the Monthly Service Payment in accordance with paragraph 2.1 of Schedule 14 (*Payment Mechanism*); or
- 29.14.2 in respect of each Contract Month following each biennial anniversary of the first Payment Commencement Date, such aggregate sums as are specified as being due to the Authority under each Annual Operations Monitoring Report submitted by Project Co to the Authority pursuant to Clause 29.12.2 (or such sums as are otherwise agreed, or determined in accordance with the Dispute Resolution Procedure, as being due and payable by Project Co) shall be deducted from the Monthly Service Payment in accordance with paragraph 2.1 of Schedule 14 (*Payment Mechanism*).

Sustainable Development

- 29.15 Project Co acknowledges that the Authority is subject to the Well-being of Future Generations Act and shall assist and cooperate with the Authority to facilitate the Authority's compliance with its obligation to carry out sustainable development.
- 29.16 Project Co further acknowledges that the information contained in or supplied in connection with Clauses 29.9 to 29.14 (*Community Benefits*) and Schedule 29 (*Community Benefits*) may be published in whole or in part and/or supplied by the Authority to a Relevant Authority, as the Authority in its sole discretion considers necessary for compliance with its obligations to supply, produce and/or publish information under the Well-being of Future Generations Act.
- 29.17 Where the Authority requests information from Project Co in connection with Project Co's obligations under this Agreement (including without limitation Clauses 29.9 to 29.14 (*Community Benefits*) and Schedule 29 (*Community Benefits*)) in relation to any duty or obligation on the Authority under the Well-being of Future Generations Act, Project Co shall supply such information as soon as possible and in any event within ten (10) Business Days of receiving such request.

Part 7: STATUTORY FUNCTIONS AND ROADS ORDERS

30 NO DELEGATION OF FUNCTIONS

No delegation

- 30.1 The provisions of this Clause 30 are subject to Clause 33B (*Implementation of Contracting Out Order*). Prior to any Authorisation Notice being issued by the Authority pursuant to Clause 33B.1, this Clause 30 shall apply in respect of all Authorised Functions. Following any Authorisation Notice being issued by the Authority pursuant to Clause 33B.1, this Clause 30 shall apply, or cease to have effect (as the case may be), in relation to any Authorised Highways Function to the extent so provided in Clause 33B.
- 30.2 Project Co acknowledges the duties, obligations, functions, powers and responsibilities of the Authority:
- 30.2.1 in its capacity as Highway Authority, Traffic Authority, Street Authority (where applicable), Bridge Authority, Responsible Authority and Transport Authority, including pursuant to the Side Roads Order (where applicable), in relation to the respective Project Facilities, in respect of the Authorised Highways Functions; and
- 30.2.2 in respect of the Authorised Roads Order Functions.
- 30.3 As permitted by Section 6(8) of the Highways Act, Project Co is appointed and authorised, pursuant to this Agreement, to carry out the Project Operations, as the Authority's sub-contractor, for the purposes of and in connection with the exercise and/or discharge (as the case may be) by the Authority of the Authorised Functions. Subject to Clause 33B (*Implementation of Contracting Out Order*) and Clause 33C (*Delegated Functions*), nothing in this Agreement shall be construed to be a delegation by the Authority to Project Co of any of the Authority's functions, nor an authorisation by the Authority to Project Co to exercise or delegate any of the Authority's functions as agent or principal, in any case whether pursuant to the 1994 Act or otherwise.
- 30.4 To the extent the Project Operations relate to or require the exercise of any Authorised Function which is a duty, function or power of the Authority, which requires any element of discretion or decision-making by the Authority (including a decision whether to exercise a particular power which the Authority is entitled to exercise):
- 30.4.1 Project Co shall have no authority to exercise any such discretion or to make any such decision; and
- 30.4.2 to the extent any such matter is identified in the Roads Liaison Procedure and/or the Interface Protocol, Project Co shall act in accordance with such Roads Liaison Procedure and/or Interface Protocol in respect of such matter; and
- 30.4.3 in respect of any other matter, if Project Co (acting reasonably) believes that the exercise by the Authority of the relevant statutory power is essential to enable Project Co to perform any obligation under this Agreement, Clause 31 (*Exercising Statutory Powers*) shall apply.

Notification to others

- 30.5 Project Co shall take such actions as are appropriate to inform all interested parties of its role as a sub-contractor to the Authority, authorised to perform the Project

Operations in connection with the discharge and/or exercise by the Authority of the Authorised Functions.

- 30.6 The Authority shall from time to time, at the written request of Project Co, notify Statutory Undertakers that Project Co will be performing (and is authorised to perform) the Project Operations, as the Authority's sub-contractor, in connection with the discharge and/or exercise by the Authority of the Authorised Functions.
- 30.7 The Authority shall also notify Project Co as soon as reasonably practicable of any Requirements of Interested Parties and/or notices or details of legal proceedings which it receives relating to the Authorised Functions.

Monthly Service Reports

- 30.8 Project Co shall include in each Monthly Service Report details of all actions taken in the preceding month and all actions to be taken in the following month by Project Co in performing the Project Operations in connection with the Authorised Functions, including details of:
- 30.8.1 all notices given and received;
- 30.8.2 (subject to Clause 30.4 above) all directions and consents given to Statutory Undertakers and/or Third Parties; and
- 30.8.3 all agreements, commitments or compromises reached with Statutory Undertakers and/or Third Parties.

Consents, Directions and Notices

- 30.9 Without prejudice to the generality of Clause 30.8 (*Monthly Service Reports*) and Schedule 35 (*Network Management*), Project Co shall provide, free of charge, the Authority with copies of all consents and directions given and/or received by Project Co (subject to and in accordance with Clause 30.4) including those pursuant to each of the Highways Act, the NRSWA and the Roads Orders.
- 30.10 Project Co shall maintain all information relating to the performance of the Project Operations relating to the Authorised Highway Functions on the Asset Management System.

Public Law Principles

- 30.11 Project Co shall, and shall ensure that each Project Co Party shall, in performing the Project Operations in connection with any Authorised Functions, at all times act in a manner which allows the Authority to:
- 30.11.1 obey and comply with all administrative and procedural requirements;
- 30.11.2 not take any decisions or actions which may be considered perverse or unreasonable or disproportionate and liable to be quashed;
- 30.11.3 obey the rules of natural justice;
- 30.11.4 take such reasonable actions as are appropriate to minimise the risk of Judicial Review; and
- 30.11.5 act as a public authority in accordance with the Human Rights Act 1998.

31 EXERCISING STATUTORY POWERS

Application

- 31.1 Whenever the exercise by the Authority of any statutory power (including any power described at Clause 30.2 above) is essential to enable Project Co to perform any obligation under this Agreement (such that a failure to exercise such statutory power or duty would render impossible, not merely more expensive, Project Co's performance of any part of this Agreement), the provisions of this Clause 31 (*Exercising Statutory Powers*) shall apply.

Procedure for Project Co request to exercise statutory power

- 31.2 If Project Co (acting reasonably) believes that the exercise by the Authority of any statutory power is essential to enable Project Co to perform any obligation under this Agreement (such that a failure to exercise such statutory power would render impossible, not merely more expensive, Project Co's performance of any part of this Agreement), Project Co shall give notice to that effect to the Authority.
- 31.3 Any notice given by Project Co in accordance with Clause 31.2 (*Procedure for Project Co request to exercise statutory power*) shall:
- 31.3.1 clearly specify the action requested of the Authority, the obligation of Project Co under this Agreement in respect of which such action is requested and the reasons why such action by the Authority is required;
 - 31.3.2 indicate a reasonable time by which the requested action is required;
 - 31.3.3 set out any recommendation by Project Co in respect of the requested action; and
 - 31.3.4 specify the likely effect upon the performance of the Project Operations if the action requested of the Authority is not agreed to by the Authority.

Authority's response to request

- 31.4 No later than fifteen (15) Business Days after receipt of a notice given pursuant to Clause 31.2 (*Procedure for Project Co request to exercise statutory power*), or within such shorter period as may be specified in the Roads Liaison Procedure or Interface Protocol in respect of the relevant circumstances, the Authority shall acknowledge receipt of such notice and shall give its estimate (acting reasonably, and where the relevant time period is specified in the Roads Liaison Procedure or Interface Protocol the estimated period shall be no longer than that specified period) of the date on which it will respond on the merits of the request, provided that no such estimate shall be binding on the Authority.
- 31.5 The Authority shall respond on the merits of the request contained in the notice given pursuant to Clause 31.2 (*Procedure for Project Co request to exercise statutory power*) as soon as reasonably practicable in the circumstances, taking into consideration, inter alia, any legal requirement for consultation with the public or other interested parties in connection with such request.

No Fetter on Discretion

- 31.6 The Authority shall consider on its merits in accordance with its statutory duties any request for action contained in a notice given in accordance with Clause 31.2 (*Procedure for Project Co request to exercise statutory power*). Without in any way limiting the discretion of the Authority in responding to any such request, the Authority shall, in reaching any such decision, to the extent it is lawfully permitted to do so, give consideration, inter alia, to the matters set out in Clause 31.7 (*Matters to be*

considered). The decision of the Authority on the merits of the request shall not be subject to review under the Dispute Resolution Procedure.

Matters to be considered

- 31.7 The considerations referred to in Clause 31.6 (*No Fetter on Discretion*) are the following:
- 31.7.1 whether the Authority has the statutory power to take the action requested;
 - 31.7.2 whether there is any alternative course available to Project Co (and the cost to Project Co of such alternative course) which would not require action by the Authority;
 - 31.7.3 the effect the requested action would have on the interests of any Third Parties;
 - 31.7.4 whether the timing and substance of the request is such as to enable the Authority to consider the merits of the request in accordance with the principles of procedural fairness (taking into account, where appropriate, any legal requirement of consultation with other interested parties);
 - 31.7.5 whether the action requested would have any implications for safety, either of Users or of any other Third Parties; and
 - 31.7.6 whether the exercise of any other statutory power would be equally or more effective (provided that the Authority would exercise that statutory power).

Refusal by Authority to take requested action

- 31.8 Subject to Clause 31.9 (*Refusal by Authority to take requested action*) if, in the exercise of its discretion, the Authority refuses to take the action requested then, provided that Project Co has complied with Clauses 31.1 (*Application*) to 31.3 (*Procedure for Project Co request to exercise statutory power*) Project Co shall be relieved from liability under this Agreement (including liability for Deductions) to the extent that by reason of such refusal Project Co is not able to perform the obligations identified in the request contained in the notice given pursuant to Clause 31.2 (*Procedure for Project Co request to exercise statutory power*).
- 31.9 Project Co shall be relieved of its liability in accordance with Clause 31.8 (*Refusal by Authority to take requested action*) only if and to the extent that it has in the opinion of the Authority (acting reasonably) taken all steps necessary to mitigate the effects of the refusal of the Authority to take the requested action.

Where a decision by a Minister of the Crown or Court is required

- 31.10 If any consent, confirmation or order of a Relevant Minister or any order of the Court is required for the exercise by the Authority of any statutory power requested to be exercised pursuant to this Clause 31 (*Exercising Statutory Powers*), and the Authority, in the exercise of its discretion, decides that it wishes to seek to exercise such statutory power, then the Authority shall as soon as reasonably practicable in the circumstances apply for such consent, confirmation or order. The decision of the Relevant Minister or the Court shall not be subject to review under the Dispute Resolution Procedure and the Authority shall not be obliged to exercise any right of appeal of such decision.
- 31.11 If the Relevant Minister or the Court refuse to give or make any consent, confirmation or order referred to in Clause 31.10 (*Where a decision by the Welsh Ministers or Court is required*), then the provisions of Clauses 31.8 and 31.9 (*Refusal by Authority to take requested action*) shall apply (*mutatis mutandis*).

Exceptions

31.12 Clause 31.1 (*Application*) shall not apply to:

31.12.1 the exercise of any statutory function of the Authority as a planning authority under the Town and Country Planning Act 1990; or

31.12.2 the securing of any acquisition of land by the Authority via compulsory purchase powers or voluntary agreement.

Indemnity for Costs

31.13 If, in the exercise of its discretion, the Authority agrees to take the action requested, then (unless the Authority in its absolute discretion otherwise agrees) Project Co shall bear and shall indemnify the Authority for all costs (including legal and/or administrative costs, general staff costs and overheads) incurred by the Authority as a consequence of or in connection with the exercise of such statutory power.

Implementation of decision

31.14 If, in the exercise of its discretion, the Authority agrees to take the action requested then, without prejudice to Clause 31.13, to the extent the Authority is lawfully permitted to do so, the Authority may request Project Co to, in which case Project Co shall, implement such action (or any part thereof), as directed by the Authority, as the Authority's sub-contractor.

32 NOT USED

33 EXERCISE OF POWERS, AUTHORISED FUNCTIONS AND STATUTORY UNDERTAKERS

Exercising Powers

33.1 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 Agreement or any other Project Document and this Agreement and all other Project Documents had not been executed by the Authority.

33.2 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 under any public or private law, statute, byelaw, order or regulation, other than in its capacity as a contracting counterparty, shall not be deemed, for the purposes of this Agreement, to be an act or omission or breach of the Authority or any Authority Party.

33.3 Nothing contained or implied in this Agreement or any Project 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.

Primary Duty of Co-ordination under TMA and NRSWA

33.4 Project Co acknowledges that:

33.4.1 the Authority has a duty to co-ordinate the execution of works of all kinds on the Project Facilities pursuant to the TMA Regulations, the TMA Codes of Practice, the NRSWA, the NRSWA Regulations and the NRSWA Codes of Practice; and

- 33.4.2 all works on the Project Facilities whether promoted by Project Co, Statutory Undertakers, the Authority or Third Parties are subject to compliance with the Statutory Authority's (or where applicable the Traffic Manager's) network management procedures.
- 33.5 Without prejudice to Clauses 20.10 (*Traffic Management*) to 20.13 (*Information*) and Schedule 35 (*Network Management*), Project Co shall use its best endeavours to co-ordinate the execution of the works of all kinds affecting the Project Road and the Project Facilities and with works taking place affecting the surrounding highway network (outside of the Project Road and the Project Facilities):
- 33.5.1 in the interests of safety;
- 33.5.2 so as to minimise the inconvenience to local communities and Users;
- 33.5.3 so as to protect the structure of the Project Facilities and the integrity of Utilities;
- 33.5.4 so as to enable the Authority to discharge its statutory duties, powers and/or functions; and
- 33.5.5 in accordance with each of the TMA, the TMA Regulations, the TMA Codes of Practice, the NRSWA, the NRSWA Regulations and the NRSWA Codes of Practice.
- 33.6 Project Co shall comply with such directions as to the co-ordination of works of all kinds including the co-ordination of works on streets outside of the Project Road as the Authority may reasonably give from time to time.
- 33.7 Project Co shall notify the Authority in writing of any potential offence committed by a Statutory Undertaker in relation to the Project Facilities at the earliest opportunity (and in any event within ten (10) Business Days) after becoming aware of the potential offence. Project Co shall provide any such information relating to the potential offence to the Authority within ten (10) Business Days of such request.

Services in Relation to Authority's Functions

- 33.8 Project Co shall, at all times, assist and facilitate the Authority or its agents in carrying out and shall take all steps necessary to ensure that the Authority or its agents are able to comply with their respective duties as the Street Authority, Highway Authority, Traffic Authority and Bridge Authority in each case in relation to the Project Facilities.

NRSWA

- 33.9 Not Used.
- 33.10 The parties agree and acknowledge that all works undertaken by Project Co in connection with the carrying out of the Project Operations shall be Works for Road Purposes, Major Highway Works or Diversionary Works (as the case may be).
- 33.11 To the extent that the same are relevant to the carrying out of the Project Operations:
- 33.11.1 (subject to Clause 30.4) Project Co shall itself comply with the provisions of NRSWA, NRSWA Regulations and the NRSWA Codes of Practice and any requirements of Statutory Undertakers notified to Project Co (whether by the Authority or the Statutory Undertaker) pursuant to NRSWA; and

33.11.2 Project Co shall itself comply with all obligations placed on the Authority pursuant to NRSWA in connection with Works for Road Purposes, Major Highway Works and Diversionary Works under (amongst others) sections 83 and 84 of NRSWA.

33.12 Project Co shall notify the Authority of all proposed Major Highway Works, Diversionary Works and Works for Roads Purposes necessary in connection with the Project Operations and shall (subject to Clause 30.4) direct, notify, contract (or procure that the relevant Sub-Contractor contracts), or make satisfactory arrangements in respect of such works with Statutory Undertakers and carry out any such works in accordance with NRSWA, the NRSWA Regulations, the NRSWA Codes of Practice and the provisions of this Agreement.

33.13 Project Co shall be responsible for (and shall indemnify and hold the Authority harmless from and against) all costs of, and shall make all payments due to and as may be agreed by Project Co (or by the Authority at Project Co's request or with the agreement of Project Co) with Statutory Undertakers in connection with, any Diversionary Works in accordance with NRSWA.

Works promoted by Statutory Undertakers

33.14 Notwithstanding the duty of the Statutory Authority (and/or Traffic Manager where applicable) in respect of inspections of reinstatements for works promoted by Statutory Undertakers pursuant to the NRSWA, Project Co shall carry out inspections of such reinstatements carried out by Statutory Undertakers on the Project Facilities to the extent such inspections are provided for (as a right of the Statutory Authority) pursuant to the NRSWA, NRSWA Regulations and the NRSWA Codes of Practice and required pursuant to this Agreement.

33.15 In the event that Project Co considers a reinstatement by a Statutory Undertaker to be unsatisfactory and detrimental to the ability of Project Co to meet its performance requirements under the Agreement then Project Co shall notify the Authority of the same within ten (10) Business Days of the relevant reinstatement work being completed. Where no notice is submitted within the specified period Project Co shall be deemed to have accepted the reinstatement.

33.16 If, pursuant to works promoted by Statutory Undertakers, a contribution is made to the Authority pursuant to section 78 of the NRSWA then payment will be made to Project Co by the Authority (within twenty (20) Business Days of receipt of any monies from the Statutory Undertaker) to the extent the contribution relates to costs actually incurred or likely to be incurred by Project Co in performing its obligations under this Agreement during the Project Term and Project Co shall pay to the Authority any contribution received by Project Co (within twenty (20) Business Days of receipt of any monies from the Statutory Undertaker) to the extent the contribution relates to costs incurred or likely to be incurred outside the Project Term.

NRSWA payments to the Authority

33.17 The Authority shall pay to Project Co within twenty (20) Business Days of receipt of any monies actually received by the Authority from any Statutory Undertaker pursuant to any provision of NRSWA, in respect of costs which Project Co has incurred and is entitled to pursuant to the provisions of this Agreement in undertaking the Project Operations.

33.18 Subject to Project Co's compliance with the provisions of this Agreement and only in cases where Project Co is unable to do so, at the request of Project Co, and subject to an indemnity for all costs, including administrative costs, the Authority shall endeavour to assist Project Co by engaging in correspondence with Statutory Undertakers to recover all possible charges, fees, contributions and costs due to the

Authority in each case as Statutory Authority undertaking works for road purposes, in respect of the Project Road and the local roads network pursuant to NRSWA.

- 33.19 Where, despite the Authority's actions pursuant to Clause 33.20, it is not possible to recover such charges, fees, contributions and costs due to the Authority in each case as Statutory Authority, the Authority shall provide to Project Co a separate authorisation for Project Co to act as agent for and on behalf of the Authority for the purpose of only pursuing those particular costs which the parties have been unable to recover pursuant to Clause 33.18.

Project Co Responsible

- 33.20 Project Co shall indemnify and keep the Authority indemnified on demand at all times from and against any claims and/or Direct Losses incurred by the Authority in connection with:

33.20.1 any failure by Project Co to comply with or fully observe, perform or satisfy Clauses 30 (*No delegation of Functions*), Clause 33B (*Implementation of Contracting Out Order*) and 33C (*Delegated Functions*); and/or

33.20.2 any or all of the Authorised Functions (other than any Authorised Highway Function to which Clause 33C has taken effect and applies), arising as a result of or in connection with any failure by Project Co to perform its obligations in accordance with this Agreement.

33A Not Used

33B IMPLEMENTATION OF CONTRACTING OUT ORDER

- 33B.1 Upon bringing into effect of a Contracting Out Order, the Authority may issue a written notice to Project Co ("**Authorisation Notice**") setting out that it requires certain or all Authorised Highways Functions to be exercised by Project Co pursuant to a delegation of such Authorised Highways Functions, with effect of the date specified in the Authorisation Notice ("**Authorisation Date**"). The Authorisation Notice shall set out the period for which the delegation will apply ("**Authorisation Period**").
- 33B.2 With effect from the Authorisation Date, Clause 30 shall cease to have effect in respect of and to the extent of any Authorised Highways Functions identified in the Authorisation Notice as being delegated to Project Co, and Clause 33C shall take effect and shall apply in respect of and to the extent of such Authorised Highways Functions in place of Clause 30. The authorisation granted in respect of any such Authorised Highways Functions pursuant to Clause 33C.1 (by operation of this Clause 33B.2) shall be the "authorisation" for the purposes of this Clause 33B. For the avoidance of doubt, where the Authorisation Notice sets out that only certain of the Authorised Highways Functions are to be delegated, Clause 33C shall apply only in respect of those Authorised Highways Function and Clause 30 shall continue to apply in respect of the remainder of the Authorised Highways Functions.
- 33B.3 If, following the issue of an Authorisation Notice, a Contracting Out Order shall cease for whatever reason to be in effect, Project Co may request the Authority to take such action as necessary to bring into effect a further order in respect of part or all of the functions subject of the original order. The provisions of Clause 31.2 (*Procedure for Project Co request to exercise statutory power*), Clause 31.6 (*No Fetter on Discretion*) and Clause 31.7 (*Matters to be considered*) (but for the avoidance of doubt not Clauses 31.8 and 31.9 (*Refusal by the Authority to take requested action*)) shall apply mutatis mutandis to any such request.

- 33B.4 If a part of a Contracting Out Order that enables the Authority to delegate such Authorised Highways Functions is revoked pursuant to section 69 of the 1994 Act, then the authorisation in respect of such Authorised Highways Functions shall automatically be revoked (such Authority Highways Functions being "**Revoked Functions**"), and:
- 33B.4.1 for the purposes of section 73 of the 1994 Act "relevant contract" shall mean only so much of Clause 30 (*Subcontracting of Functions (General)*) as relates only to the Revoked Functions and such provisions shall remain effective in respect of any Authorised Highways Functions which are not revoked; and
- 33B.4.2 from the date of such revocation, Clause 33C shall cease to have effect, and Clause 30 shall apply (in place of and to the exclusion of Clause 33C) in respect of any such Revoked Function.
- 33B.5 Following the issue of an Authorisation Notice but prior to the expiry of the Authorisation Period (or any Renewed Authorisation Period) in respect of an Authorised Highways Function which was the subject of that Authorisation Notice, Project Co may, by written notice to the Authority, request the Authority renew the authorisation for that Authorised Highways Function for any period not exceeding ten (10) years from the date of renewal provided that where Project Co does not give such written notice, the Authority shall still be entitled to decide whether it will renew such authorisation for that Authorised Highways Function. The decision whether or not to renew any authorisation in whole or in part shall be in the absolute discretion of the Authority. The decision of the Authority shall not be subject to review under the Dispute Resolution Procedure.
- 33B.6 If, following a request under Clause 33B.5 (*Implementation of Contracting Out Order*), the Authority decides to renew an authorisation, it shall confirm the same by notice in writing to Project Co. Such notice shall specify:
- 33B.6.1 the Authorised Highways Functions of the Authority which Project Co is authorised to carry out in respect of the Project Facilities; and
- 33B.6.2 the authorisation period, which shall not exceed the shorter of the remainder of the Project Term and ten (10) years from the date of the renewal ("**Renewed Authorisation Period**").
- 33B.7 If Project Co fails to carry out any Authorised Highways Functions in the manner set out in Clause 33 (*Authorised Functions and Statutory Undertakers*) and/or Clause 33C then the Authority may withdraw or suspend the authorisation in respect of those Authorised Highways Functions. Such suspension or withdrawal shall not be treated by Project Co as a repudiation by the Authority or, for the purposes of Clause 33B.8 (*Implementation of Contracting Out Order*), a revocation of authorisation. From the date of such suspension or withdrawal, Clause 33C shall cease to have effect, and Clause 30 shall apply (in place of and to the exclusion of Clause 33C) in respect of those Authorised Highways Functions (in the case of a suspension, during the period of the suspension only following which Clause 33C shall apply in place of Clause 30).
- 33B.8 If an authorisation is revoked by the Authority, other than in accordance with Clause 33B.7 (*Implementation of Contracting Out Order*), then:
- 33B.8.1 in respect of the Authorised Highways Functions which are the subject of that revoked authorisation ("**Revoked Functions**"), from the date of such revocation Clause 33C shall cease to have effect, and Clause 30 shall apply (in place of and to the exclusion of Clause 33C), in respect of any such Revoked Function; and

- 33B.8.2 the authorisation in respect of any Authorised Highways Functions which are not Revoked Functions shall remain effective.
- 33B.9 Any authorisation shall, to the extent continuing at the relevant time, cease automatically on the earlier of the Expiry Date and the Termination Date.
- 33B.10 If following the issue of an Authorisation Notice, an Authorisation Period is not renewed (for any reason) then, from the date of expiry of that Authorisation Period, Clause 33C shall cease to have effect and Clause 30 shall apply (to the exclusion of Clause 33C) in respect of any Authorised Highway Functions identified in such Authorisation Notice.
- 33B.11 Any disapplication of Clause 30 or Clause 33C in respect of any Authorised Highways Function pursuant to this Clause 33B shall in all cases be without prejudice to any accrued rights of the Authority which may have arisen pursuant to that Clause (Clause 30 or Clause 33C, as the case may be), prior to the date on which the Clause is expressed to be disapplied or to cease to have effect.
- 33B.12 For the avoidance of doubt, the Authority does not intend to delegate authority to Project Co to exercise any Authorised Road Order Functions and accordingly Clause 33C shall apply only in respect of Authorised Highways Functions and Clause 30 shall always apply in respect of Authorised Roads Order Functions.

33C DELEGATED FUNCTIONS

- 33C.1 The provisions of this Clause 33C are subject to Clause 33B (*Implementation of Contracting Out Order*). Prior to any Authorisation Notice being issued by the Authority pursuant to Clause 33B.1, this Clause 33C shall not have come into force or effect. Following any Authorisation Notice being issued by the Authority pursuant to Clause 33B.1, this Clause 33C shall come into effect and apply, or cease to have effect (as the case may be), in relation to any Authorised Highways Function to the extent so provided in Clause 33B.
- 33C.2 Subject to the provisions of Clause 33B (*Implementation of Contracting Out Order*), Project Co is hereby appointed by the Authority (to the extent acting as Highway Authority, Traffic Authority, Street Authority (where applicable), Bridge Authority, Responsible Authority and Transport Authority, including pursuant to the Side Roads Order (where applicable) in relation to the respective Project Facilities) to carry out, in respect of the Project Facilities, the Authorised Highways Functions for the Authorisation Period. Project Co and the Authority shall take such actions as are necessary to effect the efficient exercise of any such Authorised Highways Functions in accordance with this Agreement.
- 33C.3 Project Co shall exercise properly, fully and in accordance with Law and the terms of this Agreement, each of the Authorised Highways Functions in respect of the Project Operations for as long as the authorisation given under Clause 33C.2 is effective.
- 33C.4 Project Co shall indemnify and keep the Authority indemnified on demand at all times from and against any claims and/or Direct Losses incurred by the Authority in connection with the performance or exercise by Project Co of the rights and powers granted under, or any failure by Project Co to comply with or fully observe, perform or satisfy, (including in accordance with this Clause 33C) any or all of the Authorised Highway Functions.

Scope of authorisation

- 33C.5 Any authorisation provided pursuant to this Clause 33C in respect of each and every Authorised Highways Function shall be non-assignable (other than pursuant to an assignment of Project Co's interests in this Agreement subject to

and in accordance with Clauses 61.9 and 61.10). Project Co shall not delegate any such Authorised Highways Function (provided that, for the avoidance of doubt, without prejudice to Project Co's obligations under this Clause 33C and otherwise under this Agreement, this Clause shall not prohibit Project Co from sub-contracting the performance of any works or services arising as a result of the exercise by Project Co of any such Authorised Highways Function).

Notification to others

- 33C.6 Project Co shall take such actions as are appropriate to inform all interested parties of its role performing the Authorised Highways Functions on behalf of the Authority pursuant to this Clause 33C (*Delegated Functions*).
- 33C.7 The Authority shall from time to time, at the written request of Project Co, notify Statutory Undertakers that, subject to Clause 33B and the terms and conditions set out in Clause 33 (*Authorised Order Functions and Statutory Undertakers*) and this Clause 33C, Project Co will be exercising the Authorised Highways Functions in respect of the Project Facilities.
- 33C.8 The Authority shall also notify Project Co as soon as reasonably practicable of any Requirements of Interested Parties and/or notices or details of legal proceedings which it receives relating to the Authorised Highways Functions.

Public Law Principles

- 33C.9 In exercising each of the Authorised Highways Functions, Project Co shall, at all times act in accordance with the requirements of the applicable legislation and the requirements of public and administrative law and, without limitation to the foregoing, it shall:
- 33C.9.1 obey and comply with all administrative and procedural requirements;
- 33C.9.2 not take any decisions or actions which may be considered perverse or unreasonable or disproportionate and liable to be quashed;
- 33C.9.3 obey the rules of natural justice;
- 33C.9.4 take such reasonable actions as are appropriate to minimise the risk of Judicial Review; and
- 33C.9.5 act as a public authority in accordance with the Human Rights Act 1998.

Monthly Service Reports

- 33C.10 Project Co shall include in each Monthly Service Report details of all actions taken in the preceding month and all actions to be taken in the following month by Project Co in performing the Authorised Highways Functions, including details of:
- 33C.10.1 all notices given and received;
- 33C.10.2 all directions and consents given to Statutory Undertakers and/or Third Parties;
- 33C.10.3 all agreements, commitments or compromises reached with Statutory Undertakers and/or Third Parties; and

- 33C.10.4 any legal proceedings (including any appeals) commenced or proposed or threatened to be commenced in relation to any Authorised Function.

Consents, Directions and Notices

- 33C.11 Without prejudice to the generality of Clause 33C.10 (*Monthly Service Reports*) and Schedule 35 (*Network Management*), Project Co shall provide, free of charge, the Authority with copies of all consents and directions given and/or received by Project Co including those pursuant to each of the Highways Act, the NRSWA and the Roads Orders.
- 33C.12 Project Co shall maintain all information relating to the performance of the Authorised Highways Functions on the Asset Management System.

PART 8: DELAY EVENTS, RELIEF EVENTS AND FORCE MAJEURE

34 DELAY EVENTS AND COMPENSATION EVENTS

- 34.1 If, at any time, Project Co becomes aware that there will be (or is likely to be) a delay in completion of the Works relating to one or more Phases, Project Co shall forthwith give notice to the Authority's Representative to that effect specifying the relevant delay or impediment. In relation to any such delay or impediment if the Authority's Representative is satisfied, or it is determined in accordance with Schedule 20 (*Dispute Resolution Procedure*), that such delay or impediment has arisen as a result of the occurrence of a Delay Event, then, subject to Clause 34.2 (*Delay Events and Compensation Events*), the Authority's Representative shall allow Project Co an extension of time equal to the delay or impediment caused by such Delay Event (taking into account reasonably foreseeable consequences of the Delay Event) and shall revise the relevant Phase Completion Date(s) accordingly but to avoid doubt, there shall be no extension to the Project Term as a result of any such delay or impediment.
- 34.2 If Project Co is (or claims to be) affected by a Delay Event and/or a Compensation Event:
- 34.2.1 it shall (and shall procure that the Project Co Parties shall) take and continue to take all reasonable steps to eliminate or mitigate the consequences of such an event upon the performance of its obligations under this Agreement and, where relevant, resume performance of its obligations affected by the Delay Event and/or a Compensation Event as soon as practicable; and
- 34.2.2 it shall neither be relieved from liability under this Agreement nor entitled to any extension of time for the purpose of Clause 34 (*Delay Events and Compensation Events*) to the extent that it is delayed or impeded due to its failure (if any) to comply with its obligations under Clause 34.2.1 above.
- 34.3 For the purposes of this Agreement, a Delay Event means any of the following to the extent in each case that there will be (or is likely to be) a delay in completion of a Phase or Phases:
- 34.3.1 the occurrence of a Qualifying Change in relation to which it has been agreed or determined that the implementation of the Authority Change would delay the completion of the Phase(s);
- 34.3.2 any breach by the Authority and/or any Authority Party of any of the Authority's express obligations under this Agreement (but excluding breaches of the South Wales Trunk Road Agent during the period from the Authority's RS Target Date until the Restricted Services Commencement Date) to the extent in each case that any such breach is not caused, or contributed to, by Project Co or any Project Co Party;
- 34.3.3 the execution of works on the Site not forming part of this Agreement by the Authority or any contractors employed by the Authority;
- 34.3.4 opening up of the Works pursuant to Clauses 13.3 to 13.7 (*Right to Open Up*) (inclusive) where such Works are not subsequently found to be defective (unless it is agreed or determined in accordance with Schedule 20 (*Dispute Resolution Procedure*) that the opening up of the Works was reasonable in the light of other defects previously discovered by the Authority);
- 34.3.5 Force Majeure;

- 34.3.6 a Relief Event;
 - 34.3.7 a Relevant Change in Law referred to in Clause 37.3.1 (*Discriminatory Change in Law*) and Clause 37.3.2 (*Specific Change in Law*);
 - 34.3.8 an event treated as a Delay Event pursuant to Clause 16.8A (*Permit to Use*) or Clause 16.12A (*Snagging Items*);
 - 34.3.9 The [REDACTED] Area is not made available to Project Co by the [REDACTED] Date;
 - 34.3.10 a Disruption Event;
 - 34.3.11 the A470 Diversionary Works are not completed by the A470 Diversion Completion Date; and/or
 - 34.3.12 the Dowlais Diversionary Works are not completed by the Dowlais Diversion Completion Date.
- 34.4 Without prejudice to the generality of Clause 34 (*Delay Events and Compensation Events*), Project Co shall give notice in writing to the Authority's Representative as soon as it (or the Contractor) can reasonably foresee a Delay Event and/or a Compensation Event (as applicable) occurring or, if the same is not reasonably foreseeable, as soon as it (or the Contractor) shall become aware of a Delay Event and/or a Compensation Event (as applicable). Project Co shall within ten (10) Business Days after such notification, give further written details to the Authority's Representative which shall include:
- 34.4.1 a statement of which Delay Event and/or a Compensation Event (as applicable) the claim is based upon;
 - 34.4.2 details of the circumstances from which the Delay Event and/or a Compensation Event arises;
 - 34.4.3 details of the contemporary records which Project Co will maintain to substantiate its claim;
 - 34.4.4 details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event and/or Compensation Event may have upon completion of the relevant Phase(s);
 - 34.4.5 details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event and/or a Compensation Event; and
 - 34.4.6 details of any relief from, obligations, under this Agreement that Project Co considers is reasonably required as a consequence of a Compensation Event, including:
 - 34.4.6.1 a detailed description of the obligations from which relief is requested and the extent and duration of the requested relief;
 - 34.4.6.2 an explanation of why Project Co considers that the Compensation Event has or will result in a breach of Project Co's obligations and why relief from such obligations would be reasonable in the circumstances; and
 - 34.4.6.3 the likely impact on Project Co and/or the Project in the event that Project Co is not relieved from such obligations under the Project Agreement.

34.5 As soon as possible but in any event within five (5) Business Days of Project Co (or the Contractor) receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim then, other than in respect of:

34.5.1 a Delay Event where the Phase Completion Date has already been revised pursuant to Clause 34.1 (*Delay Events*); or

34.5.2 a Compensation Event where Project Co has already been compensated pursuant to Clause 34.14 (*Compensation*) and has (where relevant) been granted such relief from its obligations under this Agreement as is reasonable for such Compensation Event,

Project Co shall submit further particulars based on such information to the Authority's Representative.

34.6 The Authority's Representative shall, after receipt of written details under Clause 34.4 (*Delay Events and Compensation Events*), or of further particulars under Clause 34.5 (*Delay Events and Compensation Events*), be entitled by notice in writing to require Project Co to provide such further supporting particulars as he may reasonably consider necessary. Project Co shall afford the Authority's Representative reasonable facilities for investigating the validity of Project Co's claim including, without limitation, onsite inspection.

34.7 Subject to the provisions of this Clause, the Authority's Representative shall:

34.7.1 in respect of a Delay Event, revise the relevant Phase Completion Date(s) in accordance with Clause 34.1 (*Delay Events*); and

34.7.2 in respect of a Compensation Event, compensate Project Co in accordance with Clause 34.14 (*Compensation*) and give Project Co such relief from its obligations under the Project Agreement, as is reasonable for such Compensation Event,

as soon as reasonably practicable and in any event within five (5) Business Days of the later of:

34.7.3 the date of receipt by the Authority's Representative of Project Co's notice given in accordance with Clause 34.4 (*Delay Events and Compensation Events*) and the date of receipt of any further particulars (if such are required under Clause 34.6 (*Delay Events and Compensation Events*)), whichever is the later; and

34.7.4 the date of receipt by the Authority's Representative of any supplemental information supplied by Project Co in accordance with Clause 34.5 (*Delay Events and Compensation Events*) and the date of receipt of any further particulars (if such are required under Clause 34.6 (*Delay Events and Compensation Events*)), whichever is the later.

34.8 If Project Co has failed to comply with the requirements as to the giving of notice under Clause 34.4 (*Delay Events and Compensation Events*), or has failed to maintain records or afford facilities for inspection to the Authority's Representative, then:

34.8.1 in respect of a Delay Event, Project Co shall not be entitled to any extension of time (and the relevant Phase Completion Date(s) shall not be revised); and

34.8.2 in respect of a Compensation Event, Project Co shall not be entitled to any compensation or relief from its obligations under this Agreement,

in respect of any period of delay by Project Co in giving notice or providing information under Clause 34.4 (*Delay Events and Compensation Events*) and/or to the extent that its failure to maintain records or afford facilities for inspection to the Authority's Representative has prevented the Authority's Representative from assessing the consequences of the Delay Event and/or Compensation Event, as applicable.

34.9 If:

34.9.1 in respect of a Delay Event, the Authority's Representative declines to fix a revised Phase Completion Date(s); or

34.9.2 Project Co considers that a different Phase Completion Date(s) should be fixed; or

34.9.3 there is a disagreement as to whether a Delay Event has occurred; or

34.9.4 the parties cannot agree the extent of any relief from Project Co's obligations under the Project Agreement in respect of a Compensation Event,

then Project Co shall be entitled to refer the matter for determination in accordance with Schedule 20 (*Dispute Resolution Procedure*).

Compensation

34.10 If a Compensation Event occurs Project Co's sole right to compensation shall be as provided for in Clauses 34.12 to 34.14 (*Compensation*) inclusive. To avoid doubt, no other Delay Event shall entitle Project Co to receive any compensation save as otherwise expressly provided in:

34.10.1 Schedule 16 (*Change Protocol*) in the case of a Delay Event referred to in Clause 34.3.1 (subject always to the provisions of Clause 37 (*Changes in Law*)); or

34.10.2 Clause 37 (*Changes in Law*) in the case of a Delay Event referred to in Clause 34.3.7.

34.11 For the purposes of Clause 34.10 (*Compensation*), a Compensation Event means:

34.11.1 any Delay Event referred to in Clause 34.3.2, Clause 34.3.3, Clause 34.3.4, Clause 34.3.8, Clause 34.3.9, Clause 34.3.10, Clause 34.3.11 or Clause 34.3.12 for which, in each case, it has been agreed or determined pursuant to this Clause 34 (*Delay Events and Compensation Events*) that Project Co is entitled to an extension of time; or

34.11.2 in the period prior to a Phase Actual Completion Date, in circumstances where there is no delay in completion of the relevant Phase where Project Co has incurred a loss and/or expense as a direct result of:

34.11.2.1 any breach by the Authority or an Authority Party of any of the Authority's express obligations under this Agreement (but excluding breaches of the South Wales Trunk Road Agent during the period from the Authority's RS Target Date until the Restricted Services Commencement Date); or

34.11.2.2 the occurrence of the circumstances in clause 34.3.10,

to the extent that such breach is not caused, or contributed to, by Project Co or any Project Co Party.

34.12 Subject to Clause 34.14 (*Compensation*), if it is agreed, or determined, that there has been a Compensation Event, and Project Co has incurred loss (including loss of revenue) and/or expense as a direct result of such Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better or worse position than it would have been in had the relevant Compensation Event not occurred and (where relevant) such relief from its obligations under this Agreement as is reasonable for such Compensation Event (taking into account the reasonably foreseeable consequences of the Compensation Event). Project Co shall promptly provide the Authority's Representative with any additional information he may require in order to determine the amount of such compensation and where applicable, the extent of relief from Project Co's obligations under this Agreement.

34.13 Project Co shall take all reasonable steps so as to minimise the loss and/or expense referred to in Clause 34.12 (*Compensation*) in relation to any Compensation Event and any compensation payable shall:

34.13.1 exclude any amounts incurred or to be incurred as a result of any failure of Project Co (or any Project Co Party) to comply with this Clause 34.13 (*Compensation*); and

34.13.2 be reduced by any amount which Project Co has recovered or will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy.

34.14 The amount of any compensation due to Project Co under Clause 34.12 (*Compensation*) shall be agreed between the parties or, failing agreement, determined pursuant to Schedule 20 (*Dispute Resolution Procedure*) and such compensation shall be payable:

34.14.1 in respect of compensation for a Compensation Event to the extent resulting in Capital Expenditure being incurred the Authority shall compensate Project Co for the actual Capital Expenditure incurred by Project Co within twenty (20) Business Days of its receipt of a written demand accompanied by a valid VAT invoice for the same by Project Co supported by all relevant information; and

34.14.2 in all other cases in accordance with Section 6 (*Changing the Financial Model*) of Schedule 16 (*Change Protocol*) as if a Relevant Event had taken place.

35 RELIEF EVENTS

35.1 For the purposes of this Agreement, subject to Clause 35.4 (*Mitigation*), Relief Events mean any of the following events:

35.1.1 fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;

35.1.2 failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;

35.1.3 accidental loss or damage to the Works and/or Project Facilities or any roads servicing the same;

- 35.1.4 without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with the Authority's Construction Requirements and the Service Level Specification, failure or shortage of power, fuel or transport;
- 35.1.5 blockade or embargo falling short of Force Majeure;
- 35.1.6 the discovery of fossils, antiquities and human remains requiring action in accordance with Clause 17 (*Fossils and Antiquities*);
- 35.1.7 official or unofficial strike, lockout, go slow or other dispute in each case generally affecting the construction, building maintenance or facilities management industry (or a significant sector of that industry);
- 35.1.8 Exceptionally Adverse Weather; or
- 35.1.9 any Key Structure Latent Defect, provided that the application of this Clause 35.1.9 shall be restricted to those periods during which Project Co receives relief from Deductions pursuant to Clause 25.27,

provided in each case that such event does not arise (directly or indirectly) as a result of any wilful act or default of the party claiming relief and/or in the case of Project Co claiming relief, any Project Co Party.

- 35.2 Subject to Clauses 35.3 (*Relief Events*) and 35.4 (*Mitigation*), no right of termination shall arise under this Agreement by reason of any failure by a party to perform any of its obligations under this Agreement to the extent that such failure to perform occurs because of the occurrence of a Relief Event (and, to avoid doubt, and without prejudice to Clause 35.9 (*Mitigation*), unless expressly stated to the contrary in this Agreement, it is acknowledged that all other rights and obligations of the parties under this Agreement remain unaffected by the occurrence of a Relief Event).
- 35.3 Without prejudice to Project Co's rights under Clause 34 (*Delay Events and Compensation Events*), Project Co shall only be relieved of its obligations under Clauses 12 (*The Design, Construction and Commissioning Process*), 13 (*Right of Access of Authority's Representative*), 14 (*Programme and Dates for Completion*), and 34 (*Delay Events and Compensation Events*) by Delay Events in accordance with Clause 34 (*Delay Events and Compensation Events*).

Mitigation

- 35.4 Where a party is (or claims to be) affected by a Relief Event:
 - 35.4.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Relief Event as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
 - 35.4.2 it shall not be entitled to rely upon the relief afforded to it pursuant to Clause 35.2 (*Relief Events*) of this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under Clause 35.4.1 above.
- 35.5 The party claiming relief shall serve written notice on the other party within five (5) Business Days of it becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.

- 35.6 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Business Days of the notice referred to in Clause 35.5 (*Mitigation*) which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the Relief Event on the ability of the party to perform, the action being taken in accordance with Clause 35.4 (*Mitigation*), the date of the occurrence of the Relief Event and an estimate of the period of time required to overcome it (and/or its effects).
- 35.7 The party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- 35.8 If, following the issue of any notice referred to in Clause 35.6 (*Mitigation*), the party claiming relief receives or becomes aware of any further information relating to the Relief Event (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.
- 35.9 To avoid doubt, and subject to any other express provision of this Agreement, the occurrence of a Relief Event shall not entitle Project Co to any compensation.

36 **FORCE MAJEURE**

- 36.1 For the purposes of this Agreement, Force Majeure means any of the following events or circumstances:
 - 36.1.1 war, civil war, armed conflict or terrorism; or
 - 36.1.2 nuclear contamination unless in any case Project Co and/or any Project Co Party is the source or the cause of the contamination; or
 - 36.1.3 chemical or biological contamination of the Works and/or the Project Facilities and/or the Site from any of the events referred to in Clause 36.1.1 above; or
 - 36.1.4 pressure waves caused by devices travelling at supersonic speeds,
 - which directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement.
- 36.2 Subject to Clauses 36.3 and 36.4 (*Force Majeure*) the party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure it is not able to perform its obligations under this Agreement. For the avoidance of doubt (but without prejudice to Clause 45 (*Termination Resulting from Force Majeure*)) the Authority shall not be entitled to terminate this Agreement for a Project Co Event of Default if such Project Co Event of Default arises from an event of Force Majeure.
- 36.3 Where a party is (or claims to be) affected by an event of Force Majeure:
 - 36.3.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform; and
 - 36.3.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or has not in fact performed, its obligations under this Agreement due to its failure (if any) to comply with its obligations under Clause 36.3.1.

- 36.4 Without prejudice to Project Co's rights under Clause 34 (*Delay Events and Compensation Events*), Project Co shall only be relieved from its obligations under Clauses 12 (*The Design, Construction and Commissioning Process*), 13 (*Right of Access of Authority's Representative*), 14 (*Programme and Dates for Completion*) and 34 (*Delay Events and Compensation Events*) by Delay Events in accordance with Clause 34 (*Delay Events and Compensation Events*).
- 36.5 The party claiming relief shall serve written notice on the other party within five (5) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 36.6 A subsequent written notice shall be served by the party claiming relief on the other party within a further five (5) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the party to perform, the action being taken in accordance with Clause 36.3 (*Force Majeure*), the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).
- 36.7 The party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- 36.8 If, following the issue of any notice referred to in Clause 36.6 (*Force Majeure*), the party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other party as soon as reasonably possible.
- 36.9 Nothing in this Clause 36 (*Force Majeure*) shall affect the Authority's entitlement to make Deductions in the period during which any event of Force Majeure is subsisting.
- 36.10 The parties shall endeavour to agree any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 20 (*Dispute Resolution Procedure*) shall not apply to a failure of the Authority and Project Co to reach agreement pursuant to this Clause 36.10 (*Force Majeure*).

Disaster Plan

- 36.11 The parties shall comply with the provisions of the Disaster Plan.
- 36.12 The parties shall liaise with each other periodically to review and update the Disaster Plan.

PART 9: CHANGES IN LAW & CHANGES

37 CHANGES IN LAW

General

- 37.1 Project Co shall take all steps necessary to ensure that the Project Operations are performed in accordance with the terms of this Agreement (including, without limitation, Clause 5.2.1) following any Change in Law.

Relevant Changes in Law

- 37.2 Subject to Clause 37.4.3(e) and Clause 37.4.3(f) and on the occurrence of any Relevant Change in Law, the parties shall be entitled to seek adjustments to the Annual Service Payments to compensate for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations. Such adjustments (if any) will be calculated in accordance with and subject to Clause 37.4 (*Relevant Changes in Law*).

- 37.3 Relevant Change in Law means any of the following:

- 37.3.1 the occurrence of any Discriminatory Change in Law having an impact on the performance of the Project Operations;
- 37.3.2 the occurrence of any Specific Change in Law having an impact on the performance of the Project Operations; or
- 37.3.3 the occurrence, after the relevant date, of any Change in Law which requires any work of alteration, addition, demolition or extension or variation in the quality or function of the Project Facilities which is not Maintenance Works or Lifecycle Replacement or work which Project Co would otherwise be required to undertake to comply with its obligations under this Agreement. For the purposes of this Clause 37.3.3, the relevant date shall in respect of a Phase be the later to occur of the Phase Completion Date and the Phase Actual Completion Date, save where the Phase Actual Completion Date is delayed by a Compensation Event, a Delay Event referred to in Clause 34.3.1 or by a Delay Event referred to in Clause 34.3.7, in which case the relevant date shall be the later to occur of the Phase Completion Date and the date on which the Works relating to the relevant Phase would have been completed in accordance with this Agreement had the relevant Compensation Event or Delay Event not occurred,

provided that:

- (a) such Change in Law was not reasonably foreseeable at the date of this Agreement by an experienced contractor performing operations similar to the relevant Project Operations, on the basis of draft bills published in Government green or white papers or other Government departmental consultation papers, bills, draft statutory instruments or draft instruments or proposals published in the Official Journal of the European Union, in each case published:
- (i) prior to the date of this Agreement; and
 - (ii) in substantially the same form or having substantially the same effect as the Relevant Change in Law; and
- (b) a Change in Law relating to the application for, coming into effect, terms, implementation, repeal, revocation or otherwise of any

Planning Permission shall not constitute a Relevant Change in Law.

37.4 On the occurrence of a Relevant Change in Law:

37.4.1 either party may give notice to the other of the occurrence of the Relevant Change in Law;

37.4.2 the parties shall meet within fifteen (15) Business Days of the notice referred to in Clause 37.4.1 to consult and seek to agree the effect of the Relevant Change in Law. If the parties, within ten (10) Business Days of this meeting, have not agreed the occurrence or the effect of the Relevant Change in Law, either party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 20 (*Dispute Resolution Procedure*); and

37.4.3 within ten (10) Business Days of the agreement or determination referred to in Clause 37.4.2 above, the Authority's Representative shall issue an Authority Change Notice and the relevant provisions of Schedule 16 (*Change Protocol*) shall apply except that:

- (a) Project Co may give notice to the Authority's Representative that it objects to such an Authority Change Notice only on the grounds that the implementation of the Change would not give effect to or comply with the Relevant Change in Law;
- (b) the Authority shall (i) agree the implementation of the Low Value Change, or (ii) approve the High Value Change Stage 2 Submission, (as appropriate) in respect of the Change in accordance with the relevant provisions of Schedule 16 (*Change Protocol*);
- (c) the provisions of Clause 11 (*Consents*) shall apply;
- (d) the Authority shall not be entitled to withdraw any Authority Change Notice or its agreement as to the implementation of the Low Value Change or approval of a High Value Change Stage 2 Submission (as appropriate), issued in accordance with this Clause 37.4 (*Relevant Changes in Law*);
- (e) Project Co shall, without prejudice to its general obligation to comply with the terms of this Agreement:
 - (i) use all reasonable endeavours to mitigate the adverse effects of any Relevant Change in Law and take all reasonable steps to minimise any increase in costs arising from such Relevant Change in Law; and
 - (ii) use all reasonable endeavours to take advantage of any positive or beneficial effects of any Relevant Change in Law and take all reasonable steps to maximise any reduction in costs arising from such Relevant Change in Law; and
- (f) any compensation payable, or reduction to the Annual Service Payments, shall be calculated in accordance with the relevant provisions of Schedule 16 (*Change Protocol*) provided that:
 - (i) the amount of any compensation payable; or

- (ii) the amount by which the Annual Service Payment is to be reduced,

shall not take into account any amounts incurred or to be incurred as a result of Project Co's failure to comply with Clause 37.4.3(e) above.

General Change in Law

37.5 Either party may give notice to the other of the need for a Change which is necessary in order to enable Project Co to comply with any Change in Law which is not a Relevant Change in Law, in which event:

37.5.1 the parties shall meet within fifteen (15) Business Days to consult and seek to agree the effect of the Change in Law and any Change required as a consequence. If the parties, within ten (10) Business Days of this meeting, have not agreed the occurrence or the effect of the relevant Change in Law, either party may refer the question of whether a Change in Law has occurred or the effect of the Change in Law for resolution in accordance with Schedule 20 (*Dispute Resolution Procedure*); and

37.5.2 within ten (10) Business Days of the agreement or determination referred to in Clause 37.5.1 above the Authority's Representative shall, if it is agreed or determined that a Change is required in order to comply with the Change in Law, issue an Authority Change Notice and the relevant provisions of Schedule 16 (*Change Protocol*) shall apply except that:

- (a) Project Co may give notice to the Authority's Representative that it objects to such an Authority Change Notice only on the grounds that the implementation of the Change would not give effect to or comply with the Change in Law;
- (b) the Authority shall (i) agree the implementation of the Low Value Change; or (ii) approve the High Value Change Stage 2 Submission, (as appropriate) in respect of the Change in accordance with the relevant provisions of Schedule 16 (*Change Protocol*);
- (c) the provisions of Clause 11 (*Consents*) shall apply;
- (d) the Authority shall not be entitled to withdraw any Authority Change Notice or its (i) agreement as to the implementation of the Low Value Change; or (ii) approval of a High Value Change Stage 2 Submission (as appropriate), issued in accordance with this Clause 37.5 (*General Changes in Law*); and
- (e) Project Co shall not be entitled to any payment or other compensation or relief from any performance of its obligations under this Agreement in respect of such Change in Law or associated Change (or the consequences of either).

38 CHANGE PROTOCOL

The provisions of Schedule 16 (*Change Protocol*) shall have effect in respect of Changes except as otherwise expressly provided in this Agreement.

38A BREXIT CHANGE

38A.1 Brexit Change

38A.1.1 In the event that Project Co becomes aware that a Brexit Change may arise which could lead to an increase or decrease in Project Co's costs of performing its obligations under this Agreement, Project Co will notify the Authority within ten (10) Business Days of becoming aware, such notice to include the information specified within Clause 38A.1.3 below (a "**Brexit Change Notice**"). The parties acknowledge and agree that a Brexit Change Notice may cover more than one Brexit Change, and in such circumstances the Brexit Change Notice shall be structured in a clear manner so as to enable the Authority to consider each Brexit Change.

38A.1.2 Where the Authority becomes aware that a Brexit Change may arise which could lead to an increase or decrease in Project Co's costs of performing its obligations under this Agreement, and the Authority has not received a notification from Project Co in accordance with Clause 38A.1.1, the Authority shall be entitled to require Project Co to produce a Brexit Change Notice within ten (10) Business Days of Project Co's receipt of a request from the Authority.

38A.1.3 Each Brexit Change Notice shall contain:

38A.1.3.1 sufficient information, set out in reasonable detail, relating to the anticipated Brexit Change such that the Authority can understand the anticipated Brexit Change;

38A.1.3.2 Project Co's assessment of the impact of the anticipated Brexit Change on:

38A.1.3.2.1 the cost to Project Co of performing its obligations under this Agreement (whether an increase or decrease in costs and split out into the Additional Supplier Costs anticipated to be incurred in respect of each category of Specified Goods); and

38A.1.3.2.2 any potential steps that could be taken to mitigate the impact of the anticipated Brexit Change on Project Co's costs of performing its obligations under this Agreement; and

38A.1.3.3 all relevant supporting evidence in connection with the items set out within this Clause 38A.1.3,

and Project Co shall promptly provide (and in any event within five (5) Business Days of receiving a request) such further information or any other supporting documentation as the Authority may reasonably request.

38A.2. The parties shall meet within twenty (20) Business Days of receipt of a Brexit Change Notice to discuss and agree (in writing) the items included at Clause 38A.1.3.2, which agreement shall record:

- 38A.2.1 the likely changes to Project Co's costs of performing its obligations under this Agreement as a result of the Brexit Change; and
- 38A.2.2 the mitigation steps to be taken by Project Co in order to take all reasonable steps to mitigate, so far as is reasonably possible, the impact of the anticipated Brexit Change on Project Co's costs of performing its obligations under this Agreement (including, without limitation, as appropriate, considering reasonable advance purchase of the Specified Goods by Project Co and/or sourcing the relevant Specified Goods from an alternative jurisdiction to the specified EU Source State),

(the record of such agreement being the "**Agreed Brexit Impact Statement**"). In the event that the parties fail to agree an Agreed Brexit Impact Statement (and where such Brexit Change will occur or has occurred), Schedule 20 (*Dispute Resolution Procedure*) shall apply in determining the Agreed Brexit Impact Statement.

38A.3. In the event that at any time the contents of an Agreed Brexit Impact Statement cease to be accurate (or additional steps of mitigation become available and reasonably practicable), either party may notify the other in writing and the parties shall agree a revised Agreed Brexit Impact Statement within ten (10) Business Days of such notice. In the event that the parties fail to agree a revised Agreed Brexit Impact Statement, Schedule 20 (*Dispute Resolution Procedure*) shall apply in determining the Agreed Brexit Impact Statement.

38A.4. Where the Brexit Change is then implemented:

38A.4.1 where the Agreed Brexit Impact Statement provides that, as a result of the Brexit Change, Project Co's costs in performing its obligations under this Agreement shall be reduced, the Brexit Change shall be deemed to be a Relevant Change in Law to which Clause 37.4 (*Changes in Law*) shall apply; or

38A.4.2 where the Agreed Brexit Impact Statement provides that, as a result of the Brexit Change, Project Co will incur Additional Supplier Costs in performing its obligations in relation to the Works and/or Services under this Agreement, Project Co shall be entitled to claim reimbursement for such Additional Supplier Costs (on the basis of evidence of such costs in the form of supplier invoices specifying the relevant Brexit Tariff costs) from the Authority, provided that Project Co is able to demonstrate that:

38A.4.2.1 the additional costs relate solely to Brexit Tariffs arising as a result of the Brexit Change;

38A.4.2.2 such reimbursement will result in a direct pass through to Project Co's supply chain (including suppliers to the Contractor and Services Provider, as appropriate); and

38A.4.2.3 it has complied with any mitigation measures included within the relevant Agreed Brexit Impact Statement.

38A.4.3 Where Project Co has complied with Clause 38A.4.2 it shall be entitled to issue an invoice to the Authority in respect of reimbursement of the Additional Supplier Costs referred to in Clause 38A.4.2, in accordance with Clause 39.3 and the relevant Agreed Brexit Impact Statement. The Authority shall reimburse such

amounts specified in such invoice to Project Co within twenty (20) days of the Authority's receipt of the relevant invoice.

- 38A.4.4 On request by the Authority, Project Co shall be required to demonstrate that it has satisfied (or procured the satisfaction) of any supplier invoices included within a claim (pursuant to Clause 38A.4.2.2) within the timescales specified by the relevant invoice. Where Project Co is not able comply with this Clause 38A.4.4, Project Co shall be required to repay any reimbursement received pursuant to Clause 38A.4.3 to the Authority (in relation to the relevant invoice) on demand.
- 38A.4.5 The parties agree that a Change in Law for the purposes of this Agreement shall not be deemed to be foreseeable at the applicable reference date (being [REDACTED] in the case of any Brexit Change and, the date of this Agreement in the case of any other Change in Law) by virtue solely of the fact that the United Kingdom's exit from the European Union was foreseeable at such date.
- 38A.4.6 For the purposes of the definition of Brexit Change, and notwithstanding Clause 38A.4.5, a Brexit Change shall be deemed to be foreseeable where the relevant Brexit Change was included within any draft bill or draft statutory instrument published in any Government green or white paper or other Governmental consultation paper, bill or draft statutory instrument at [REDACTED], including without limitation the UK global tariff published by the Department for International Trade on 19 May 2020 (as updated on 11 June 2020 and at any time prior to and including [REDACTED]).

PART 10: FINANCIAL

39 PAYMENT

Service Payments

- 39.1 Project Co shall not be entitled to receive any Monthly Service Payments until the occurrence of the first Payment Commencement Date. Subject to the provisions of this Agreement, the Authority shall pay Project Co in accordance with this Clause 39 (*Service Payments*) and the provisions of Schedule 14 (*Payment Mechanism*).

Invoicing and payment arrangements

- 39.2 The provisions of this Clause 39.2 (*Invoicing and payment arrangements*) apply to the issue of invoices in respect of the Monthly Service Payment by Project Co under this Agreement:

Monthly Service Report

- 39.2.1 On the last Business Day of the Contract Month in which the first Payment Commencement Date occurs Project Co shall submit to the Authority a Monthly Service Report. The Monthly Service Report shall set out the Monthly Service Payment in respect of the Contract Month in which the first Payment Commencement Date occurs.
- 39.2.2 On or before the tenth Business Day of each Contract Month (following the Contract Month in which the first Payment Commencement Date occurs) Project Co shall submit to the Authority a Monthly Service Report. The Monthly Service Report shall set out:
- (a) the Monthly Service Payment in respect of the present Contract Month, calculated in accordance with paragraph 2.1 of Schedule 14 (*Payment Mechanism*). The calculation will be supported by a completed Payment Calculation Schedule;
 - (b) details of each element of the Monthly Service Payment (being the Services Fee, Deductions and any PTIC);
 - (c) such information as is required pursuant to clause 39.2.3; and
 - (d) the other information required to be included in a Monthly Service Report as detailed in Schedule 12 (*Service Requirements*) or any other express provision of this Agreement.
- 39.2.3 The Monthly Service Report issued following the Contract Month in which the Actual Completion Date occurs shall include details of each and the aggregate amount of all Construction Phase Deductions incurred during the Construction Phase. Each subsequent Monthly Service Report shall include details of all Construction Phase Deductions deducted from the Services Fee to date and the Construction Phase Deductions to be deducted from the Services Fee in respect of the present Contract Month.
- 39.2.4 Within ten (10) Business Days of the Expiry Date or Termination Date (as relevant), Project Co shall provide to the Authority a Monthly Service Report with details of each and the aggregate amount of all Deductions incurred in respect of the final two (2) Contract Months and any Construction Phase Deduction not yet deducted from the Services Fee.

39.2.5 The parties shall endeavour to agree the contents of a Monthly Service Report within ten (10) Business Days of its submission in accordance with Clause 39.2.1, 39.2.2, 39.2.3 or 39.2.4 (as relevant), failing which either party may refer the matter to the Dispute Resolution Procedure.

Monthly Invoice

39.2.6 On the first Business Day of each Contract Month (following the Contract Month in which the first Payment Commencement Date occurs) and within twenty (20) Business Days of the Expiry Date or Termination Date (as applicable) Project Co shall submit to the Authority an invoice in the form to be agreed between the Parties ("**Monthly Invoice**") aggregating the following:

- (a) the Monthly Service Payment for the preceding Contract Month;
- (b) adjustments to reflect previous over-payments and/or under-payments (each adjustment stated separately);
- (c) any other amounts due by one party to the other (and where owed by Project Co showing as a negative figure);
- (d) any VAT payable in respect of the above amounts;
- (e) in respect of the Monthly Invoice issued following the Expiry Date or Termination Date (as applicable) the Deductions agreed or determined to have been incurred in respect of the final two (2) Contract Months pursuant to clause 39.2.4 or 39.4;

and setting out the date of the invoice, the due date for payment of the invoice and the account to which payment is to be made together with supporting information that clearly sets out the derivation and calculation of amounts referred to in the Monthly Invoice.

39.2.7 Subject to Clauses 39.3 (*Manner of payment*) and 39.4 (*Disputes*) and the submission of the supporting information referred to in Clause 39.2.6, where a Monthly Invoice shows a net amount owed by the Authority to Project Co, the Authority shall pay the amount of the Monthly Invoice by the later of the final Business Day of the Contract Month in which the Monthly Invoice is received (or, in the case of the Monthly Invoice in respect of the final Contract Month, by the final Business Day of the calendar month in which the Monthly Invoice is received) or by the date falling fourteen (14) Business Days after receipt of the Monthly Invoice, together with delivery of a valid VAT invoice in respect thereof. Where a Monthly Invoice shows a net amount owed by Project Co to the Authority, Project Co shall pay that amount to the Authority by the later of the final Business Day of the Contract Month in which the Monthly Invoice is received (or, in the case of the Monthly Invoice in respect of the final Contract Month, by the final Business Day of the calendar month in which the Monthly Invoice is received) or by the date falling fourteen (14) Business Days after the Monthly Invoice or, at the option of the Authority and subject to Schedule 14 (*Payment Mechanism*), carry forward that amount to the next Monthly Invoice to reduce amounts which would otherwise be owed by the Authority to Project Co.

Manner of payment

39.3 All invoices under this Agreement shall be raised in Pounds Sterling and the money of account and money of payment in respect of all payments, liabilities and claims (including any accrued rights) under this Agreement at any time shall remain denominated in Pounds Sterling. All payments under this Agreement shall

be made in Pounds Sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

Disputes

- 39.4 If the Authority (acting in good faith) disputes all or any part of the Monthly Service Payments or other amounts calculated in accordance with Clause 39.2 (*Invoicing and Payment Arrangements*), the undisputed amount of the Monthly Service Payment shall be paid by the Authority in accordance with Clause 39.2 (*Invoicing and Payment Arrangements*) and the provisions of this Clause 39.4 (*Disputes*) shall apply. The parties shall (without prejudice to the right to make a referral to the Dispute Resolution Procedure pursuant to clause 39.2.5) use all reasonable endeavours to resolve the dispute in question within ten (10) Business Days of the dispute arising. If they fail so to resolve it, either party may refer the matter to the Dispute Resolution Procedure. Following resolution of the dispute, any amount agreed or determined to have been payable by the Authority (and which has not already been paid) shall be paid forthwith by the Authority to Project Co, together with interest on such amount calculated in accordance with Clause 39.5 (*Late Payments*).

Late Payments

- 39.5 Each party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of this Agreement by the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from and including the day after the date on which payment was due up to and including the date of payment.

Set-Off

- 39.6 Subject to Clause 50.11 (*Rights of Set-Off*), whenever any sum of money shall be agreed, or determined, as due and payable by Project Co to the Authority, such sum may at the Authority's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, to Project Co from the Authority under this Agreement provided that the Authority has given Project Co not less than five (5) Business Days' notice of its intention to deduct or apply such sum.
- 39.7 Whenever any sum of money shall be agreed, or determined, as due and payable by the Authority to Project Co, such sum may at Project Co's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, from Project Co to the Authority under this Agreement provided that Project Co has given the Authority not less than five (5) Business Days' notice of its intention to deduct or apply such sum.

40 VAT AND CONSTRUCTION INDUSTRY TAX DEDUCTION SCHEME

VAT

- 40.1 All amounts stated to be payable by either party under this Agreement shall be exclusive of any VAT properly chargeable on any amount.
- 40.2 Each party shall pay to the other party any VAT properly chargeable on any supply made to it under this Agreement provided that it shall first have received from the other party a valid tax invoice in respect of that supply which complies with the requirements of Part III Value Added Tax Regulations 1995.

- 40.3 If either party (referred to in this Clause as the "**First Party**") shall consider that any VAT which the other party (referred to in this Clause as the "**Second Party**") claims to be properly chargeable to the First Party in connection with this Agreement is not in fact properly so chargeable, the First Party shall be entitled to require the Second Party to obtain clearance from HM Revenue and Customs (or, if relevant, such other body as is charged at the time with the collection and management of VAT) as to the VAT (if any) properly so chargeable. The Second Party shall forthwith request HM Revenue and Customs for such clearance.
- 40.4 The following further provisions shall apply in respect of the application for clearance in accordance with Clause 40.3 (VAT):
- 40.4.1 prior to submitting its request for such clearance and any further communication to HM Revenue and Customs in connection with the obtaining of the clearance, the Second Party shall first obtain the agreement of the First Party to the contents of such request and any such further communication, such agreement not to be unreasonably withheld or delayed;
- 40.4.2 the Second Party shall provide to the First Party copies of all communications received from HM Revenue and Customs in connection with the application for clearance as soon as practicable after receipt; and
- 40.4.3 the Second Party shall use all reasonable endeavours (including without limitation the provision of such additional information as HM Revenue and Customs may require) to obtain such clearance as soon as reasonably practicable following the initial request.
- 40.5 If clearance is required by the First Party under Clause 40.3 (VAT), the First Party shall not be obliged to pay the VAT so claimed by the Second Party unless and until clearance is received from HM Revenue and Customs which states that a sum of VAT (the "**VAT Sum**") is properly so chargeable or HM Revenue and Customs state that they are not prepared to give any clearance on the matter. In this case, then subject to Clauses 40.6 and 40.7 (VAT) and provided that the First Party shall first have received a valid tax invoice which complies with the requirements of Part III Value Added Tax Regulations 1995 and which states the VAT Sum to be the amount of VAT chargeable to the First Party, the First Party shall pay the VAT Sum (and any interest or penalties attributable to the VAT Sum) to the Second Party.
- 40.6 If the First Party disagrees with any clearance obtained pursuant to Clause 40.3 (VAT) by the Second Party from HM Revenue and Customs, then the Second Party (provided that it is indemnified to its reasonable satisfaction against all costs and expenses including interest and penalties which it may incur in relation thereto) shall take such action and give such information and assistance to the First Party as the First Party may require to challenge such clearance or otherwise to resist or avoid the imposition of VAT on the relevant supply.
- 40.7 The following further provisions shall apply if the First Party shall exercise its rights under Clause 40.6 (VAT):
- 40.7.1 the action which the First Party shall be entitled to require the Second Party to take shall include (without limitation) contesting any assessment to VAT or other relevant determination of HM Revenue and Customs before any VAT tribunal or court of competent jurisdiction and appealing any judgement or decision of any such tribunal or court;
- 40.7.2 if the Second Party shall be required to pay to or deposit with HM Revenue and Customs a sum equal to the VAT assessed as a condition precedent to its pursuing any appeal, the First Party shall, at its election, either pay such sum to HM Revenue and Customs on behalf of the Second Party or on

receipt of proof in a form reasonably satisfactory to the First Party that the Second Party has paid such sum to or deposited such sum with HM Revenue and Customs the First Party shall pay such sum to the Second Party;

- 40.7.3 save as specifically provided in Clause 40.5 (VAT), the First Party shall not be obliged to pay to the Second Party any sum in respect of the VAT in dispute to the Second Party or in respect of VAT on any further supplies made by the Second Party to the First Party which are of the same type and raise the same issues as the supplies which are the subject of the relevant dispute unless and until the final outcome of the relevant dispute is that it is either determined or agreed that VAT is properly chargeable on the relevant supply or supplies; and
- 40.7.4 the Second Party shall account to the First Party for any costs awarded to the Second Party on any appeal, for any sum paid to or deposited with HM Revenue and Customs in accordance with Clause 40.7.2 which is repayable to the Second Party and for any interest to which the Second Party is entitled in respect of such sums.

Changes in recoverability of VAT

- 40.8 Subject to Clause 40.9 (*Changes in recoverability of VAT*), if, following a Change in Law, Project Co becomes unable to recover VAT attributable to supplies to be made to the Authority by Project Co pursuant to this Agreement, the Authority shall ensure that Project Co is left in no better and no worse position than it would have been had such Change in Law not occurred (including but not limited to making such amendments to this Agreement as Project Co and the Authority shall agree acting reasonably), provided that Project Co shall use all reasonable endeavours to mitigate the adverse effects of any such Change in Law.
- 40.9 The provisions of Clause 40.8 (*Changes in recoverability of VAT*) shall apply only if (and to the extent that) the Change in Law was not reasonably foreseeable at the date of this Agreement by an experienced contractor performing operations similar to the relevant Works on the basis of draft bills published in Government green or white papers or other Government departmental consultation papers, bills, draft statutory instruments or draft instruments or proposals published in the Official Journal of the European Union, in each case published:
- 40.9.1 prior to the date of this Agreement; and
- 40.9.2 in substantially the same form as the Change in Law.

Construction Industry Tax Deduction Scheme

- 40.10 This Clause 40.10 (*Construction Industry Tax Deduction Scheme*) relates to the Construction Industry Tax Deduction Scheme:
- 40.10.1 In this Clause 40.10 (*Construction Industry Tax Deduction Scheme*) (but not otherwise):
- (a) **"the Act"** means the Finance Act 2004;
 - (b) **"the Regulations"** means the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045);
 - (c) **"the Legislation"** means Chapter 3 Part 3 of the Act and the Regulations, taken together;
 - (d) **"Contractor"** means a person who is a contractor for the purposes of Chapter 3 Part 3 of the Act; and

- (e) **"sub-contractor"** means a person who is a sub-contractor for the purposes of Chapter 3 Part 3 of the Act.

40.10.2 Each of the Authority and Project Co shall comply with the Legislation.

40.10.3 If any payment due from the Authority to Project Co under this Agreement is a contract payment under section 60(1) of the Act, then the Authority, as Contractor, shall (not later than fifteen (15) Business Days before the first such payment is due to be made) verify, in accordance with Regulation 6 of the Regulations, whether the sub-contractor is registered for gross payment or for payment under deduction or is not registered under Chapter 3 Part 3 of the Act.

40.10.4 If any payment due from the Authority to Project Co under this Agreement is a contract payment under section 60(1) of the Act, then:

- (a) if Project Co is registered for gross payment under section 63(2) of the Act, the Authority shall make a payment to Project Co without any deduction;
- (b) if Project Co is not registered for gross payments under section 63(2) of the Act, the Authority shall make a payment to Project Co, subject to the deduction of the relevant percentage in accordance with section 61(1) of the Act, and thereupon Clause 40.10.6 below shall apply.

40.10.5 If any dispute arises between the Authority and Project Co as to whether any payment due by the Authority to Project Co under this Agreement is or is not a contract payment by virtue of the exemption in Regulation 23 of the Regulations, the parties will jointly apply to HM Revenue and Customs for a written clearance and until such clearance is received it shall be assumed that such payment is a contract payment and the provisions of Clause 40.10 (*Construction Industry Tax Deduction Scheme*) shall apply accordingly.

40.10.6 The Authority shall be entitled to make a deduction at the rate specified in section 61(1) of the Act or at such other rate as may be in force from time to time from the whole of any payment to Project Co (and not just that part of such payment which does not represent the direct cost to Project Co or any other person of materials used or to be used in carrying out the construction operations to which the relevant payment relates) unless prior to making such payment the Authority shall have received written confirmation from HM Revenue and Customs (obtained by and at the expense of Project Co) in a form which is reasonably satisfactory to the Authority directing the Authority to make the deduction against only a specified amount or proportion of any such payment to Project Co.

40.10.7 Where any error or omission has occurred in calculating or making any payment under this Clause 40.10 (*Construction Industry Tax Deduction Scheme*) then:

- (a) in the case of an over deduction, the Authority shall correct that error by repayment of the sum over deducted to Project Co; and
- (b) in the case of an under deduction, Project Co shall correct that error or omission by repayment of the sum under deducted to the Authority.

40.10.8 The Authority shall send promptly to HM Revenue & Customs any returns required by the Legislation, and shall provide to Project Co a payment

statement (where appropriate) and/or such other information as may be required by the Legislation in relation to any contract payment.

40.10.9 If compliance with this Clause 40.10 (*Construction Industry Tax Deduction Scheme*) involves the Authority or Project Co in not complying with any other of the terms of this Agreement, then the provisions of this Clause shall prevail.

41 **FINANCIAL MODEL**

41.1 Unless otherwise agreed between the parties, any amendments to the Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Agreement, and shall in all cases be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed). In the event that the parties fail to agree any proposed amendments to the Financial Model, the matter shall be referred for resolution in accordance with Schedule 20 (*Dispute Resolution Procedure*).

41.2 Following any amendment of the Financial Model in accordance with this Agreement, Project Co shall promptly deliver a copy of the revised Financial Model to the Authority in the same form as the original form (or such other form as may be agreed by the parties from time to time together with a signed audit letter from Project Co's auditors).

42 **RECORDS AND OPEN BOOK ACCOUNTING**

Records and Reports

The provisions of Schedule 19 (*Record Provisions*) shall apply to the keeping of records and the making of reports.

PART 11: TERMINATION

43 AUTHORITY EVENTS OF DEFAULT

43.1 For the purposes of this Agreement, Authority Events of Default means any of the following events or circumstances:

- 43.1.1 the Authority is in material breach of its obligations under Clause 9 (*Nature of Land Interests*) (other than as a consequence of a breach by Project Co of its obligations under this Agreement) and such breach materially adversely affects the ability of Project Co to perform its material obligations under this Agreement for a continuous period of not less than thirty (30) Business Days;
- 43.1.2 the Authority fails to pay any sum or sums due to Project Co under this Agreement (which sums are not in dispute) which, either singly or in aggregate, exceed(s) the amount of the Monthly Service Payment from time to time and such failure continues for thirty (30) Business Days from receipt by the Authority of a notice of non-payment from Project Co;
- 43.1.3 the Authority fails to pay any amount or amounts of the Side Roads Works Price which has or have become due and payable to Project Co under Schedule 36 (*Side Roads Works*) (which sums are not in dispute) by the final date for payment of such sums and which either singly or in aggregate exceed(s) £[REDACTED] and such failure continues for thirty (30) Business Days from receipt by the Authority of a notice of non-payment from Project Co;
- 43.1.4 an expropriation, sequestration or requisition of a material part of the Assets and/or shares of Project Co or Hold Co by the Authority or any Relevant Authority; or
- 43.1.5 a breach by the Authority of Clause 61.11.2 (*Sub-Contracting and Assignment*).

Project Co's options

43.2 On the occurrence of an Authority Event of Default, or within a reasonable time after Project Co becomes aware of the same, and while the same is still subsisting, Project Co may, at its option:

- 43.2.1 in respect of execution of the Works, suspend performance by it of its obligations under this Agreement until such time as the Authority shall have demonstrated to the reasonable satisfaction of Project Co that it is capable of performing, and will perform, its obligations under this Agreement; or
- 43.2.2 serve notice on the Authority (or such other party as may be notified in advance in writing by the Authority to Project Co) of the occurrence (and specifying details) of such Authority Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the Authority (or otherwise) in respect of Clauses 43.1.1, 43.1.4 or 43.1.5 within sixty (60) Business Days of such notice, and in respect of Clauses 43.1.2 or 43.1.3 within thirty (30) Business Days of such notice, Project Co may serve a further notice on the Authority (or its substitute notified in accordance with this Clause 43.2.2) terminating this Agreement with immediate effect.

- 43.3 Project Co shall not exercise or purport to exercise any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

44 PROJECT CO EVENT OF DEFAULT

Project Co Event of Default

- 44.1 For the purposes of this Agreement, Project Co Event of Default means any of the following events or circumstances listed in this Clause 44.1 (*Project Co Event of Default*):

Insolvency

- 44.1.1 the occurrence of any of the following events in respect of Project Co, namely:

- (a) any arrangement or composition with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to Project Co;
- (b) a receiver, administrator, administrative receiver, liquidator or other encumbrancer or other similar officer taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within ten (10) Business Days) upon, the whole or any material part of the assets of Project Co;
- (c) Project Co ceasing to carry on business;
- (d) a petition being presented (and not being discharged within twenty (20) Business Days), or a resolution being passed or an order being made for the administration or the winding up, bankruptcy or dissolution of Project Co; or
- (e) if Project Co shall suffer any event analogous to the events set out in Clauses 44.1.1(a) to 44.1.1(d) in any jurisdiction in which it is incorporated or resident;

Long stop

- 44.1.2 Project Co failing to achieve a Phase Actual Completion Date within a period of eighteen (18) months after the relevant Phase Completion Date;

Default

44.1.3

- (a) Project Co committing a material breach of its obligations under this Agreement which has a material and adverse effect on the delivery of the Project Operations (other than as a consequence of a breach by the Authority of its obligations under this Agreement);
- (b) Project Co wilfully breaches Schedule 23 (*Refinancing*);

- 44.1.4 Project Co Abandoning this Agreement;

Health and safety

44.1.5 at any time after the relevant Phase Actual Completion Date Project Co committing a material breach of its obligations under this Agreement (other than as a consequence of a breach by the Authority of its obligations under this Agreement) which results in the criminal investigation, prosecution and conviction of Project Co or any Project Co Party or the Authority under the Health and Safety Regime (a "**H&S Conviction**") provided that an H&S Conviction of a Project Co Party or the Authority shall not constitute a Project Co Event of Default if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by Project Co in accordance with Clause 61.1 (*Sub-contractors*);

In determining whether to exercise any right of termination or right to require the termination of the engagement of a Project Co Party pursuant to this Clause 44.1.5, the Authority shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (b) give all due consideration, where appropriate, to action other than termination of this Agreement;

Change in Control

44.1.6 the occurrence of any Change in Control which is prohibited by Clause 62 (*Ownership Information and Changes in Control*);

Assignment

44.1.7 Project Co failing to comply with the provisions of Clauses 61.9 (*Assignment*) or 61.1 (*Sub-contractors*);

Deductions

44.1.8 the total Deductions (excluding Construction Phase Deductions) in each of any three (3) Contract Months in any six (6) consecutive Contract Months is equal to or greater than three point five per cent (3.5%) of the Services Fee for the current Contract Year;

Warning Notices

44.1.9 Project Co is awarded a total of four (4) or more Warning Notices in any period of twelve (12) consecutive months;

Payment

44.1.10 Project Co failing to pay any sum or sums due to the Authority under this Agreement (which sums are not in dispute) which, either singly or in aggregate, exceed(s) £[REDACTED](index linked) and such failure continues for sixty (60) Business Days from receipt by Project Co of a notice of non-payment from the Authority;

Insurance

44.1.11 a breach by Project Co of its obligation to take out and maintain the insurances required by Clauses 57.1, 57.1A and 57.2 (*Project Co Insurances*);

Procurement Breach

44.1.12 Project Co has, at the date of this Agreement, been in one of the situations referred to in regulation 57(1) of The Public Contracts Regulations 2015 (S.I.2015/102), including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015 (S.I.2015/102) and should therefore have been excluded from the procurement proceedings;

Corrupt Gifts

44.1.13

- (a) Project Co has committed a Prohibited Act in relation to which Clause 49.3.1 applies; or
- (b) Project Co has committed a Prohibited Act, in relation to which Clause 49.3.2, 49.3.3, 49.3.4 or 49.3.5 applies; or

Tax Compliance

44.1.14 in the circumstances described at Clause 56.5.5 and/or Clause 56.5.6 (*Tax Compliance*).

Notification

44.2 Project Co shall notify the Authority of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Co Event of Default, in either case promptly on Project Co becoming aware of its occurrence.

Authority's options

44.3 On the occurrence of a Project Co Event of Default, or within a reasonable time after the Authority becomes aware of the same, and while the same is subsisting, the Authority may:

44.3.1 in the case of the Project Co Events of Default referred to in Clauses 44.1.1 (*Insolvency*), 44.1.2 (*Long Stop*), 44.1.3(b) (*Default*), 44.1.5 (*Health and Safety*), 44.1.6 (*Change in Control*), 44.1.7 (*Assignment*), 44.1.8 (*Deductions*), 44.1.9 (*Warning Notices*), 44.1.10 (*Payment*), 44.1.12 (*Procurement Breach*) or 44.1.13(a) (*Corrupt Gifts*), terminate this Agreement in its entirety by notice in writing having immediate effect;

44.3.2 in the case of any Project Co Event of Default referred to in Clause 44.1.3(a) and 44.1.4, serve notice of default on Project Co requiring Project Co at Project Co's option either:

- (a) to remedy the Project Co Event of Default referred to in such notice of default (if the same is continuing) within twenty (20) Business Days of such notice of default; or
- (b) to put forward within twenty (20) Business Days of such notice of default a reasonable programme (set out, if appropriate, in stages)

for remedying the Project Co Event of Default. The programme shall specify in reasonable detail the manner in, and the latest date by, which such Project Co Event of Default is proposed to be remedied (Project Co shall only have the option of putting forward a programme in accordance with this Clause 44.3.2(b) if it first notifies the Authority within ten (10) Business Days of such notice of default that it proposes to do so);

44.3.3 in the case of any Project Co Event of Default referred to in Clause 44.1.11 (*Insurance*) serve notice of default on Project Co requiring Project Co to remedy the Project Co Event of Default (if the same is continuing) within twenty (20) Business Days of such notice of default;

44.3.4 in the case of any Project Co Event of Default referred to in Clause 44.1.14 (*Tax Compliance*), serve notice of default on Project Co requiring Project Co to remedy the Project Co Event of Default (if the same is continuing) within thirty (30) Business Days of such notice of default; and

44.3.5 in the case of any Project Co Event of Default referred to in Clause 44.1.13(b) serve notice of default on Project Co requiring Project Co to remedy the Project Co Event of Default (if the same is continuing) within twenty (20) Business Days of such notice of default, on the terms required pursuant to Clause 49.3.2, 49.3.3, 49.3.4 or 49.3.5, as appropriate.

Remedy provisions

44.4 Where Project Co puts forward a programme in accordance with Clause 44.3.2(b), the Authority shall have twenty (20) Business Days from receipt of the same within which to notify Project Co (acting reasonably) that it does not accept the programme, failing which the Authority shall be deemed to have accepted the programme. Where the Authority notifies Project Co that it does not accept the programme as being reasonable, the parties shall endeavour within the following five (5) Business Days to agree any necessary amendments to the programme put forward. In the absence of agreement within five (5) Business Days, the question of whether the programme (as the same may have been amended by agreement) will remedy the Project Co Event of Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable programme) may be referred by either party for resolution in accordance with Schedule 20 (*Dispute Resolution Procedure*).

44.5 If:

44.5.1 the Project Co Event of Default notified in a notice of default served under Clause 44.3.2, Clause 44.3.3, Clause 44.3.4 or Clause 44.3.5 (as the case may be) is not remedied before the expiry of the period referred to in Clause 44.3.2(a), Clause 44.3.3, Clause 44.3.4 or Clause 44.3.5 (as appropriate); or

44.5.2 where Project Co puts forward a programme pursuant to Clause 44.3.2(b) which has been accepted by the Authority or has been determined to be reasonable and Project Co fails to achieve any element of the programme or the end date for the programme (as the case may be); or

44.5.3 any programme put forward by Project Co pursuant to Clause 44.3.2(b) is rejected by the Authority as not being reasonable, and the Dispute Resolution Procedure does not find against that rejection,

then the Authority may terminate this Agreement in its entirety by written notice to Project Co with immediate effect. Provided that for the purposes of Clause 44.5.2 if Project Co's performance of the programme is adversely

affected by the occurrence of a Delay Event referred to in Clause 34.3.2, Force Majeure, a Relief Event or an Excusing Cause then, subject to Project Co complying with the mitigation and other requirements in this Agreement concerning a Delay Event, Force Majeure, a Relief Event or an Excusing Cause (as the case may be), the time for performance of the programme or any relevant element of it shall be deemed to be extended by a period equal to the delay caused by the occurrence of a Delay Event referred to in Clause 34.2.2, Force Majeure, the Relief Event or the Excusing Cause (as the case may be) which is agreed by the parties or determined in accordance with Schedule 20 (*Dispute Resolution Procedure*).

Authority's costs

- 44.6 Project Co shall reimburse the Authority for all reasonable costs incurred by the Authority in exercising any of its rights pursuant to this Clause 44 (*Project Co Event of Default*) (including, without limitation, any relevant increased administrative expenses). The Authority shall take reasonable steps to mitigate such costs.
- 44.7 The Authority shall not exercise, or purport to exercise, any right to terminate this Agreement except as expressly set out in this Agreement. The rights of the Authority (to terminate or otherwise) under this Clause are in addition (and without prejudice) to any right which the Authority may have to claim the amount of loss or damage suffered by the Authority on account of the acts or omissions of Project Co (or to take any action other than termination of this Agreement).

45 TERMINATION RESULTING FROM FORCE MAJEURE

If, in the circumstances referred to in Clause 36 (*Force Majeure*), the parties have failed to reach agreement on any modification to this Agreement pursuant to Clause 36 (*Force Majeure*) within six (6) calendar months of the date on which the party affected serves notice on the other party in accordance with Clause 36 (*Force Majeure*) either party may at any time afterwards terminate this Agreement by written notice to the other party having immediate effect provided always that the effects of the relevant event of Force Majeure continues to prevent either party from performing any material obligation under this Agreement.

46 AUTHORITY VOLUNTARY TERMINATION

The Authority shall be entitled to terminate this Agreement at any time on six (6) months' written notice to Project Co, including, for the avoidance of doubt, in circumstances described at regulation 73(1)(c) of The Public Contracts Regulations 2015 (S.I.2015/102). In the event of notice being given by the Authority in accordance with this Clause, the Authority shall, at any time before the expiration of such notice, be entitled to direct Project Co, where the Works (or any part or parts of the Works) or any Service (or any elements of any Service) have not been commenced, to refrain from commencing any such Works or Services (or to procure the same).

47 TERMINATION FOR PERSISTENT BREACH BY PROJECT CO

- 47.1 If an Information Breach, or any other breach other than any breach for which Deductions could have been made has continued for more than fourteen (14) days or occurred more than three (3) times in any six (6) month period then the Authority may serve a notice on Project Co:
- 47.1.1 specifying that it is a formal warning notice;
 - 47.1.2 giving reasonable details of the breach; and
 - 47.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

- 47.2 If, following service of such a warning notice, the breach specified has continued beyond thirty (30) days or recurred in three (3) or more months within the six (6) month period after the date of service, then the Authority may serve another notice on Project Co:
- 47.2.1 specifying that it is a final warning notice;
 - 47.2.2 stating that the breach specified has been the subject of a warning notice served within the twelve (12) month period prior to the date of service of the final warning notice; and
 - 47.2.3 stating that if such breach continues for more than fourteen (14) days or recurs in three (3) or more months within the six (6) month period after the date of service of the final warning notice, the Agreement may be terminated.
- 47.3 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.
- 47.4 Once a termination notice is served for a Persistent Breach, Project Co should not be entitled to any further rectification period, although the provisions of the Funders' Direct Agreement will still apply.

48 **EXPIRY**

This Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of this Agreement. To avoid doubt, Project Co shall not be entitled to any compensation for termination of this Agreement on the Expiry Date.

49 **CORRUPT GIFTS AND PAYMENTS**

Prohibition on corruption

- 49.1 The term "**Prohibited Act**" means:
- 49.1.1 offering, giving or agreeing to give to the Authority or any other public body or to any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward:
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority or any other public body; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority or any other public body;
 - 49.1.2 entering into this Agreement or any other agreement with the Authority or any other public body in connection with which commission has been paid or has been agreed to be paid by Project Co or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to the Authority;
 - 49.1.3 committing any offence:
 - (a) under the Bribery Act 2010;

- (b) under any Law creating offences in respect of fraudulent acts; or
 - (c) at common law, in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority or any other public body;
- 49.1.4 defrauding or attempting to defraud or conspiring to defraud the Authority or any other public body;
- 49.1.5 committing any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- 49.1.6 committing any breach of the Data Protection Laws by unlawfully processing Personal Data in connection with any blacklisting activities; or
- 49.1.7 giving, directly or indirectly, or permitting or suffering to be given, to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers.

Warranty

- 49.2 Project Co warrants that in entering into this Agreement it has not committed any Prohibited Act.

Remedies

- 49.3 If Project Co or any Project Co Party (or anyone employed by or acting on behalf of them) commits any Prohibited Act, then the Authority shall be entitled to act in accordance with Clauses 49.3.1 to 49.3.6 below:
- 49.3.1 if a Prohibited Act is committed by Project Co or by an employee not acting independently of Project Co, then the Authority may terminate this Agreement with immediate effect by giving written notice to Project Co;
- 49.3.2 if the Prohibited Act is committed by an employee of Project Co acting independently of Project Co, then the Authority may give written notice to Project Co of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice Project Co terminates the employee's employment and (if necessary) procures the performance of the relevant part of the Works, Services and/or Restricted Services by another person;
- 49.3.3 if the Prohibited Act is committed by a Contracting Associate or by an employee of that Contracting Associate not acting independently of that Contracting Associate then the Authority may give written notice to Project Co of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice Project Co terminates the relevant Sub-Contract and procures the performance of the relevant part of the Works, Services and/or Restricted Services by another person, where relevant, in accordance with Clause 61 (*Sub-Contracting and Assignment*);
- 49.3.4 if the Prohibited Act is committed by an employee of a Contracting Associate acting independently of that Contracting Associate, then the Authority may give notice to Project Co of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice Project Co procures the termination of the employee's employment and (if necessary) procures the performance of the relevant part of the Works, Services and/or Restricted Services by another person;

49.3.5 if the Prohibited Act is committed by any other person not specified in Clauses 49.3.1 to 49.3.4 above, then the Authority may give notice to Project Co of termination and this Agreement will terminate unless within twenty (20) Business Days Project Co procures the termination of such person's employment and of the appointment of their employer (where the employer is not the Authority and where such person is not employed by Project Co or the Contracting Associate) and (if necessary) procures the performance of the relevant part of the Works, Services and/or Restricted Services by another person; and

49.3.6 any notice of termination under this Clause shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party who the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Agreement will terminate in accordance with the applicable provisions of this Clause.

49.4 Without prejudice to its other rights or remedies under this Clause, the Authority shall be entitled to recover from Project Co:

49.4.1 the amount or value of any such gift, consideration or commission; and

49.4.2 any other loss sustained in consequence of any breach of this Clause.

Permitted payments

49.5 Nothing contained in this Clause shall prevent Project Co from paying any proper commission or bonus to its employees within the agreed terms of their employment.

Notification

49.6 Project Co shall notify the Authority of the occurrence (and details) of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

Interim Management

49.7 Where Project Co is required to replace any Sub-Contractor pursuant to this Clause, the provisions of Clause 61.5 (*Replacement of a non-performing Sub-Contractor*) shall apply and be construed accordingly.

50 COMPENSATION ON TERMINATION

50.1 If this Agreement is terminated pursuant to Clause 45 (*Termination Resulting from Force Majeure*), then the Authority shall pay compensation to Project Co in accordance with Section 3 (*Consequence of Termination for Force Majeure*) of Schedule 17 (*Compensation on Termination*).

50.2 If this Agreement is terminated pursuant to Clause 44 (*Project Co Event of Default*) or Clause 47 (*Termination for Persistent Breach by Project Co*) then the Authority shall pay compensation to Project Co in accordance with Section 2 (*Compensation for Project Co Default*) of Schedule 17 (*Compensation on Termination*).

50.3 If this Agreement is terminated pursuant to Clause 43 (*Authority Events of Default*), then the Authority shall pay compensation to Project Co in accordance

with Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*) of Schedule 17 (*Compensation on Termination*).

- 50.4 If this Agreement is terminated pursuant to Clause 46 (*Authority Voluntary Termination*), then the Authority shall pay compensation to Project Co in accordance with Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*) of Schedule 17 (*Compensation on Termination*).

Tax equalisation

- 50.5 Where a payment is to be made to Project Co pursuant to Clause 50.1, Clause 50.3 or Clause 50.4 (*Compensation on Termination*) (a "**Compensation Payment**") and Project Co has a Relevant Tax Liability in respect of such payment, then the amount of the Compensation Payment to be made by the Authority to Project Co shall be increased so as to ensure that Project Co is in the same position (after account is taken of the Relevant Tax Liability) as it would have been in had it not been for such Relevant Tax Liability.
- 50.6 For the purposes of this Clause 50 (*Compensation on Termination*):
- 50.6.1 "**Relief**" shall mean any relief, allowance or deduction in computing profits or tax or a credit against, or right to repayment of, tax granted by or pursuant to any legislation for tax purposes;
- 50.6.2 a "**Relief derived from the Project**" is a Relief which arises in connection with the Project and includes any Relief arising as a consequence of the distribution of any amount obtained in respect of the Project (other than a Compensation Payment) by Project Co (whether by way of interest, dividend or other distribution, repayment, reduction or redemption of capital or indebtedness or return of assets or otherwise); and
- 50.6.3 Project Co shall be regarded as having a "**Relevant Tax Liability**" in respect of a Compensation Payment to the extent that:
- (a) it has a liability for tax in consequence of or in respect of a Compensation Payment ("**Actual Liability**"); or
 - (b) it would have had a liability for tax within paragraph (a) above but for the utilisation of a Relief other than a Relief derived from the Project ("**Deemed Liability**").
- 50.7 In determining whether Project Co has a Relevant Tax Liability by reason of a Compensation Payment, it should be assumed that any Reliefs derived from the Project which are available to Project Co (or would have been so available but for a surrender by Project Co of such Reliefs by way of group or consortium relief) for offset against the Compensation Payment, or against tax in relation to the same, have been so offset to the maximum extent possible.
- 50.8 Project Co shall keep the Authority fully informed of all negotiations with HM Revenue and Customs in relation to any Relevant Tax Liability in respect of a Compensation Payment. Project Co shall not agree, accept or compromise any claim, issue or dispute relating to such Relevant Tax Liability without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed. The Authority may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct Project Co to resist, appeal, defend or otherwise dispute the Relevant Tax Liability in respect of the Compensation Payment, provided that the cost of any such dispute (including any interest or penalties incurred) shall be at the Authority's expense. However, if Project Co 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, Project Co 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 Clause 50.5 (*Tax equalisation*) to reflect such outcome.

50.9 Any increase in the amount of a Compensation Payment which is payable under Clause 50.5 (*Tax equalisation*) shall be paid on the later of five (5) Business Days after a demand therefor (together with evidence in sufficient detail for the Authority to satisfy itself of the Relevant Tax Liability and its calculation) is made by Project Co and:

50.9.1 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

50.9.2 in the case of a Deemed Liability, five (5) Business Days before the date on which tax which would have been payable but for the utilisation of the relevant Relief must be paid in order to avoid incurring interest or penalties (whether by Project Co or otherwise) and, for the purposes of determining when the Relief would otherwise have been utilised, Reliefs shall be regarded as utilised in the order in which they arise.

50.10 The Authority shall have the right to pay the amount payable under Clause 50.5 (*Tax equalisation*) direct to HM Revenue and Customs in satisfaction of the relevant tax due by Project Co.

Rights of Set-Off

50.11 To avoid doubt, the Authority's obligations to make any payment of compensation to Project Co pursuant to this Clause are subject to the Authority's rights under Clause 39.6 (*Set-Off*), save that the Authority agrees not to set-off any amount agreed or determined as due and payable by Project Co to the Authority against any payment of termination compensation (whether payable as a lump sum or in instalments) under Clauses 50.1, 50.3 or 50.4 (*Compensation on Termination*), except to the extent that such termination payment exceeds the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as the case may be) at that time.

Full and final settlement

50.12 Subject to the provisions of paragraph 2.1 of Section 4 (*General*) of Schedule 17 (*Compensation on Termination*):

50.12.1 any compensation paid pursuant to this Clause shall be in full and final settlement of any claim, demand and/or proceedings of Project Co in relation to any termination of this Agreement and/or any Project Document (and the circumstances leading to such termination) and Project Co shall be excluded from all other rights and remedies in respect of any such termination; and

50.12.2 the compensation payable (if any) pursuant to this Clause 50 (*Compensation on Termination*) above shall be the sole remedy of Project Co and Project Co shall not have any other right or remedy in respect of such termination.

51 CONSEQUENCES OF TERMINATION

Continued performance

- 51.1 Subject to any exercise by the Authority of its rights to perform, or to procure a third party to perform, the obligations of Project Co, the parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the Termination Date.

Transfer to Authority of Assets, Contracts etc.

- 51.2 On the service of a notice of termination in accordance with this Agreement for any reason or otherwise at the Expiry Date, subject to the provisions of the Funders' Direct Agreement:

- 51.2.1 if prior to the final Phase Actual Completion Date, in so far as any transfer shall be necessary fully and effectively to transfer property to the Authority, Project Co shall transfer to, and there shall vest in, the Authority, such part of the Works and/or the Project Facilities as shall have been constructed and such items of the plant and equipment as shall have been procured by Project Co if the Authority so elects;
- 51.2.2 all goods and all materials on or near to the Site not yet incorporated in the Works shall remain available to the Authority for the purposes of completing the Works and if the cost of such goods and materials has not been reflected in the payment of any compensation pursuant to Schedule 17 (*Compensation on Termination*), subject to the payment by the Authority to Project Co in respect of such goods and materials (determined as between a willing vendor and willing purchaser with any disputes determined pursuant to Clause 60 (*Dispute Resolution Procedure*));
- 51.2.3 the construction plant shall remain available to the Authority for the purposes of completing the Works, subject to payment of the Contractor's reasonable charges;
- 51.2.4 Project Co shall hand over to, and there shall vest in, the Authority, free from any Encumbrances (other than any created on or by or against the Authority), the Project Facilities and any right or interest (including the remaining term of any lease or licence) Project Co has in any depot for the Project;
- 51.2.5 if the Authority so elects, Project Co shall procure that any of the Construction Contract, and/or the Service Contracts shall be novated or assigned to the Authority, provided that where termination occurs under Clause 43 (*Authority Events of Default*) the consent of the Contractor, the Service Provider or the Authority (as the case may be) shall be required;
- 51.2.6 Project Co shall, or shall procure that any Contracting Associate shall (as the case may be), offer to sell to the Authority at a fair value (determined as between a willing vendor and willing purchaser, with any disputes as to such fair value being determined pursuant to Schedule 20 (*Dispute Resolution Procedure*)), free from any Encumbrance all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any of its Contracting Associates and reasonably required by the Authority in connection with the operation of the Project Facilities or the provision of the Services;
- 51.2.7 Project Co shall deliver to the Authority (as far as not already delivered to the Authority) one complete set of:

- (a) “as built drawings” showing all alterations made to the Project Facilities since the commencement of operation of the Project Facilities; and
 - (b) maintenance, operation and training manuals for the Project Facilities;
- 51.2.7A Project Co shall comply with the requirements of paragraphs 2.2 to 2.4 (inclusive) of Schedule 18 (*Handback Procedure*).
- 51.2.8 Project Co shall use all reasonable endeavours to procure that the benefit of all manufacturer’s warranties in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Agreement and included in the Project Facilities are assigned, or otherwise transferred, to the Authority with full title guarantee; and
- 51.2.9 Project Co shall deliver to the Authority the records referred to in Clause 42 (*Records and Open Book Accounting*) except where such documents are required by Law to be retained by Project Co or its Contracting Associates (in which case complete copies shall be delivered to the Authority).
- 51.3 Project Co shall ensure that provision is made in all contracts of any description whatsoever to ensure that the Authority will be in a position to exercise its rights, and Project Co will be in a position to comply with its obligations, under Clause 51.2 (*Transfer to Authority of Assets, Contracts etc.*) Clause 51.4 (*Transitional Arrangements*) and Clause 52 (*Handback Procedure*).

Transitional arrangements

- 51.4 On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall have the following duties:
 - 51.4.1 Project Co shall co-operate fully with the Authority and any successor providing to the Authority services in the nature of any of the Services or any part of the Services in order to achieve a smooth transfer of the manner in which the Authority obtains services in the nature of the Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the Authority and members of the public;
 - 51.4.2 Project Co shall as soon as practicable remove from the Site all property not acquired by the Authority pursuant to Clause 51.2 (*Transfer to Authority of Assets, Contracts etc.*) (or not belonging to the Authority or any Authority Party) and if it has not done so within forty (40) Business Days after any notice from the Authority requiring it to do so the Authority may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of Project Co;
 - 51.4.3 Project Co shall forthwith deliver to the Authority’s Representative:
 - (a) any security passwords, access codes and other keys to the Project Facilities and the equipment; and
 - (b) without prejudice to Clause 59 (*Intellectual Property*), any copyright licences for any computer programmes (or licences to use the same) necessary for the operation of the Project Facilities (but excluding computer programmes, which have been developed or acquired by a Service Provider for its own use and

not solely for the purposes of provision of any of the Services at the Project Facilities or the assignment or transfer of which is otherwise restricted); and

51.4.4 Project Co shall as soon as practicable vacate the Site and (without prejudice to Schedule 18 (*Handback Procedure*)) shall leave the Site and the Project Facilities in a safe, clean and orderly condition.

51.5 If the Authority wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry of this Agreement, Project Co shall co-operate with the Authority fully in such competition process including (without limitation) by:

51.5.1 providing any information which the Authority may reasonably require to conduct such competition but, to avoid doubt, information which is commercially sensitive to Project Co shall not be provided (and, for the purpose of this Clause 51.5.1 commercially sensitive shall mean information which would if disclosed to a competitor of Project Co give that competitor a competitive advantage over Project Co and thereby prejudice the business of Project Co but shall, to avoid doubt, exclude any information to be disclosed in terms of Clause 27 (*Employment Matters*)); and

51.5.2 assisting the Authority by providing all (or any) participants in such competition process with access to the Site and the Project Facilities.

Continuing Obligations

51.6 Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any termination sum or other payment of compensation on termination pursuant to this Agreement:

51.6.1 termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and

51.6.2 termination of this Agreement shall not affect the continuing rights and obligations of Project Co and the Authority under Clauses 10 (*The Site*), 27 (*Employment Matters*), 36 (*Force Majeure*), 39 (*Payment*), 40 (*VAT and Construction Industry Tax Deduction Scheme*), 41 (*Financial Model*), 42 (*Records and Open Book Accounting*), 45 (*Termination Resulting from Force Majeure*), 46 (*Authority Voluntary Termination*), 49 (*Corrupt Gifts and Payments*), 50 (*Compensation on Termination*), 51.2 (*Transfer to Authority of Assets, Contracts etc.*), 51.4 and 51.5 (*Transitional Arrangements*), 53 (*Indemnities*), 57 (*Insurance*), 58 (*Exclusions and Limitations on Liability*), 59 (*Intellectual Property*), 60 (*Dispute Resolution Procedure*), 63 (*Mitigation*), 65 (*Confidentiality*), 68 (*Notices*) and Clause 79 (*Governing Law and Jurisdiction*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

52 HANDBACK PROCEDURE

The provisions of Schedule 18 (*Handback Procedure*) shall apply to the handback of the Project Facilities to the Authority on expiry of this Agreement.

PART 12: INDEMNITIES, RELIEF, WARRANTIES & INSURANCE

53 INDEMNITIES

Project Co indemnities to Authority

53.1 Project Co shall, subject to Clause 53.2, (*Project Co Not Responsible*) be responsible for, and shall release and indemnify the Authority and Authority Parties on demand from and against, all liability for:

53.1.1 death or personal injury;

53.1.2 loss of or damage to property (including property belonging to the Authority or an Authority Party or for which they are responsible ("**Authority Property**"));

53.1.3 breach of statutory duty; and

53.1.4 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, the Project Operations or maintenance of any Lifecycle Assets and/or the Project Facilities or the performance or non-performance by Project Co of its obligations under this Agreement or the presence on the Site and/or the Authority's property of Project Co and/or a Project Co Party and/or the South Wales Trunk Road Agent during the period from the Authority's RS Target Date until the Restricted Services Commencement Date and whether or not arising out of the act, neglect or omission of Project Co or any Project Co Party and/or the South Wales Trunk Road Agent during the period from the Authority's RS Target Date until the Restricted Services Commencement Date.

Project Co Not Responsible

53.2 Project Co shall not be responsible or be obliged to indemnify the Authority or an Authority Party under Clause 53 (*Indemnities*) for:

53.2.1 any of the matters referred to in Clauses 53.1.1 to 53.1.4 above which arises as a direct result of Project Co acting on the instruction of the Authority;

53.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or an Authority Party (excluding injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the South Wales Trunk Road Agent during the period from the Authority's RS Target Date until the Restricted Services Commencement Date) or by the breach by the Authority of its obligations under this Agreement.

Conduct of claims

53.3 This Clause 53.3 (*Conduct of Claims*) shall apply to the conduct, by a party from whom an indemnity is sought under this Agreement, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the party giving the indemnity is referred to as the "**Indemnifier**". Accordingly:

53.3.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may

become, entitled to indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the same;

53.3.2 subject to Clauses 53.3.3, 53.3.4 and 53.3.5 below, on the giving of a notice by the Beneficiary pursuant to Clause 53.3.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with an indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;

53.3.3 with respect to any claim conducted by the Indemnifier pursuant to Clause 53.3.2 above:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (c) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

53.3.4 the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 53.3.2 above; or
- (b) the 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 53.3.1 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Clause 53.3.3 above;

53.3.5 the Beneficiary shall be free 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 53.3.2 above 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 cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Clause 53.3.5, then the Indemnifier shall be released from any liability under its indemnity under Clause 53.1 (*Project Co Indemnities to Authority*) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 53.3.2 in respect of such claim;

53.3.6 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:

- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (b) the 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 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 which are excluded by this Agreement from being recovered from the Indemnifier); and

53.3.7 any person taking any of the steps contemplated by Clauses 53.3.1 to 53.3.5 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 Agreement.

Mitigation – indemnity claims

53.4 To avoid doubt the provisions of Clause 63 (*Mitigation*) apply to any indemnity given under this Agreement and any such indemnity shall not apply to the extent that such part or parts of Direct Losses could have been reduced or avoided by the Beneficiary complying with the provisions of such Clause 63 (*Mitigation*).

54 TAX ON INDEMNITY PAYMENTS

If any payment by one party under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing them) in the hands of the recipient, the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax. In relation to any such additional amount payable to Project Co, Project Co and the Authority shall have the same rights and obligations as would apply to a Relevant Tax Liability under Clause 50.6.3 and Clauses 50.5 to 50.10 (*Tax equalisation*) (inclusive) shall apply mutatis mutandis to the payment of the additional amount. The party making the payment shall pay such additional amount within ten (10) Business Days of receipt of such demand.

55 EXCUSING CAUSES AND RESTRICTED SERVICES EXCEPTIONS

55.1 If:

- 55.1.1 an Excusing Cause interferes adversely with, or causes or contributes to a failure of, the performance of the Services by Project Co and/or causes or contributes to the occurrence of an Availability Failure and/or a Performance Failure; or
- 55.1.2 a Restricted Services Exception interferes adversely with, or causes or contributes to a failure of, the performance of the Restricted Services by Project Co and/or causes or contributes to the occurrence of a Restricted

Services Availability Failure and/or a Restricted Services Performance Failure,

and provided that the effect of such Excusing Cause or Restricted Services Exception is claimed within ten (10) Business Days of the date on which Project Co became aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause or Restricted Services Exception, then (subject to Clauses 55.3 (*Insured Exposure*) and 55.4 (*Mitigation of Excusing Causes and Restricted Services Exceptions*)) to the extent such failure or interference or occurrence of an Availability Failure and/or a Performance Failure or a Restricted Services Availability Failure and/or a Restricted Services Performance Failure arises as a result of such Excusing Cause or Restricted Services Exception (as applicable):

55.1.3 such failure by Project Co to perform or interference or occurrence, and any poor performance of, any affected Service or Restricted Service shall not constitute a breach of the provisions of this Agreement by Project Co;

55.1.4 such failure by Project Co to perform or interference or occurrence shall not be taken account of in measuring the performance of any affected Service or Restricted Service in accordance with the Service Level Specification or the Restricted Services Service Level Specification, which shall be operated as though the relevant Service or Restricted Service had been performed free from such adverse interference; and

55.1.5 any such Availability Failure and/or Performance Failure or Restricted Services Availability Failure and/or Restricted Services Performance Failure shall be deemed not to have occurred,

so that Project Co shall be entitled to payment under this Agreement as if there had been no such interference with, or failure in the performance of, the Services or Restricted Services and no such occurrence of an Availability Failure and/or Performance Failure or Restricted Services Availability Failure and/or Restricted Services Performance Failure (as applicable).

55.2 Not used.

Insured exposure

55.3 Without prejudice to Clause 57 (*Insurance*), Project Co shall not be entitled to any payment which would not have been due under this Agreement but for Clause 55 (*Excusing Causes and Restricted Services Exceptions*) to the extent that Project Co is or should be able to recover under any policy of insurance required to be maintained by Project Co or any Project Co Party in accordance with this Agreement (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 Project Co (or any Project Co Party), including but not limited to non-disclosure or under insurance) or any other policy of insurance which Project Co has taken out and maintained.

Mitigation of Excusing Causes and Restricted Services Exceptions

55.4 Project Co shall take all reasonable steps to mitigate the consequences of an Excusing Cause or a Restricted Services Exception on Project Co's ability to perform its obligations under this Agreement. To the extent that Project Co does not take such steps, Project Co shall not be entitled to, and shall not receive, the relief specified in Clause 55.1 (*Excusing Causes and Restricted Services Exceptions*).

Tax Compliance

- 56.1 Project Co represents and warrants to the Authority that at the date of this Agreement, it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in connection with any Occasions of Tax Non-Compliance that it or, so far as it is aware having made reasonable enquiries, any of the Shareholders (other than WGCo) is involved in.
- 56.2 If at any time an Occasion of Tax Non-Compliance occurs in relation to it or any Shareholder other than WGCo (a **"Non-Compliant Shareholder"**), Project Co shall:
 - 56.2.1 notify the Authority in writing of such fact within five (5) Business Days of it becoming aware of that occurrence; and
 - 56.2.2 provide to the Authority:
 - (a) promptly, and in any event within twenty (20) Business Days of it becoming aware of that occurrence, details of the steps which it, or as the case may be, the Non-Compliant Shareholder is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant (together **"Proposed Mitigating Measures"**); and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require within five (5) Business Days of receipt of notice from the Authority to do so.
- 56.3 The Authority will notify Project Co in writing if the Proposed Mitigating Measures are acceptable to it, in its reasonable opinion, within fifteen (15) Business Days of receipt of all information required to be provided in accordance with Clause 56.2 (*Tax Compliance*).
- 56.4 Where the Authority notified Project Co that the Proposed Mitigating Measures are not acceptable, the Authority may, in that notice, request that Project Co provides details of further measures it, or as the case may be, the Non-Compliant Shareholder, would take to prevent the same from recurring, together with any further mitigating factors that it considers relevant. Within twenty (20) Business Days of receipt of a notice from the Authority requesting further measures, Project Co will either provide details of the further measures it, or as the case may be, the Non-Compliant Shareholder, is willing to take or notify the Authority that it is not willing to take further measures. The Authority will consider any further measures proposed by Project Co and notify Project Co within fifteen (15) Business Days if those further measures, taken together with the Proposed Mitigating Measures, are acceptable to the Authority acting reasonably.
- 56.5 If:
 - 56.5.1 the warranty by Project Co contained in Clause 56.1 (*Tax Compliance*) is untrue and Proposed Mitigating Measures are not agreed in accordance with Clauses 56.2 to 56.4 (*Tax Compliance*) (inclusive); and/or
 - 56.5.2 Project Co commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance and / or Project Co fails to provide details of Proposed Mitigating Measures each as required by Clause 56.2 (*Tax Compliance*); and/or

56.5.3 the Authority otherwise becomes aware that an Occasion of Tax Non-Compliance has occurred in relation to Project Co or a Shareholder (other than WGoCo)) and Project Co fails to provide details of Proposed Mitigating Measures within twenty (20) Business Days of its being required by the Authority to do so ; and/or

56.5.4 the Authority notifies Project Co under Clause 56.4 (*Tax Compliance*) that the Proposed Mitigating Measures are not acceptable and, if Project Co is requested to provide details of further measures pursuant to Clause 56.4 (*Tax Compliance*) the further measures (if any) are not acceptable to the Authority, in its reasonable opinion and the Authority notifies Project Co to that effect; and/or

56.5.5 in any such case Project Co fails to implement, or procure the implementation by a Non-Compliant Shareholder of, any Proposed Mitigating Measures agreed to by the Authority in any material respect (including as to timetable),

then the Authority shall be entitled to give to Project Co:

(a) where the Occasion of Tax Non-Compliance has occurred in relation to Project Co, a notice under Clause 44.3.4 (*Authority's options*); and

(b) where the Occasion of Tax Non-Compliance has occurred in relation to a Shareholder, a notice under Clause 56.5.6 (*Shareholder Tax Non-Compliance Notice*).

56.5.6 Where the Occasion of Tax Non-Compliance applies to a Non-Compliant Shareholder, the Authority may by written notice (a "**Shareholder Tax Non-compliance Notice**") require that the Non-Compliant Shareholder transfers all its shares and Shareholder loan notes in Project Co or Hold Co to a person who is not a Restricted Person within one hundred and eighty (180) days commencing on the date the Shareholder Tax Non-compliance Notice is served. If the Non-Compliant Shareholder does not effect such transfer of shares and Shareholder loan notes in Project Co or Hold Co to a person who is not a Restricted Person within such one hundred and eighty (180) day period (or such longer period as may be agreed by the Authority in its absolute discretion) then the Authority will be entitled to give a notice to Project Co under Clause 44.3.4 (*Authority's options*).

If Project Co fails to implement, or procure the implementation by a Non-Compliant Shareholder of, any Proposed Mitigating Measures agreed to by the Authority in any material respect (including as to timetable) following an Occasion of Tax Non-Compliance which applies to a Non-Compliant Shareholder, the Authority may by written notice (a "**Shareholder Tax Mitigation Measures Non-Compliance Notice**") require that the Non-Compliant Shareholder transfers all its shares and Shareholder loan notes in Project Co or Hold Co to a person who is not a Restricted Person within ninety (90) days commencing on the date the Shareholder Tax Mitigation Measures Non-Compliance Notice is served. If the Non-Compliant Shareholder does not effect such transfer of shares and Shareholder loan notes to a person who is not a Restricted Person within such ninety (90) day period (or such longer period as may be agreed by the Authority in its absolute discretion) then the Authority will be entitled to give a notice to Project Co under Clause 44.3.4 (*Authority's options*).

Project Co Insurances

- 57.1 Project Co shall procure that the Insurances, details of which are set out in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) of Schedule 15 (*Insurance Requirements*), are taken out prior to the commencement of the Works and are maintained for the periods specified in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) of Schedule 15 (*Insurance Requirements*).
- 57.1A Project Co shall procure that the Insurances, details of which are set out in Section 1A (*Policies to be taken out by Project Co from the Commencement Date and maintained during the Restricted Services Period*) of Schedule 15 (*Insurance Requirements*), are taken out on or prior to the Commencement Date and are maintained for the periods specified in Section 1A (*Policies to be taken out by Project Co from the Commencement Date and maintained during the Restricted Services Period*) of Schedule 15 (*Insurance Requirements*).
- 57.2 Project Co shall procure that the Insurances, details of which are set out in Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of Schedule 15 (*Insurance Requirements*), are taken out from the relevant Phase Actual Completion Date and are maintained for the periods specified in Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of Schedule 15 (*Insurance Requirements*).
- 57.3 Without prejudice to the other provisions of this Clause 57 (*Insurance*), Project Co shall, at all relevant times, at its own cost, effect and maintain in full force those insurances which it is required to effect by any applicable Law. In addition, Project Co shall discharge all its obligations under the Insurance Act 2015 when placing, renewing, maintaining or amending any of the Insurances referred to in Clauses 57.1, 57.1A, 57.2 and 57.3 including complying with the duty of fair presentation to insurers, and taking the actions needed to protect the Authority's separate interests where appropriate.
- 57.4 All Insurances referred to in Clauses 57.1, 57.1A and 57.2 (*Project Co Insurances*) shall:
- 57.4.1 be maintained in the names of the parties specified in Schedule 15 (*Insurance Requirements*) and shall be composite policies of insurance (and not joint) unless stated otherwise in Schedule 15 (*Insurance Requirements*);
 - 57.4.2 be placed with insurers who are acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed);
 - 57.4.3 in so far as they relate to damage to assets (including the Project Facilities), cover the same for the full reinstatement value. Should Project Co wish to use an EML/First Loss basis of cover in respect of primary property damage cover (both Construction Phase and Operational Term), a full rationale and basis upon which any such policy formation is adapted shall be provided by Project Co for the Authority's prior approval (acting reasonably);
 - 57.4.4 comply with the relevant provisions of Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*), Section 1A (*Policies to be taken out by Project Co from the Commencement Date and maintained during the Restricted Services Period*) and Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of Schedule 15 (*Insurance Requirements*).

- 57.4.5 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 Section 3 (*Endorsements*) of Schedule 15 (*Insurance Requirements*);
 - 57.4.6 in respect of the Physical Damage Policies provide for payment of any proceeds received by Project Co to be applied in accordance with Clause 57.26 (*Reinstatement*);
 - 57.4.7 in the case of the Operational Insurances only, be reviewed and renewed in accordance with Section 4 (*Insurance Arrangements*) of Schedule 15 (*Insurance Requirements*);
 - 57.4.8 the limit of indemnity and maximum deductible for each of the Operational Insurances shall, where such values are specified as being indexed under Section 2 (*Policies to be taken out by Project Co and Maintained from the Actual Completion Date*) of Schedule 15 (*Insurance Requirements*) be indexed provided that the limit of indemnity or maximum deductible (as appropriate) shall only be increased where the indexed sum is equal to or exceeds the next whole insurable amount or deductible (as the case may be) available in the insurance market.
- 57.5 Project Co shall ensure that its brokers give the Authority a letter of undertaking substantially in the form set out in Section 5 (*Broker's Letter of Undertaking*) of Schedule 15 (*Insurance Requirements*) at Financial Close and subsequently on the renewal of each of the Insurances.

Subrogation and Vitiating

- 57.6 Project Co shall in respect of the insurances referred to in Clauses 57.1, 57.1A and 57.2 (*Project Co Insurances*):
- 57.6.1 procure that all policies of insurance to be effected by it pursuant to this Clause shall contain a provision to the effect that the insurers have agreed to waive all rights of subrogation against the Authority (and all Authority Parties other than contractors and sub-contractors) in accordance with Endorsement 2 in Section 3 (*Endorsements*) of Schedule 15 (*Insurance Requirements*); and
 - 57.6.2 provide for non-vitiating protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in Section 3 (*Endorsements*) of Schedule 15 (*Insurance Requirements*);
- provided that, to avoid doubt, this Clause 57.6 (*Subrogation and Vitiating*) shall not by itself prevent Project Co from claiming against the Authority under an express provision of this Agreement for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum of such insurance required by this Agreement.
- 57.7 Neither party shall take any action or fail to take any reasonable action or (in so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) as a result of which any of the Insurances may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

Evidence of Project Co Insurance

- 57.8 Not less than twenty (20) Business Days prior to the amendment or expiry of any relevant insurance policy (other than the expiry of any of the Operational Insurances in respect of which Project Co must comply with the provisions of Section 4 (*Insurance Arrangements*) of Schedule 15 (*Insurance Requirements*)), Project Co shall submit to the Authority a request for approval from the Authority of the insurer and the principal terms and conditions of such insurance policy (and any revision to such terms and conditions or change in identity of such insurer), such approval not to be unreasonably withheld or delayed.
- 57.9 Project Co shall provide to the Authority:
- 57.9.1 copies on request of all insurance policies referred to in Clauses 57.1 to 57.3 (*Project Co Insurances*) (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
 - 57.9.2 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 57 (*Insurance*) and Schedule 15 (*Insurance Requirements*).
- 57.10 Renewal certificates or other such evidence of renewal in relation to the 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 within twenty (20) Business Days of the Renewal Date.
- 57.11 If Project Co defaults in insuring or continuing to maintain the Insurances, the Authority may insure against any risk in respect of which such default has occurred and recover any premiums from Project Co as a debt provided that if the default occurs during the Operational Term the amount recoverable from Project Co shall be the difference between the premiums had Project Co continued to maintain the Insurances and the premiums paid by the Authority to take out and maintain the Insurances.

Acceptance and compliance

- 57.12 The supply to the Authority of any draft insurance policy or certificate of insurance or other evidence of compliance with this Clause 57 (*Insurance*) shall not imply acceptance by the Authority (or the Authority's Representative) that:
- 57.12.1 the extent of insurance cover is sufficient and its terms are satisfactory; or
 - 57.12.2 in respect of any risks not insured against, that the same were Uninsurable.
- 57.13 Neither failure to comply, nor full compliance, with the insurance provisions of this Agreement shall relieve Project Co of its liabilities and obligations under this Agreement.

Uninsurable Risks

- 57.14
- 57.14.1 If a risk usually covered by contractors' 'all risks' insurance, contractors' pollution liability, property damage insurance, third party liability insurance, delay in start up and business interruption insurance (but not loss of profits)

or statutory insurances in each case required under this Agreement becomes Uninsurable then:

- (a) Project Co shall notify the Authority of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk; and
- (b) if both parties agree, or it is determined in accordance with the Dispute Resolution Procedure that the risk is Uninsurable and that:
 - (i) the risk being Uninsurable is not caused by the actions of Project Co or any sub-contractor of Project Co (of any tier); and
 - (ii) Project Co has demonstrated to the Authority that Project Co and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by Project Co would in similar circumstances (in the absence of the type of relief envisaged by this Clause) 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).

57.14.2 If the requirements of Clause 57.14.1 (*Uninsurable Risks*) are satisfied, but the parties cannot agree as to how to manage or share the risk, then:

- (a) where such requirements are satisfied in respect of such third party liability insurance the Authority shall (at the Authority's option) either pay to Project Co an amount equal to the amount calculated in accordance with Section 3 (*Compensation on Termination for Force Majeure*) of Schedule 17 (*Compensation on Termination*) and this Agreement will terminate, or elect to allow this Agreement to continue and Clause 57.14.2(b) below shall thereafter apply in respect of such risk;
- (b) where such requirements are satisfied in respect of contractors' 'all risks' insurance, property damage insurance, third party liability insurance (if the Authority elects to allow this Agreement to continue in accordance with Clause 57.14.2(a)), delay in start up and business interruption insurance (but not loss of profits) or statutory insurances this Agreement 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 Project Co an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Agreement will continue, or an amount equal to the amount calculated in accordance with Section 3

(*Compensation on Termination for Force Majeure*) of Schedule 17 (*Compensation on Termination*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon this Agreement will terminate;

- (c) where pursuant to Clauses 57.14.2(a) and/or 57.14.2(b) this Agreement continues then the Annual Service Payment 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 Project Co in respect of the relevant risk in the year prior to it becoming Uninsurable (index linked from the date that the risk becomes Uninsurable) save to the extent that such reduction is otherwise reflected in a reduction in the payments claimed by Project Co pursuant to paragraph 2.1 of Schedule 14 (*Payment Mechanism*) in respect of the PTIC element of the Monthly Service Payment. Where the risk is Uninsurable for part of a year only the reduction in the Annual Service Payment shall be pro rated to the number of months for which the risk is Uninsurable;
- (d) where pursuant to Clauses 57.14.2(a) and/or 57.14.2(b) this Agreement continues Project Co shall approach the insurance market at least every four (4) months to establish whether the risk remains Uninsurable. As soon as Project Co is aware (and, the parties agree or it is determined pursuant to the Dispute Resolution Procedure) that the risk is no longer Uninsurable, Project Co shall take out and maintain or procure the taking out and maintenance of insurance (to be inceptioned as soon as is reasonably practicable) for such risk in accordance with this Agreement;
- (e) in respect of any period between the Authority receiving notification in accordance with Clause 57.14.1(a) that a TPL Risk has become Uninsurable and the Authority's notification to the Project Co in accordance with Clause 57.14.2(a) in respect of such risk then, provided it is ultimately agreed or determined that the requirements of Clause 57.14.1(b) are satisfied in respect of the Uninsurable TPL Risk and subject to Clause 57.14.2(f) below, Clause 57.14.2(b) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during this period; and
- (f) Clause 57.14.2(e) shall only apply provided the Project Co does not unreasonably materially delay (a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of Clause 57.14.1(b) are satisfied in respect of the Uninsurable TPL Risk and/or (b) meeting with the Authority to discuss the means by which the risk should be managed.

Where this Clause 57.14.2 (*Uninsurable Risks*) applies and this Agreement continues, Project Co shall, subject to Clause 57.14.2(c), be relieved of its obligations to maintain insurance in respect of the relevant Uninsurable risk.

57.14.3 If, pursuant to Clause 57.14.1(b), the Authority elects to make payment of compensation to Project Co (such that this Agreement will terminate)(the "**Relevant Payment**"), Project Co 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 this Agreement will continue (and the Relevant Payment will not be made by the Authority), and Project Co'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.

- 57.14.4 During the Operational Term, the Authority shall be entitled to notify Project Co that a risk has become Uninsurable under paragraph (b) of the definition of "Uninsurable". Following such notification Clauses 57.14.1(b) to 57.14.3 (*Uninsurable Risks*) (except Clause 57.14.1(b)(ii)) shall apply as if Project Co has issued a notice under Clause 57.14.1(a).

Unavailability of terms

- 57.15 If, upon the renewal of any of the Insurances:

57.15.1 any Insurance Term is not available to Project Co in the worldwide insurance market with reputable insurers of good standing; and/or

57.15.2 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 Project Co and/or any sub-contractor of Project Co (of any tier) then Clause 57.16 (*Unavailability of terms*), shall apply.

- 57.16 If it is agreed or determined that Clause 57.15 (*Unavailability of terms*) applies then the Authority shall waive Project Co's obligations in Clauses 57.1 to 57.3 (*Project Co Insurances*) and/or Schedule 15 (*Insurance Requirements*) in respect of that particular Insurance Term and Project Co shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 57.15 (*Unavailability of terms*) continue to apply to such Insurance Term.
- 57.17 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 Project Co in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address Project Co'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, Project Co shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.
- 57.18 Project Co shall notify the Authority as soon as reasonably practicable and in any event within five (5) days of becoming aware that Clause 57.15.1 and/or Clause 57.15.2 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). During the Operational Term the Authority shall be entitled to notify Project Co that Clause 57.15.2 is likely to apply or (on expiry of the relevant insurance then in place) does apply in respect of an Insurance Term (irrespective of the reason for the same). Project Co 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.

- 57.19 In the event that Clause 57.15.1 and/or Clause 57.15.2 apply in respect of an Insurance Term, (irrespective of the reasons for the same) Project Co shall approach the insurance market at least every four (4) months to establish whether Clause 57.15.1 and/or Clause 57.15.2 remain applicable to the Insurance Term. As soon as Project Co is aware that Clause 57.15.1 and/or Clause 57.15.2 has ceased to apply to the Insurance Term and the parties agree or it is determined pursuant to the Dispute Resolution Procedure, Project Co 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 Agreement.

Risk Management

- 57.20 With effect from the date of this Agreement, the Authority and Project Co shall each designate or appoint an insurance and risk manager and notify details of the same to the other party. Such person shall:

57.20.1 be responsible for dealing with all risk management matters on behalf of its appointing or designating party including (without limitation) ensuring compliance by that party with this Clause 57.20 (*Risk Management*);

57.20.2 advise and report to that party on such matters; and

57.20.3 ensure that any report or survey conducted by any insurer of any relevant procedures in relation to the Project (or where such report or survey cannot be made available, any recommendation or requirement following that survey) is disclosed to the parties.

- 57.21 Without prejudice to the provisions of Clause 57.20 (*Risk Management*), the parties shall notify one another, and in Project Co's case the relevant insurer, of any circumstances which may give rise to a claim of a value equal to or in excess of [REDACTED] (index linked) under the Insurances within five (5) Business Days of becoming aware of the same (or earlier, if so requested by the terms of the relevant insurance policy). If any insurer disputes any such claim, Project Co shall provide the Authority with full details of any disputed claim and the parties shall liaise with one another to ensure that the relevant claim is preserved or pursued.

Application of Proceeds

- 57.22 All insurance proceeds received by Project Co under the Physical Damage Policies shall be paid into the Insurance Proceeds Account and shall be applied in accordance with this Agreement and in accordance with the Insurance Proceeds Account Agreement.

- 57.23 Subject to the provisions of the Funders' Direct Agreement and Clause 57.26 (*Reinstatement*), Project Co shall apply any proceeds of any policies of Insurance:

57.23.1 in the case of third party legal liability or employers' liability insurance, in satisfaction of the claim, demand, proceeding or liability in respect of which such proceeds are payable; and

57.23.2 in the case of any other insurance other than delay in start up or business interruption insurance, so as to ensure the performance by Project Co of its obligations under this Agreement, including where necessary the reinstatement, restoration or replacement of the Project Facilities, assets, materials or goods affected by the event giving rise to the insurance claim and consequent payment of proceeds.

- 57.24 Where reinstatement monies are required to be released from the Insurance Proceeds Account Project Co shall obtain the Authority's consent in accordance with the Insurance Proceeds Account Agreement. The Authority shall give its consent (or confirm that it is withholding its consent) to the release of monies from the Insurance Proceeds Account within one (1) Business Day of a request from Project Co (provided that such consent must not be unreasonably withheld).
- 57.25 If the proceeds of any insurance claim are insufficient to cover the settlement of such claims, Project Co will make good any deficiency forthwith.

Reinstatement

57.26

57.26.1 All insurance proceeds received under any Physical Damage Policy shall be applied to repair, reinstate and replace each part or parts of the Project Facilities in respect of which the proceeds were received.

57.26.2 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the ("**Relevant Incident**") in an amount in excess of [REDACTED] (index-linked):

- (a) Project Co shall deliver as soon as practicable and in any event within twenty-eight (28) days after the making of the claim a plan prepared by Project Co for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with Clause 57.26.3 below. The Reinstatement Plan shall set out:
 - (i) if not the Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority; and
 - (ii) the proposed terms and timetable or, if not then established, the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably delayed;
- (b) provided that the Authority is satisfied that the Reinstatement Plan will enable Project Co to comply with Clause 57.26.3 below within a reasonable timescale:
 - (i) the Reinstatement Plan will be adopted and carried out by Project Co;
 - (ii) Project Co shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority;
 - (iii) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Insurance Proceeds Account (the

"Relevant Proceeds") (together with any interest accrued) may be withdrawn by Project Co from the Insurance Proceeds Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in Clause 57.26.2(b)(ii) above, and to meet any other reasonable costs and expenses of Project Co for the sole purposes of funding the Reinstatement Works and the parties shall operate the signatory requirements of the Insurance Proceeds Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Insurance Proceeds Account for the purposes of funding any Reinstatement Works;

- (iv) the Authority agrees and undertakes that, subject to compliance by Project Co with its obligations under this Clause, and provided that Project Co procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Clause 57.26.2(b)(ii), it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;
- (v) the Authority undertakes to use reasonable endeavours to assist Project Co in the carrying out of the Reinstatement Plan;
- (vi) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with Clause 57.26.3 below the Authority shall permit withdrawal by Project Co of any Relevant Proceeds then held in the Insurance Proceeds Account that have not been paid under Clause 57.26.2(b)(iii) above, in respect of the Relevant Incident, together with any interest accrued; and
- (vii) subject to the provisions of Clause 53.1 (*Project Co Indemnities to Authority*) Project Co shall be solely responsible for the payment of any deficiency.

57.26.3 Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace any of the Project Facilities, Project Co shall carry out the work in accordance with the Authority's Construction Requirements so that on completion of the work, the provisions of this Agreement are complied with.

57.26.4 If and to the extent that a breach by Project Co of its obligations under Clause 57.26.2(b) leads to a delay in the completion of the Reinstatement Works, any entitlement that Project Co has to relief under Clause 35 (*Relief Events*) shall be suspended.

Exclusions

- 58.1 The indemnities under this Agreement shall not apply and (without prejudice to the Authority's rights under the Payment Mechanism) there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever to the extent that any loss claimed by either party is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature ("**Indirect Losses**") suffered or allegedly suffered by either party. The Authority agrees that, notwithstanding the foregoing, any losses of Project Co arising under the Construction Contract and the Service Contracts as originally executed (or as amended in accordance with and subject to Clause 4.1 (*Ancillary Documents*)) which are not Indirect Losses shall not be excluded from such a claim solely by reason of this Clause 58.1 (*Exclusions*).
- 58.2 The Authority shall not be liable in tort to Project Co or any Project Co Party in respect of any negligent act or omission of the Authority or any Authority Party relating to or in connection with this Agreement to the extent that such liability is covered by any Insurances and Project Co shall procure that no Project Co Party shall bring such a claim against the Authority.

No Double Recovery

- 58.3 Subject to:
- 58.3.1 any other express right of the Authority pursuant to this Agreement; and
- 58.3.2 the Authority's right to claim, on or after termination of this Agreement, 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 this Agreement by Project Co save to the extent that the same has already been recovered by the Authority pursuant to this Agreement or has been taken into account to reduce any compensation payable by the Authority pursuant to Clause 50 (*Compensation on Termination*),
- the sole remedy of the Authority in respect of a failure to provide the Services and/or Restricted Services in accordance with this Agreement shall be the operation of the Payment Mechanism.
- 58.4 Subject to Clause 43 (*Authority Events of Default*) and any other express right of Project Co pursuant to this Agreement, Project Co's sole remedy in respect of any breach of this Agreement which is a Compensation Event shall be pursuant to Clause 34 (*Delay Events and Compensation Events*).
- 58.5 Nothing in Clause 58.3 (*No Double Recovery*) shall prevent or restrict the right of the Authority to seek an injunction or an order for specific performance or other discretionary remedies of the court.
- 58.6 Notwithstanding any other provision of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement or any other agreement in relation to the Project in respect of any loss that it has incurred (or any failure of the other party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this Agreement or otherwise.
- 58.7 Neither party shall have the right to terminate this Agreement for breach of contract save as expressly set out in this Agreement.

PART 13: MISCELLANEOUS

59 INTELLECTUAL PROPERTY

Project Data

59.1 Project Co shall make available to the Authority free of charge (and hereby irrevocably licences the Authority to use) all Project Data that might reasonably be required by the Authority and Project Co shall ensure that it can make the Project Data available to the Authority on these terms, for the purposes of:

59.1.1 the Authority exercising its rights under this Agreement and carrying out its duties under this Agreement and/or any statutory duties that the Authority may have; and

59.1.2 following termination of this Agreement, the design or construction of the Project Facilities, the operation, maintenance or improvement of the Project Facilities and/or the carrying out of operations the same as, or similar to, the Project Operations,

(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.

Intellectual Property Rights

59.2 Project Co:

59.2.1 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 Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in Project Co; and

59.2.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in Clause 59.2.1 above to the Authority,

in both cases, solely for the Approved Purposes.

Project Co shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in Project Co and Project Co shall enter into appropriate agreements with any Project Co Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

59.2A The Authority hereby grants to Project Co, free of charge, an irrevocable, non-exclusive, non-transferable licence during the Project Term to use any Design Data made available to Project Co by the Authority and any Intellectual Property Rights relating to such Design Data for the sole purpose of Project Co's performance of its obligations under this Agreement and subject to Clause 12.17 (*The Authority's Design Data*). Project Co may sublicense the rights granted pursuant to this clause 59.2A to its Sub-Contractors for the sole purpose of Project Co's performance of its obligations under this Agreement.

Maintenance of data

- 59.3 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, Project Co shall 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 such purposes as the Authority may at its sole discretion require. As an alternative, Project Co 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.
- 59.4 Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in Clause 59.3 (*Maintenance of data*) in accordance with Good Industry Practice. Without prejudice to this obligation, Project Co shall submit to the Authority's Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Authority's Representative has given its approval. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority's Representative, who shall be entitled to object on the basis set out above.

Claims

- 59.5 Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any rights in or to any Intellectual Property (other than any Disclosed Data) or because the use of any materials, plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, Project Co shall indemnify the Authority at all times from and against all such claims and proceedings and the provisions of Clause 53.3 (*Conduct of Claims*) shall apply.

60 DISPUTE RESOLUTION PROCEDURE

Except where expressly provided otherwise in this Agreement, any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the procedure set out in Schedule 20 (*Dispute Resolution Procedure*).

61 SUB-CONTRACTING AND ASSIGNMENT

Sub-contractors

- 61.1 Project Co shall, without prejudice to Clause 61.8 (*Assignment*), procure that none of the persons listed below shall sub-contract all (or substantially all) of their obligations under or in the agreement set out next to its name:

Person	Contract
Contractor	Construction Contract
Service Provider	Service Contract

without, in each case, the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed). To avoid doubt, (i) any failure to

comply with Clause 61.3 (*Sub-contractors*) shall be a reasonable ground for withholding consent and (ii) consent shall, without prejudice to the other provisions of Clause 61.1 (*Sub-contractors*), not be required in respect of the appointment of any party currently approved by the Authority as a suitable replacement and (iii) any failure to demonstrate the Sub-Contractor's legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and that such persons have the appropriate qualifications, experience and technical competence and resource available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract, shall be a reasonable ground for withholding consent.

61.2 If the contract set out next to the name of any person referred to in Clause 61.1 (*Sub-contractors*) shall at any time lapse, terminate or otherwise cease to be in full force and effect (whether by reason of expiry or otherwise), with the effect that such person shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement (subject to compliance with Clause 61.1 (*Sub-contractors*)).

61.3 Project Co shall:

61.3.1 deliver the Contractor's Collateral Agreement, the Service Provider's Collateral Agreement and the Key Sub-Contractor Collateral Agreements on the date of this Agreement, other than in respect of any Key Sub-Contractors who are not appointed at that time;

61.3.2 procure that any replacement for any person referred to in Clause 61.1 (*Sub-contractors*) or any Key Sub-Contractor: shall enter into a contract upon the same or substantially similar terms as the person so replaced; shall enter into a collateral agreement on the same or substantially the same terms as the Collateral Agreement entered into by the person so replaced and shall deliver a certified copy of that appointment and the Collateral Agreement duly executed by each party to that Collateral Agreement other than the Authority no later than the date that such appointment is to take effect; and

61.3.3 where any new Key Sub-Contractor is to be engaged in connection with the Project, procure that: a certified true copy of their appointment; and, a Collateral Agreement substantially in the form set out in Section 3 (*Key Sub-Contractor Collateral Agreement*) of Schedule 9 (*Collateral Agreements*) duly executed by each party to that Collateral Agreement other than the Authority, is delivered to the Authority no later than the date on which such appointment is to take effect.

61.4 Where Project Co enters into a contract with a Sub-Contractor for the purposes of carrying out the Project Operations or any part of the Project Operations under this Agreement, Project Co shall cause a term to be included in such contract:

61.4.1 which requires payment to be made to the Sub-Contractor within a specified period not exceeding thirty (30) days from receipt of an application for payment as defined by the contract requirements and in the case of the provision of Services provides that, for the purpose of payment alone, where the Authority has made payment to Project Co and the Sub-Contractor's application for payment includes Project Operations in relation to which payment has been made by the Authority then, to the extent that it relates to such Project Operations, the application for payment shall be treated as valid and payment shall be made to the Sub-Contractor without deduction (but without prejudice to any right to deduct or set off validly arising under the terms of the contract with the Sub-Contractor); and

- 61.4.2 which notifies the Sub-Contractor that the contract forms part of a larger contract for the benefit of the Authority and that should the Sub-Contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the Sub-Contractor to the Authority's Representative; and
 - 61.4.3 which requires any sub contracts entered into in relation to the Project Operations to be on the same terms as this Clause 61.4 (*Sub-contractors*) (including for the avoidance of doubt this Clause 61.4.3) subject only to modification to refer to the correct designation of the equivalent party as the supplier and recipient of the relevant Project Operations as the case may be.
- 61.4A On or before the fifth Business Day of each calendar month during the Project Term Project Co shall submit to the Authority a payment report identifying:
- 61.4A.1 those payments made by Project Co, the Contractor and the Service Provider to their respective Sub-Contractors within (30) days from the receipt of a relevant application for payment;
 - 61.4A.2 those payments made by Project Co, the Contractor and the Service Provider to their respective Sub-Contractors which have not been made within thirty (30) days from receipt of a relevant application for payment.

Replacement of a non-performing Sub-Contractor

- 61.5 On the substitution or replacement of a Service Provider due to a breach or default under a Service Contract, Project Co may elect, subject to Clause 61.7 (*Replacement of a non-performing Sub-Contractor*) and provided that at the time of making such election no notice of termination has been served under this Agreement, that for the purposes of Clause 44.1.8 (*Deductions*) and Clause 44.1.9 (*Warning Notices*) only, all Deductions incurred and Warning Notices served prior to the date of such substitution or replacement shall be disregarded by virtue of Clause 61.6 (*Replacement of a non-performing Sub-Contractor*) below.
- 61.6 If Project Co makes an election pursuant to Clause 61.5 (*Replacement of a non-performing Sub-Contractor*) above then, with effect from the date of substitution or replacement of the Service Provider, all Deductions incurred and Warning Notices served prior to that date shall be disregarded for the purposes of Clause 44.1.8 (*Deductions*) and Clause 44.1.9 (*Warning Notices*). For the avoidance of doubt, the Authority shall retain the right to make Deductions in accordance with Schedule 14 (*Payment Mechanism*) in respect of the Availability Failures and/or Performance Failures to which the Deductions and/or Warning Notices are attributable.
- 61.7 Project Co shall be entitled to make an election pursuant to Clause 61.5 (*Replacement of a non-performing Sub-Contractor*) on a maximum of two (2) occasions during the Project Term.

Assignment

- 61.8 This Agreement and any other agreement in connection with the Project to which both the Authority and Project Co are a party shall be binding on, and shall enure to the benefit of, Project Co and the Authority and their respective statutory successors and permitted transferees and assignees.
- 61.9 Subject to Clause 61.10 (*Assignment*), Project Co shall not, without the prior written consent of the Authority, assign, novate, transfer, sub-contract or otherwise dispose of any interest in this Agreement, the Construction Contract,

the Service Contract and any other contract entered into by Project Co for the purposes of performing its obligations under this Agreement.

61.10 The provisions of Clause 61.9 (*Assignment*) do not apply to the grant of any security, in a form approved by the Authority prior to its grant (such approval not to be unreasonably withheld or delayed), for any loan made to Project Co under the Initial Funding Agreements provided that any assignee shall enter into the Funders' Direct Agreement in relation to the exercise of its rights, if the Authority so requires.

61.11 The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

61.11.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

61.11.2 any other public body whose obligations under this Agreement and the Funders' Direct Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to Project Co) 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 Agreement,

without the consent of Project Co. The prior written consent of Project Co (not to be unreasonably withheld or delayed) shall be required for any other assignment, transfer or disposal by the Authority of the whole or any part of this Agreement.

62 OWNERSHIP INFORMATION AND CHANGES IN CONTROL

62.1 Project Co represents and warrants to the Authority that at the date of this Agreement the legal and beneficial ownership of Project Co and Hold Co is as set out in Schedule 21 (*Project Co Information*) and that, other than any security granted to the Senior Funders under the Senior Funding Agreements and other than any Shareholder pre-emption rights, 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 Project Co or Hold Co.

62.2 Project Co shall inform the Authority of any proposed Change in Control in Project Co and/or Hold Co prior to its occurrence, or, if it does not have any prior information, as soon as reasonably practicable and in any event, within thirty (30) days of any Change in Control occurring in respect of Project Co and/or Hold Co.

62.3 The Authority may, not more than twice in any Contract Year, or at any time when a Project Co Event of Default is outstanding, require Project Co to inform it, as soon as reasonably practicable and in any event within thirty (30) days of receipt of the Authority's request for details, of any Change in Control in respect of Project Co and/or Hold Co.

62.4 Project Co's obligations under Clauses 62.1 and 62.2 (*Ownership Information and Changes in Control*) above shall, except where a legal transfer of shares has occurred be limited to the extent of Project Co's awareness having made all reasonable enquiry.

62.5 Subject to Clause 62.6 (*Ownership Information and Changes in Control*), prior to the expiry of a period of twelve (12) months commencing on the final Phase Actual Completion Date, no Change in Control in any or all of the shares in

Project Co, Hold Co, [REDACTED] shall be permitted without the prior written approval of the Authority. Any Change in Control arising as a consequence of either:

62.5.1 the grant or enforcement of security in favour of the Senior Funders over or in relation to any of the shares of Project Co, provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed);

62.5.2 any transfer by a shareholder of any shares in Project Co and/or Hold Co to:

- (a) any Member of the Same Group (or its trustee or nominee);
- (b) where a shareholder holds the Shares as a result of a permitted transfer(s) under this clause 62.5.2, the transferor(s) of such Shares and/or any other person(s) to whom the transferor(s) could have transferred any Shares under this Clause 62.5.2 if it had remained a shareholder;
- (c) where a shareholder holds any Shares as a trustee or nominee, the beneficial owner of such Shares, another trustee or nominee of such beneficial owner and/or any other person(s) to whom the beneficial owner could have transferred any Shares under this Clause 62.5.2 if it had been a shareholder; or
- (d) where any Shares are held by or on behalf of a Fund:
 - (i) the Fund for whom the Shares are held;
 - (ii) any Member of the Same Fund Group (or its trustee or nominee);
 - (iii) any Co Investment Scheme of that Fund or any Member of the Same Fund Group; or
 - (iv) any person, entity or arrangement which is entitled or permitted to hold or participate in Shares under any Co Investment Scheme of that Fund or any Member of the Same Fund Group (or its trustee or nominee);
- (e) any shareholder may transfer any Shares, subject to the Companies Act 2006, to the company in which such shares are held for cancellation or to be held in treasury; and
- (f) any shareholder who is a public sector or a third sector body may transfer any of its Shares to a successor body. For the purpose of this clause, a body is a successor body to another body if it assumes some or all of the functions formerly exercised by the other body;

62.5.3 any change in beneficial or legal ownership of any shares that are listed on a recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000); or

62.5.4 where the Change of Control arises as a consequence of any change in legal or beneficial ownership of any interest in shares owned at the date of this Agreement by WGCo,

shall be disregarded for the purpose of this Clause 62.5 (*Ownership Information and Changes in Control*) above.

Where Clause 62.5.2 applies and subsequent to any such transfer (the "**Original Transfer**") the transferee ceases to be a Member of the Same Group (or its trustee or nominee) or a Member of the Same Fund Group (or its trustee or nominee) of the original transferor, it shall be a breach of this Clause 62.5 (*Ownership Information and Changes in Control*) if the shares or interests which were the subject of the Original Transfer are not within twenty (20) Business Days of such cessation, transferred to the original transferor or a transferee permitted under Clause 62.5.2.

- 62.6 No Change in Control (at any time) in any or all of the shares in Project Co or Hold Co (or any company (other than a public quoted company whose equity securities are listed on a recognised investment exchange, as defined in section 285 of the Financial Services and Markets Act 2000) holding shares in Hold Co, Project Co or in any company (or its shareholders) holding shares in such a company (or its shareholders)) shall be permitted without the prior written approval of the Authority where the person acquiring control is a Restricted Person.

63 **MITIGATION**

Each of the Authority and Project Co shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.

64 **DATA PROTECTION**

Data Protection

- 64.1 For the purpose of the following Clauses, the terms "Controller", "Data Subject" "Personal Data Breach" and "Process/Processing" shall have the meanings given to them in the Data Protection Laws, and "Personal Data" shall refer only to Personal Data processed in the course of Project Co's performance of this Agreement.
- 64.2 Project Co undertakes to the Authority that it shall comply with the obligations of a separate, independent "Controller" under the provisions of the Data Protection Laws in respect of the Personal Data processed by it. In addition, Project Co:
- 64.2.1 warrants that it has, or will have at all material times, (and it shall procure that all Sub-Contractors (and their agents and sub contractors of any tier have or will have at all material times) Protective Measures in place to protect against unauthorised or unlawful Processing or any Data Loss Event and that it has taken, or will take at all material times, all reasonable steps to ensure the reliability of any of its staff which will have access to Personal Data Processed as part of the Project Operations;
 - 64.2.2 undertakes that it will only obtain, hold, Process, use, store and disclose Personal Data in accordance with its privacy notice and (without prejudice to Clause 5.2 (*General standards*)) that such data will be held, Processed, used, stored and disclosed only in accordance with the Data Protection Laws and any other applicable Law;
 - 64.2.3 undertakes that it will notify the Authority without undue delay following any Personal Data Breach in respect of the Personal Data;
 - 64.2.4 will co-operate with the Authority, to the extent reasonably requested, in relation to any notifications to the Information Commissioner or to Data Subjects which either party is required to make following a Personal Data Breach;

64.2.5 will co-operate with the Authority, to the extent reasonably requested in relation to:

- (a) a request to the Authority from a Data Subject to exercise any right under the Data Protection Laws;
- (b) any other communication from a Data Subject to the Authority concerning the Processing of their Personal Data; and
- (c) any communication from the Information Commissioner concerning the Processing of Personal Data, or compliance with the Data Protection Laws; and

64.2.6 undertakes to allow the Authority access to any relevant premises on reasonable notice to inspect its procedures described at Clause 64.2.1 above.

65 CONFIDENTIALITY

65.1 The Authority shall, subject to Clause 65.2 (*Confidentiality*) be entitled to make the documents and information listed in this Clause 65.1 (*Confidentiality*) freely available to the public (which may include, without limitation, publication on the Authority's website):

65.1.1 this Agreement;

65.1.2 the Collateral Agreements;

65.1.3 the Monthly Service Report; and

65.1.4 the Financial Model (as updated from time to time in accordance with this Agreement),

and Project Co acknowledges and agrees that, subject to the exclusion of information referred to in Clause 65.2.2, the provision or publication of the documents and information listed in this Clause 65.1 (*Confidentiality*) shall not give rise to any liability under the terms of this Agreement or otherwise. The Authority shall notify Project Co in writing not less than ten (10) Business Days prior to any intended provision or publication of information pursuant to this Clause 65.1 (*Confidentiality*).

65.2

65.2.1 The parties agree that the provisions of this Agreement, the Financial Model and each Ancillary Document shall, subject to Clause 65.2.2 below, not be treated as Confidential Information and may be disclosed without restriction and Project Co acknowledges that the Authority shall, subject to Clause 65.2.2 below, be entitled to make this Agreement and each Ancillary Document available in the public domain.

65.2.2 Clause 65.2.1 above shall not apply to provisions of this Agreement, the Financial Model or an Ancillary Document designated as Commercially Sensitive Information and listed in Schedule 26 (*Commercially Sensitive Information*) to this Agreement which shall, subject to Clause 65.3 (*Permitted Disclosure*) be kept confidential for the periods specified in that Schedule 26 (*Commercially Sensitive Information*).

65.2.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement 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.

Permitted Disclosure

65.3 Clauses 65.2.2 and 65.2.3 shall not apply to:

- 65.3.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of those obligations;
- 65.3.2 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;
- 65.3.3 any disclosure to enable a determination to be made under Schedule 20 (*Dispute Resolution Procedure*) or in connection with a dispute between Project Co and any of its subcontractors;
- 65.3.4 any disclosure which is required pursuant to any Law 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;
- 65.3.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 65.3.6 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Funders or the Senior Funders' professional advisers or insurance advisers or, 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 Project Co to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in Project Co and/or Hold Co in accordance with the provisions of this Agreement 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;
- 65.3.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new contractor, its advisers and lenders, should the Authority decide to retender this Agreement;
- 65.3.8 any registration or recording of the Consents and property registration required;
- 65.3.9 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 Agreement;
- 65.3.10 any disclosure for the purpose of:
 - (a) the examination and certification of the Authority's or Project Co's accounts;

- (b) any examination pursuant to section 6(1) of the National Audit Act 1983 and/or Government of Wales Act 2006 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
- (d) (without prejudice to the generality of Clause 65.3.4) compliance with the FOIA and/or the Environmental Information Regulations;

65.3.11 disclosure pursuant to Clause 65.1 (*Confidentiality*); or

65.3.12 disclosure to the extent required pursuant to Clause 67.2 (*Information and Audit Access*),

provided that, to avoid doubt, neither Clause 65.3.10(d) nor Clause 65.3.4 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 65.2.3 where that information is exempt from disclosure under section 41 of the FOIA.

- 65.4 Where disclosure is permitted under Clause 65.3 (*Permitted Disclosure*), other than under Clauses 65.3.2, 65.3.4, 65.3.5, 65.3.8 and 65.3.10, 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 Agreement.
- 65.5 Project Co shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the Authority.
- 65.6 Where Project Co, in carrying out its obligations under this Agreement, is provided with information relating to any Authority Party, Project Co shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless Project Co has obtained the prior written consent of that person and has obtained the prior written consent of the Authority.
- 65.7 On or before the Expiry Date, Project Co shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any Authority Party including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.
- 65.8 The parties acknowledge that the Auditor General for Wales and/or the Wales Audit Office has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament and/or National Assembly of Wales.
- 65.9 The provisions of this Clause 65 (*Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

Announcements

- 65.10 Unless otherwise required by any Law or any regulatory or governmental authority (but only to that extent), neither party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information or in the case of Project Co of its (or any Project Co Party's) interest in the Project or, in any such case, any matters relating thereto, without the prior

written consent of the other party (which shall not be unreasonably withheld or delayed).

66 FREEDOM OF INFORMATION

- 66.1 Project Co acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 66.2 to 66.8 (*Freedom of Information*).
- 66.2 Where the Authority receives a Request for Information in relation to Information that Project Co is holding on its behalf and which the Authority does not hold itself the Authority shall refer to Project Co such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving such Request for Information and Project Co shall:
- 66.2.1 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
- 66.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 66.3 Following notification under Clause 66.2 (*Freedom of Information*), and up until such time as Project Co has provided the Authority with all the Information specified in Clause 66.2.1, Project Co 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:
- 66.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 66.3.2 whether Information is to be disclosed in response to a Request for Information, and
- in no event shall Project Co respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.
- 66.4 Project Co shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least the number of years (from the date it is acquired) specified in section 1 (*General Requirements*) of Schedule 19 (*Record Provisions*) and shall permit the Authority to inspect such Information as requested from time to time.
- 66.5 Project Co shall transfer to the Authority any Request for Information received by Project Co as soon as practicable and in any event within two (2) Business Days of receiving it.
- 66.6 Project Co 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 FOIA and the Environmental Information Regulations.

- 66.7 In the event of a request from the Authority pursuant to Clause 66.2 (*Freedom of Information*) Project Co shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of Project Co's estimated costs of complying with the request to the extent these would be recoverable, if incurred by the Authority, under section 13(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 Project Co in writing whether or not it still requires Project Co to comply with the request and where it does require Project Co to comply with the request the five (5) 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 Project Co of such additional days as soon as practicable after becoming aware of them and shall reimburse Project Co for such costs as Project Co incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 66.8 Project Co acknowledges that (notwithstanding the provisions of Clause 65 (*Confidentiality*) the Authority may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), and/or having full regard to any guidance or briefings issued by the Information Commissioner or the Welsh Government, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning Project Co or the Project:
- 66.8.1 in certain circumstances without consulting with Project Co; or
- 66.8.2 following consultation with Project Co and having taken their views into account,
- provided always that where Clause 66.8.1 above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of Project Co prior to any disclosure.
- 66.9 In the event that the Project Co is or becomes subject to the Environmental Information Regulations or the FOIA it shall comply with its obligations under the Environmental Information Regulations and the FOIA. In doing so, it will use reasonable endeavours to consult the Authority before disclosing Information about them or any agreement entered into between the Authority and Project Co.

67 INFORMATION AND AUDIT ACCESS

- 67.1 Project Co shall provide to the Authority's Representative all information, documents, records and the like in the possession of, or available to, Project Co (and to this end Project Co shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Service Providers shall be available to it and Project Co has included, or shall include, relevant terms in all contracts with the Contractor or any Service Providers to this effect) as may be reasonably requested by the Authority's Representative for any purpose in connection with this Agreement.
- 67.2 For the purpose of:
- 67.2.1 the examination and certification of the Authority's accounts; or

67.2.2 any examination pursuant to section 6(1) of the National Audit Act 1983 and/or Government of Wales Act 2006 of the economy, efficiency and effectiveness with which the Authority has used its resources,

the Auditor General for Wales and/or the Wales Audit Office may examine such documents as it may reasonably require which are owned, held or otherwise within the control of Project Co (and Project Co shall procure that any person acting on its behalf who has such documents and/or other information shall also provide access) and may require Project Co to produce such oral or written explanations as he considers necessary.

67.3 Project Co shall provide and shall procure that its Sub-Contractors shall provide such information as the Authority may reasonably require from time to time to enable it to meet its obligations to provide reports and returns pursuant to regulations, directions or guidance applicable to the Authority.

67.4 Project Co shall:

67.4.1 take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems used in the provision of the Services;

67.4.2 assist the Authority in taking appropriate measures to minimise the impact of any incidents affecting the Authority's network and information systems;

67.4.3 cooperate with any audit by a Relevant Authority of its own or the Authority's security and network and information systems (at no cost to the Authority) and make any changes to the Services which the Relevant Authority requires in relation to the network and information Systems used in the provision of the Services (at no additional cost to the Authority);

67.4.4 notify the Authority without undue delay upon becoming aware of a Reportable Incident and in any event within no more than 24 hours, such notification to set out all information that the Authority may reasonably require in connection with that incident (including the time, duration, nature and impact of the Reportable Incident); and

67.4.5 on request, provide reasonable assistance to the Authority in connection with a Reportable Incident, including in respect of the assessment of that incident, the provision of further information on the Reportable Incident and in respect of the actions to be taken as a consequence of the Reportable Incident.

67.5 Project Co shall indemnify the Authority at all times against all administrative fines arising from any claim by a third party (including, without limitation, by data subjects, whether individually or in groups) or any action by the Information Commissioner or other Relevant Authority arising from:

67.5.1 a breach by Project Co of Clause 64 (*Data Protection*) or Clause 67 (*Information and Audit Access*); and/or

67.5.2 any act or omission of Project Co or a Project Co Party that results in a breach by the Authority of the Data Protection Laws and/or laws applicable to a Reportable Incident,

and the provisions of Clause 53.3 (*Conduct of Claims*) shall apply.

67.6 Project Co shall indemnify the Authority at all times against all losses, costs and expenses (including, without limitation, reasonable legal, investigatory and

consultancy fees and expenses) arising from: any claim by a third party (including, without limitation, by data subjects, whether individually or in groups) or any action by the Information Commissioner or other Relevant Authority arising from:

67.6.1 a breach by Project Co of Clause 64 (*Data Protection*) or Clause 67 (*Information and Audit Access*); and/or

67.6.2 any act or omission of Project Co or a Project Co Party that results in a breach by the Authority of the Data Protection Laws,

and the provisions of Clause 53.3 (*Conduct of Claims*) shall apply.

68 NOTICES

68.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class recorded post, by hand or by email, leaving the same at:

If to Project Co:-

[REDACTED]

If to the Authority:-

[REDACTED]

68.2 Where any information or documentation is to be provided or submitted to the Authority's Representative or the Project Co Representative it shall be provided or submitted by sending the same by first class recorded post, by hand or by email leaving the same at:

If to Project Co's Representative:-

[REDACTED]

If to the Authority's Representative:-

[REDACTED]

(copied in each case to the Authority)

68.3 Either party to this Agreement (and either Representative) may change its nominated address (including email address) by prior notice to the other party.

68.4 Notices given by first class recorded post shall be effective upon the earlier of (i) actual receipt, and (ii) three (3) Business Days after mailing, provided that a notice or other communication is received on a non-Business Day or after 5pm in the place of receipt shall be deemed to be received at 9am on the next following Business Day in such place.

68.5 Notices delivered by hand shall be effective upon delivery, provided that a notice or other communication is received on a non-Business Day or after 5pm in the place of receipt shall be deemed to be received at 9am on the next following Business Day in such place.

68.6 Notices given by email shall be deemed to have been received:

68.6.1 at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the email address specified in Clause 68.1 or 68.2 (*Notices*), or notified from time to time under Clause 68.3 (*Notices*), if sent on a Business Day between the hours of 9am and 4pm; or

68.6.2 by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and provided that in the case of notices required by or issued pursuant to Clause 25 (*Defects in the Project Facilities*), Clause 26.3 (*Grounds for Warning Notices*), Clause 26.4 (*Warning Notices Disputes*), Clause 34 (*Delay Events and Compensation Events*), Clause 35 (*Relief Events*), Clause 36 (*Force Majeure*), Clause 37 (*Changes in Law*), Clause 38A (*Brexit Change*), Clauses 43 to 50 (*Termination*), Schedule 16 (*Change Protocol*) and/or, as the case may be, Schedule 17 (*Compensation on Termination*) that within 24 hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient in accordance with the provisions of Clauses 68.1 and 68.2 (*Notices*) and where such notice is addressed to the Authority, copied to the Authority's Representative.

69 NO WAIVER

69.1 Any relaxation, forbearance, indulgence or delay (together "**indulgence**") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

Continued effect – no waiver

69.2 Notwithstanding any breach of this Agreement by either party, and without prejudice to any other rights which the other party may have in relation to it, the other party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either party to exercise any right under this Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

70 NO AGENCY

70.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and Project Co.

70.2 Save as expressly provided otherwise in this Agreement, Project Co shall not be, or be deemed to be, an agent of the Authority and Project Co shall not hold itself out as having authority or power to bind the Authority in any way.

70.3 Without limitation to its actual knowledge, Project Co shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Project Co Party.

71 ENTIRE AGREEMENT

71.1 Except where expressly provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications,

negotiations and understandings concerning the subject matter of this Agreement.

71.2 Each of the parties acknowledges that:

71.2.1 it does not enter into this Agreement 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 Agreement or not) except those expressly repeated or referred to in this Agreement 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 Agreement; and

71.2.2 this Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

72 THIRD PARTY RIGHTS

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provision contained in this Agreement save to the extent expressly provided in this Agreement and, to avoid doubt, without prejudice to the terms of the Funders' Direct Agreement or the rights of any permitted successor to the rights of Project Co or of any permitted assignee.

73 SEVERABILITY

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

74 CONFLICTS OF AGREEMENTS

In the event of any conflict between this Agreement and the Project Documents, the provisions of this Agreement shall prevail.

75 COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement and any Project Document.

76 AMENDMENTS

This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of the parties.

77 COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

78 **FURTHER ASSURANCE**

Each party shall do all things and execute all further documents necessary to give full effect to this Agreement.

79 **GOVERNING LAW AND JURISDICTION**

79.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.

79.2 Subject to the provisions of the Dispute Resolution Procedure, both parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed the day and year first above written:

EXECUTED AS A DEED by applying the seal of the WELSH MINISTERS:

The application of the seal of the Welsh)
Ministers is authenticated by)
)
)

SEAL

Name of authorised officer/staff (block
capitals)

who is duly authorised for that purpose by the
Director of Legal Services by authority of the
Welsh Ministers under s.90(2) of the
Government of Wales Act 2006.

Signature -----

Name -----

Authorised Signatory

Job Title Senior Lawyer-----

Signed as a deed by)
)

for and on behalf of Future Valleys Project Co Limited)

under a power of attorney dated)

in the presence of:)

Signature of witness

Name of witness

Address of witness

Occupation of witness

SCHEDULES

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

SECTION 1

In this Agreement unless the context otherwise requires:

"1994 Act"	means the Deregulation and Contracting Out Act 1994;
"5 Year Maintenance Plan"	means the plan, to be prepared by or on behalf of Project Co, for any works for the maintenance or repair of the Project Facilities, including the renewal or replacement of plant or equipment as necessary, during each rolling five (5) year period for the duration of the Project Term;
"A4060 Trunk Road"	means that part of the East of Abercynon to East of Dowlais Road (A4060) as more particularly described in the Main Line Order and shown as temporary highways area on Site Plan 12 number A465HV56-VIALIA-HGN-ZG-DR-CH-000152 REVPO4;
"A465 Trunk Road"	means sections 5 and 6 of The Neath to Abergavenny Trunk Road (A465), including slip roads, as more particularly described in the Main Line Order and shown as Permanent trunk road on the Site Plans;
"A470 Diversion Completion Date"	means [REDACTED];
"A470 Diversionary Works"	means: [REDACTED];
"A470 Junction Plan"	means the drawing entitled "WESTERN POWER DISTRIBUTION Original Proposed Location Areas" contained in Appendix 2 to Part 6 (<i>Interested Parties</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);
"A470 Trunk Road"	means that part of the Cardiff to Glan Conwy Trunk Road (A470) as more particularly described in the Main Line Order and shown as temporary highways area on Site Plan 8 number A465HV56-VIALIA-HGN-ZG-DR-CH-000148 REVPO4 and Site Plan 15 number A465HV56-VIALIA-HGN-ZG-DR-CH-000155 REVPO3;
"Abandoning"	means not to carry out any Works contemplated by the Programme at the Site for twenty (20) consecutive Business Days or during thirty (30) Business Days (whether consecutive or not) in any twelve (12) month period;
"ACBR Enhancements"	means Project Co's enhanced commitments on the ACBRs, distinct from the Authority's Community Benefit Requirement KPIs, described in the table set out in Part 1 (<i>ACBR Enhancements and Additional Community Benefit Project Co</i>

	<i>Proposals</i>) of Section 2 (<i>Project Co's Community Benefit Method Statements</i>) of Schedule 29 (<i>Community Benefits</i>);
"Access Road"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Access Road Lane Occupation"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Accommodation Works"	means works carried out in lieu of the entitlement of a Compensation Party to Compensation Costs, including any such works carried out in the discharge of the Requirements of Interested Parties;
"Actual Completion Date"	means the later of: (a) the date stated in the Permit to Use for the final Phase issued by the Authority pursuant to Clause 16.7.3 (<i>Permits to Use</i>); and (b) subject to Clause 14.5 (<i>Early Completion</i>), the Phase Completion Date for the final Phase;
"Actual Liability"	has the meaning given in Clause 50.6.3;
"Additional Access Rights"	has the meaning given in Clause 9.6 (<i>Extent of Rights</i>);
"Additional Community Benefit Project Co Proposals"	means Project Co's additional community benefit commitments and key performance indicators, distinct from the Authority's Community Benefit Requirement KPIs and the ACBR Enhancements, described in the table set out in Part 1 of Section 2 (<i>Project Co's Community Benefit Method Statements</i>) of Schedule 29 (<i>Community Benefits</i>);
"Additional Permitted Borrowing"	means on any date, the amount equal to any amount of principal outstanding under the Senior Funding Agreements (as the same may from time to time be amended, whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Funding Agreements at Financial Close to be outstanding at that date, but only to the extent that: (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under Clause 9.4.3 of the Funders' Direct Agreement as it applies to such Additional Permitted Borrowing, and provided further that any such excess amount of principal which is: (i) invested as part of any Qualifying Change; or (ii) outstanding from time to time as a result of any drawing under the Senior Funding Agreements as entered into at the date of this Agreement,

disregarding any subsequent amendment; or

- (iii) outstanding from time to time as a result of any amendment to the Senior Funding Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to Clause 4.3 (*Changes to Funding Agreement and Refinancing*)

shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit"

means an amount equal to:

- (a) ten per cent (10%) of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Funding Agreements is reduced to fifty per cent (50%) or less of the Original Senior Commitment; and thereafter

- (b) the higher of:

- (i) five per cent (5%) of the Original Senior Commitment; and

- (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a);

"Additional Supplier Costs"

means the additional costs charged to Project Co by its third party suppliers (including the Contractor and the Services Provider, or any other supplier either directly or indirectly via the Contractor or the Services Provider), directly in respect of Brexit Tariffs, for the supply of the Specified Goods;

"Adjustment"

has the meaning given to it in Section 1 (*Definitions*) of Schedule 16 (*Change Protocol*);

"Agent"

has the meaning given in the Funders' Direct Agreement;

"Agreed Brexit Impact Statement"

has the meaning given in Clause 38A.2;

"Agreement"

means this project agreement, including the Schedules;

"Allowable Lane Occupation"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Ancillary Documents"

means the Construction Contract, the Service Contract, and the Performance Guarantees, all as the same may be amended or replaced from time to time;

"Ancillary Rights"

means such rights as set out in Section 3 (*Ancillary Rights*) of Schedule 5 (*Land Matters*);

"Annual Environmental Performance and Monitoring Report"

has the meaning given in Part 1 of Section 3 (*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*)

"Annual Operations Monitoring Date"	has the meaning given in Clause 29.12.2;
"Annual Operations Monitoring Report"	has the meaning given in Clause 29.12.2;
"Annual Service Payment"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Annual Works Monitoring Date"	has the meaning given in Clause 29.10.3;
"Annual Works Monitoring Report"	has the meaning given in Clause 29.10.3;
"Anticipated LD Delay"	has the meaning given in Clause 25.16.6.1;
"Anti-social Behaviour Orders"	means the following which have been ordered, granted or issued (as appropriate): (a) an anti-social behaviour order as defined in the Crime and Disorder Act 1998; (b) a civil injunction as defined in Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014; (c) a criminal behaviour order as defined in Part 2 of the Anti-social Behaviour, Crime and Policing Act 2014; (d) a direction excluding a person from an area as defined in Part 3 of the Anti-social Behaviour, Crime and Policing Act 2014; (e) a community protection notice as defined in Chapter 1 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014; or (f) a public spaces protection order as defined in Chapter 2 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014;
"Apparatus"	has the meaning given in the NRSWA and includes all apparatus located in, on, under, over, across, along or adjacent to the Site;
"Archaeologist"	means [REDACTED];
"Articles of Association"	means Project Co's articles of association and/or Hold Co's articles of association as the context may require, and the term "Articles" shall be construed accordingly;
"Asset Management Plan"	has the meaning given in the Service Level Specification;
"Asset Management System"	has the meaning given in the Service Level Specification;
"Assets"	means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Agreement, including:

- (a) any land or buildings;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and
- (f) any intellectual property rights,

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

"Associate"

means in relation to any company:

- (a) a Member of the Same Group; or
- (b) a Member of the Same Fund Group,

and **"Associated"** or **"Associated Company"** shall be construed accordingly;

"Authorisation Date"

has the meaning given in Clause 33B.1 *Implementation of Contracting Out Order*;

"Authorisation Notice"

has the meaning given in Clause 33B.1 *(Implementation of Contracting Out Order)*;

"Authorisation Period"

has the meaning given in Clause 33B.1 *(Implementation of Contracting Out Order)*;

"Authorised Functions"

means together the Authorised Roads Order Functions and the Authorised Highways Functions;

"Authorised Highways Functions"

means each of the functions listed in Part 2 *(Authorised Highway Functions)* of Section 2 *(Statutory Framework)* of Schedule 32 *(Statutory Framework and Third Party Agreements)*;

"Authorised Roads Order Functions"

means each of the functions listed in Part 1 *(Authorised Roads Order Functions)* of Section 2 *(Statutory Framework)* of Schedule 32 *(Statutory Framework and Third Party Agreements)*;

"Authority Change"

has the meaning given in Schedule 16 *(Change Protocol)*;

"Authority Change Notice"

has the meaning given in Schedule 16 *(Change Protocol)*;

"Authority Events of Default"

has the meaning given in Clause 43.1 *(Authority Events of Default)*;

"Authority Party"	means any of the Authority's agents, contractors and sub-contractors of any tier and its or their directors, officers and employees at the Project Facilities with the authority of the Authority but excluding Project Co, any Project Co Party and statutory undertakers and utilities and "Authority Parties" shall be construed accordingly;
"Authority Policies"	means, subject to Clause 28.9 (<i>Authority Policies</i>), the policies of the Authority set out in Schedule 39 (<i>Authority Policies</i>) as amended from time to time in accordance with the provisions of Clause 37 (<i>Change in Law</i>) and Schedule 16 (<i>Change Protocol</i>);
"Authority Rejection Notice"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Authority's Annual Reports and Accounts"	means the Welsh Government consolidated annual accounts made available on the Authority's website;
"Authority's Community Benefits Requirements"	means those requirements set out in Section 1 (<i>Authority's Community Benefit Requirements</i>) of Schedule 29 (<i>Community Benefits</i>);
"Authority's Community Benefit Requirement KPIs" or "ACBRs"	means the Authority's minimum community benefit requirements and key performance indicators, described in Part 2 (<i>Authority Community Benefit Requirement KPIs</i>) of Section 1 (<i>Authority's Community Benefit Requirements</i>) of Schedule 29 (<i>Community Benefits</i>);
"Authority's Construction Requirements"	means the requirements of the Authority set out or identified in Section 3 (<i>Authority's Construction Requirements</i>) of Schedule 6 (<i>Construction Matters</i>) as amended from time to time in accordance with the terms of this Agreement;
"Authority's Representative"	means the person so appointed by the Authority pursuant to Clause 8 (<i>Representatives</i>);
"Authority's RS Target Date"	means 1 May 2021;
"Availability Criteria"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Availability Failure"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Availability Failure Deduction" or "AFD"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Availability Failure Factor"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Availability Period"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Bank Holiday"	means New Year's Day, Good Friday, Easter Monday, early May bank holiday, spring bank holiday, summer bank holiday, Christmas Day and Boxing Day and each day shall be

	deemed to run from 06.00 on the relevant calendar day until 05:59 on the following calendar day, except where such day lands on a Friday, in which case such day shall be deemed to run from 06.00 until 19:59 on that day;
"Barred List"	means the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012;
"Base Date"	has the meaning given in paragraph 18 of Section 2 (<i>Interpretation</i>) of Schedule 1 (<i>Definitions and Interpretation</i>);
"Base Senior Debt Termination Amount"	has the meaning given in Section 5 (<i>Definitions</i>) of Schedule 17 (<i>Compensation on Termination</i>);
"Beneficiary"	has the meaning given in Clause 53.3 (<i>Conduct of Claims</i>);
"Biennial Review"	means the biennial review referred to in Clause 24.1 (<i>Biennial Reviews</i>);
"Biennial Review Report"	has the meaning given in Clause 24.4 (<i>Biennial Reviews</i>);
"BIM"	means the Building Information Model;
"BIM Protocol"	means the building information modelling protocol, in the form attached at Schedule 30 (<i>BIM Protocol</i>);
"Brexit Change"	means, following any exit by the United Kingdom from the European Union, any Change in Law which results in the imposition by the United Kingdom of any new, or any amendment to any existing, international trade tariff, applicable to the Specified Goods, in each case which: (a) is applicable to the import of the Specified Goods from the relevant EU Source State to the UK; and (b) was not foreseeable as at [REDACTED]; and (c) would not have been applicable if the United Kingdom had not ceased to be a member of the European Union, (each such tariff being a "Brexit Tariff");
"Brexit Change Notice"	has the meaning given in Clause 38A.1.;
"Bridge Authority"	has the meaning given in section 88(1)(b) of the NRSWA;
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in England and Wales;
"Capital Expenditure"	means capital expenditure (as such term is interpreted in accordance with generally accepted accounting principles in the United Kingdom from time to time);
"Capital Expenditure Costs"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);

"Carriageway Section"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Category 1 Defect"	has the meaning given in the Service Level Specification;
"Category 1 Responders"	has the meaning given in Schedule 28 (<i>Disaster Plan</i>);
"CB Target Area"	means the target area set out in the column headed "Target Area" in: (a) Part 2 (<i>Authority Community Benefit Requirement KPIs</i>) of Section 1 (<i>Authority's Community Benefit Requirements</i>) of Schedule 29 (<i>Community Benefits</i>); and/or (b) Part 1 (<i>ACBR Enhancements and Additional Community Benefit Project Co Proposals</i>) of Section 2 (<i>Project Co's Community Benefit Method Statements</i>) of Schedule 29 (<i>Community Benefits</i>);
"CDM Regulations"	means the Construction (Design and Management) Regulations 2015 (and "CDM Regulation") shall be construed accordingly;
"Certificate"	means any certificate to be issued pursuant to Appendix 3 (<i>Design Certification Procedure</i>) of Schedule 8 (<i>Review Procedure</i>) and/or Part 5 (<i>Structural and Geotechnical Certification</i>) of Section 3 (<i>Authority's Construction Requirements</i>) of Schedule 6 (<i>Construction Matters</i>);
"Change"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"Change in Control"	means: (a) any sale or other disposal of any legal, beneficial or equitable interest in any or all of the equity share capital of a corporation (including the control over the exercise of voting rights conferred on that equity share capital, control over the right to appoint or remove directors or the rights to dividends); and/or (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above;
"Change in Law"	means the coming into effect or repeal (without re-enactment or consolidation) in England and Wales or in Wales alone of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England and Wales or in Wales alone in each case after the date of this Agreement;
"Checker"	means Sener Engineering & Systems Ltd (registered number 08814895) whose registered office is at 20 Eastbourne Terrace, London, W2 6LG or such other substitute as may be appointed pursuant to Clause 61 (<i>Sub-contracting and Assignment</i>);
"Co Investment Scheme"	means, in relation to a Fund (or a Member of the Same Fund

	Group), a scheme or arrangement under which certain officers, employees, partners, investors or other participants of that Fund (or of a Member of the Same Group as that Fund) or of its Fund Manager are entitled or permitted (as individuals or through a body corporate or any other person, entity or other arrangement) to acquire or participate in Shares, or otherwise participate in the company in which the Shares are held;
"Collateral Agreements"	means the Contractor's Collateral Agreement, the Service Provider's Collateral Agreement and the Key Sub-Contractor Collateral Agreement;
"Commencement Date"	means the date of this Agreement;
"Commercially Sensitive Information"	means the sub set of Confidential Information listed in column 1 of Schedule 26 (<i>Commercially Sensitive Information</i>) in each case for the period specified in column 2 of Schedule 26 (<i>Commercially Sensitive Information</i>);
"Common Terms Agreement"	means the common terms agreement made between, amongst others Project Co, the Original Lenders (as such term is defined therein), the Intercreditor Agent and the Security Trustee dated on or about the date of this Agreement entered into as at the date of this Agreement or as amended as permitted pursuant to Clause 4 (<i>Project Documents</i>);
"Community Benefits Payments"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Compensation Claim"	means any claim, demand, proceedings or liability;
"Compensation Costs"	means any or all Land Compensation Costs, Injurious Affection Costs and Operational Compensation Costs;
"Compensation Event"	has the meaning given in Clause 34.11 (<i>Compensation</i>);
"Compensation Loss"	means any damages, loss, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands, and the term "Compensation Losses" shall be construed accordingly;
"Compensation Party"	means a Land Compensation Party, an Injurious Affection Party or an Operational Compensation Costs Party, as the case may be;
"Compensation Payment"	has the meaning given in Clause 50.5 (<i>Tax Equalisation</i>);
"Compulsory Purchase Order"	means: (a) the Welsh Ministers (The Neath to Abergavenny Trunk Road (A465) (Abergavenny to Hirwaun Dualling and Slip Roads) and east of Abercynon to east of Dowlais Trunk Road (A4060) and Cardiff to Glan Conwy Trunk Road (A470) (Connecting Roads) (Dowlais Top to Hirwaun)) Compulsory Purchase Order 2019; and/or

- (b) the Welsh Ministers (The Neath to Abergavenny Trunk Road (A465) (Abergavenny to Hirwaun Dualling and Slip Roads) and east of Abercynon to east of Dowlais Trunk Road (A4060) and Cardiff to Glan Conwy Trunk Road (A470) (Connecting Roads) (Dowlais Top to Hirwaun)) (Supplementary) (No 1) Compulsory Purchase Order 2020;

"Confidential Information"

means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all Personal Data and Sensitive Personal Data within the meaning of the Data Protection Laws; and

- (b) Commercially Sensitive Information,

provided that information to be supplied by Project Co to the Authority pursuant to Clauses 29.15 to 29.17 (*Sustainable Development*) shall not be Confidential Information;

"Consents"

means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law, and all necessary consents and agreements from any third parties (including, without limitation, any Planning Permission), needed to carry out the Project Operations in accordance with this Agreement but excluding limbs (a) and (b) of the definition of "Orders";

"Construction Contract"

means the design and build contract dated on or around the date of this Agreement between Project Co and the Contractor (which, as at the date of this Agreement, is in the Agreed Form) as amended or replaced from time to time in accordance with this Agreement;

"Construction Phase"

means the period from and including the date of execution of this Agreement up to and including the final Phase Actual Completion Date;

"Construction Phase Community Benefits Payment"

means the shortfall by which Project Co failed to achieve a Construction Phase KPI Target in relation to the relevant CB Target Area multiplied by the corresponding amount stated in the column headed "Construction Lump Sum Payment (indexed)" for that CB Target Area.

"Construction Phase Deductions"

means LOCs Deductible, RSDs, CBPs, RFDs and/or CSDs (as those terms are defined in paragraphs 1 and 2.1 of Schedule 14 (*Payment Mechanism*)) which accrue during the Construction Phase;

"Construction Phase KPI Target"

means the target set out in the column headed "Construction Phase KPI Target" in:

- (a) Part 2 (*Authority Community Benefit Requirement*)

KPIs) of Section 1 (Authority's Community Benefit Requirements) of Schedule 29 (Community Benefits); and/or

(b) Part 1 (*ACBR Enhancements and Additional Community Benefit Project Co Proposals*) of Section 2 (*Project Co's Community Benefit Method Statements*) of Schedule 29 (Community Benefits);

"Construction Phase Required Insurance"

means any of those Insurances detailed in Section 1 (*Policies to be taken out by Project Co and maintained during the Design and Construction Phase*) of Schedule 15 (Insurance Requirements);

"Construction Quality Plan"

means the document produced in accordance with Part 1 (*Quality Plans (Design and Construction) Requirements*) of Section 5 (*Quality Plans (Design and Construction)*) of Schedule 6 (*Construction Matters*), as set out in Part 2 (*Project Co's Quality Plans*) of Section 5 (*Quality Plans (Design and Construction)*) of Schedule 6 (*Construction Matters*);

"Construction Shortfall"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Construction Shortfall Deduction"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Construction Skills Certification Scheme"

means the scheme operated by Construction Skills Certification Scheme Limited (registered number 03024675) to evidence the skills and competence of persons employed on construction sites;

"Contamination"

means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms;

"Contingent Funding Liabilities"

has the meaning given in Section 5 (*Definitions*) of Schedule 17 (*Compensation on Termination*);

"Contract Month"

means a calendar month provided that:

- (a) the first Contract Month shall be the period from and including the first Payment Commencement Date to and including the last day of the calendar month in which the first Payment Commencement Date falls; and
- (b) the last Contract Month shall be the period from and including the first day of the calendar month in which the Expiry Date or Termination Date (as the case may be) falls to and including the Expiry Date or the Termination Date (as the case may be);

"Contract Review Date"

means each review date referred to in Clause 24.2 (*Biennial Reviews*);

"Contract Year"	means each period of twelve (12) calendar months during the Project Term, starting on 1 April, and each subsequent period of twelve (12) calendar months, save for the first Contract Year which shall be the period commencing on the date of this Agreement and ending on the next 31 March and the final Contract Year which shall be the period commencing on the preceding 1 April and ending on the date of expiry or earlier termination of this Agreement (as the case may be);
"Contracting Associate"	means the Contractor, any Service Provider and any other entity which performs on behalf of Project Co any material function in connection with this Agreement or the Project Operations;
"Contracting Out Order"	means an order made under sections 69 and 77 of the 1994 Act that grants the Authority power to delegate certain of its statutory functions in respect of the Project Facilities;
"Contractor"	means [REDACTED];
"Contractor's Collateral Agreement"	means a collateral agreement among the Authority, Project Co and the Contractor in the form set out in Section 1 (<i>Contractor's Collateral Agreement</i>) of Schedule 9 (<i>Collateral Agreements</i>);
"Contractor's Site Manager"	means the manager to be appointed by the Contractor for purposes of supervision of all day-to-day activities on the Site;
"Contractor's Site Rules"	means the Contractor's rules, applicable on the Site to the Authority, Project Co, the Contractor and their respective sub-contractors and suppliers of every tier during the carrying out of the Works;
"Convictions"	means, other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that order) and including any Anti-Social Behaviour Orders;
"Corrective Action Request"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"COSHH"	means The Control of Substances Hazardous to Health Regulations 2002;
"Court"	means any court of competent jurisdiction;
"CV"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Dashboard Template"	means the form attached at Part 3 (<i>Dashboard Template</i>) of Section 1 (<i>Authority's Community Benefit Requirements</i>) of Schedule 29 (<i>Community Benefits</i>);

"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Project Co under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Protection Laws"	means Law protecting personal data of natural persons (including the Data Protection Act 2018, GDPR and codes of practice issued from time to time by relevant supervisory authorities);
"Dataroom"	means the electronic dataroom managed by the Authority provided to Project Co prior to this Agreement and containing information relevant to the Project;
"Day"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Deduction"	has the meaning given in paragraph 2.1.1(a) of Schedule 14 (<i>Payment Mechanism</i>);
"Deemed Liability"	has the meaning given in Clause 50.6.3;
"Deemed PTU"	has the meaning given in Clause 25.31.1;
"Default Interest"	means any increased margin that is payable to the Senior Funders or which accrues as a result of any payment due to the Senior Funders not being made on the date on which it is due;
"Default Interest Rate"	means one per cent (1%) above the Senior Debt Rate;
"Defects"	means any defect or fault in the Works and/or the Project Facilities which occurs due to a failure by Project Co to meet the Authority's Construction Requirements and/or Project Co's Proposals or otherwise to comply with its obligations under this Agreement;
"Delay Event"	has the meaning given in Clause 34.3 (<i>Delay Events</i>);
"Delegated Obligations"	means those obligations set out or referred to in Part 3 (<i>Delegated Obligations</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);
"Delegated Rights"	means those rights set out or referred to in Part 5 (<i>Delegated Rights</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);
"Department"	means the Department for Transport or, as the case may be, any predecessor or successor government department and, where appropriate, includes references to the Highways Agency and/or the Secretary of State for Transport, as the context so requires;
"Derogated Low Value Change"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"Design and Certification"	means the procedure set out in Appendix 3 (<i>Design and</i>

Procedure"	<i>Certification Procedure</i>) of Schedule 8 (<i>Review Procedure</i>);
"Design Data"	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing and/or operation of the Project Facilities;
[REDACTED]	[REDACTED];
"Design Quality Plan"	means the document produced in accordance with Part 1 (<i>Quality Plans (Design and Construction) Requirements</i>) of Section 5 (<i>Quality Plans (Design and Construction)</i>) of Schedule 6 (<i>Construction Matters</i>), as set out in Part 2 (<i>Project Co's Quality Plans</i>) of Section 5 (<i>Quality Plans (Design and Construction)</i>) of Schedule 6 (<i>Construction Matters</i>);
"Designer"	means [REDACTED];
"Detailed Design"	means the detailed design to be developed from the Preliminary Design, shown in the Project Co's Proposals in respect of the Works so as to allow construction of that part in accordance with the Authority's Construction Requirements and the Project Co Proposals;
"Direct Losses"	means, subject to the provisions of Clause 58.1 (<i>Exclusions</i>), all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
"Direction of Travel"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Disaster Plan"	has the meaning given in Schedule 28 (<i>Disaster Plan</i>)
"Disclosed Data"	means any Design Data and any other written information, survey reports, data and documents made available or issued to Project Co or any Project Co Party in connection with the Project by or on behalf of the Authority whether on, before or after the execution of this Agreement;
"Disclosure and Barring Service"	means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012;
"Discriminatory Change in Law"	means any Change in Law the effect of which is to discriminate directly against: (a) facilities whose design, construction, financing and operation are procured under the private finance initiative (or any successor initiative applying principles similar to those of the private finance initiative including the Mutual Investment Model) in relation to other similar projects; or (b) companies undertaking projects procured by contracts under the private finance initiative (or any successor initiative applying principles similar to those of the private finance initiative, including the Mutual Investment Model)

in relation to other companies undertaking similar projects; or

(c) the Project in relation to other similar facilities; or

(d) Project Co in relation to other companies,

save:

(i) where such Change in Law is in response to any act or omission on the part of Project Co which is illegal (other than an act or omission rendered illegal by virtue of the Change in Law itself);

(ii) that such action shall not be deemed to be discriminatory solely on the basis that its effect on Project Co is greater than its effect on other companies; and

(iii) that a change in taxes or the introduction of a tax affecting companies generally or a change in VAT shall be deemed not to be discriminatory in any circumstances (to avoid doubt, such changes being given effect in accordance with Clause 40 (*VAT and Construction Industry Tax Deduction Scheme*);

"Dispute Resolution Procedure"

means the procedure set out in Schedule 20 (*Dispute Resolution Procedure*);

"Disruption Event"

means an epidemic or pandemic, in relation to which Project Co's required adherence to any applicable:

(a) Government issued instructions, directions and/or guidance relating to that epidemic or pandemic; and/or

(b) Law relating to that epidemic or pandemic,

has a direct effect on Project Co's ability to perform or the cost of performance (in the case of the Works) of the Project Operations (but any such "Disruption Event" shall only exist for the period Project Co is required to adhere to all relevant aspects of such instructions, directions, guidance and/or Law);

"Diversionary Works"

means works involving the diversion, change in level, protection or removal of Utilities or other works in relation to Utilities which are necessary to facilitate the execution of the Project Operations;

"DOTAS"

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions

(Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992;

"Dowlais Diversion Completion Date"	means [REDACTED];
"Dowlais Diversionary Works"	means [REDACTED];
"Dowlais Junction Plan"	means the drawing entitled "WESTERN POWER DISTRIBUTION "Dowlais – Proposed Work Location Areas V2" contained in Appendix 2 to Part 6 (<i>Interested Parties</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);
"Ecologist"	means [REDACTED];
"Electricity Using Apparatus"	means all equipment forming part of the Project Facilities that uses (or is capable of using) electricity, including but not limited to street lights, lit signs, electronic signing, intelligent transport systems (ITS), traffic lights, illuminated bollards and generators and all associated apparatus but excluding ITS Active Equipment;
"Emergency"	means an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of Category 1 Responders in conformity with the Civil Contingencies Act 2004 or preventing the Services, Restricted Services and/or Works operating under normal circumstances and requiring the mobilisation and organisation of Category 1 Responders;
"Emergency Lane Occupation"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Encumbrance"	means any option, right of pre-emption, pledge, security, interest, lien, charge, mortgage, lease, licence, claim, condition, retention or other encumbrance or restriction whether imposed by agreement, by law or otherwise;
"Environment"	means all or any of the following media, alone or in combination: the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in pipes or sewerage systems), soil and land (including buildings) and any ecological systems and living organisms (including man) supported by those media;
"Environmental Assessment Documents"	has the meaning given in Part 1 (<i>General Requirements</i>) of Section 3 (<i>Authority's Construction Requirements</i>) of Schedule 6 (<i>Construction Matters</i>);

"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
"Environmental Law"	means all Laws relating to the Environment and/or pollution of the Environment;
"EPMEMP"	has the meaning given in Part 1 (<i>General Requirements</i>) of Section 3 (<i>Authority's Construction Requirements</i>) of Schedule 6 (<i>Construction Matters</i>);
[REDACTED]	[REDACTED];
"Establishment Works"	means Project Co's obligations under EPMEMP and/or SMEMP;
"Estimated Deductions"	has the meaning given in Clause 39.2.6;
"Estimated Increased Maintenance Costs"	has the meaning given in Clause 22.7 (<i>Programmed and Unprogrammed Maintenance</i>);
"Ethical Employment Code"	means the Code of Practice - Ethical Employment in Supply Chains issued by the Welsh Government on 31 May 2017;
"EU Source State"	means the EU member state from which Project Co proposes to import the Specified Goods, as specified for each category of Specified Goods in the table set out below: [REDACTED]
"Exceptionally Adverse Weather"	means weather conditions affecting the Site that directly impact on the ability of Project Co to carry out the Project Operations, and the recording of which, in comparison to relevant and reputable historic weather data agreed by the parties (both acting reasonably), is shown to occur at Tredegar Bryn Bach Park No 2 weather station on average less frequently than once in ten (10) years;
"Excusing Cause"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Exempt Lane Occupation"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Existing Road"	means all public highways and private means of access within the Site at the date of this Agreement, including: (a) all carriageways, hard shoulders, slip roads, side roads, access roads, footways and cycleways; and (b) all supporting infrastructure and amenity including structures (whether or not under or over such sections of highway), fences and barriers, drainage systems (including outfalls and balancing ponds), grassed areas, hedges and trees, planted areas,

embankments and cuttings, road markings, road traffic signs, road lighting, communications, installations and traffic signs;

"Expected PTU Date"	has the meaning given in Clause 16.2;
"Expected Temporary Highways Area Completion Date"	has the meaning given in Clause 16.14 (<i>Taking Over Certificate</i>);
"Expected Temporary Use Area Completion Date"	has the meaning given in Clause 16.25 (<i>Handing Over Certificate</i>);
"Expert"	means the expert appointed by the parties pursuant to paragraph 3 to 5 (inclusive) of Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Expiry Date"	means midnight on the date which is thirty (30) years from the final Phase Completion Date;
"Fast Track Dispute Notice"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Fast Track Dispute Resolution Procedure"	means the procedure set out in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Fees Regulations"	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
"Final Contract Month"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Final Snagging Items Completion Certificate"	means the certificate in the form set out in Schedule 22 (<i>Certificates</i>) issued by the Authority in accordance with Clause 16.10E (<i>Snagging Items</i>);
"Financial Close"	means the date of this Agreement;
"Financial Model"	means the computer spreadsheet model for the Project in the Agreed Form incorporating statements of Project Co's cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model, as amended from time to time in accordance with the terms of Clause 41 (<i>Financial Model</i>), ;
"First Party"	has the meaning given in Clause 40.3 (VAT);
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation

	to such Act;
"Force Majeure"	has the meaning given in Clause 36 (<i>Force Majeure</i>);
"Free Lane Occupation"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Fund"	means any person, entity or arrangement, whose principal business or purpose is to make or hold investments which are managed by a Fund Manager;
"Fund Manager"	means a person whose principal business is to arrange, consult, make, manage or advise upon investments;
"Funders"	means all or any of the persons who provide financing or funding in respect of the Project Operations under the Funding Agreements including: (a) [REDACTED]; (b) and, where the context so permits, prospective financiers or funders;
"Funders' Direct Agreement"	means the agreement to be entered into between the Authority, the Senior Funders and Project Co in the form set out in Schedule 4 (<i>Funders' Direct Agreement</i>);
"Funding Agreements"	means all or any of the agreements or instruments to be entered into by Project Co or any of its Associates relating to the financing of the Project Operations (including the Initial Funding Agreements and any agreements or instruments to be entered into by Project Co or any of its Associates relating to the rescheduling of their indebtedness or the refinancing of the Project Operations);
"Funding Default"	means a Default as defined in the Common Terms Agreement;
"FV Land"	means any land acquired pursuant to limb (c) of the definition of "Orders";
"FV Land Access Date"	means the relevant date(s) of the expiry of the notices to treat and notices to enter served in respect of any FV Land;
"General Anti-Abuse Rule"	means: (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data;

"Good Industry Practice"	means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances;
"Government"	means the government of the United Kingdom or the Welsh Ministers;
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
"Ground Physical and Geophysical Investigation"	means the investigation of all the conditions of and surrounding the Site and of any extraneous materials in, on or under the Site (including its surface and subsoil) to enable the Works to be designed, constructed and carried out with due regard for those conditions and the seismic activity (if any) in the region of the Site;
"H&S Conviction"	has the meaning given in Clause 44.1.5;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Handback Amount"	has the meaning given in Schedule 18 (<i>Handback Procedure</i>);
"Handback Bond"	has the meaning given in Schedule 18 (<i>Handback Procedure</i>);
"Handback Certificate"	means the certificate of confirmation that the Project Facilities comply with the Handback Requirements in the relevant form set out in Schedule 22 (<i>Certificates</i>);
"Handback Inspection"	has the meaning given in Schedule 18 (<i>Handback Procedure</i>);
"Handback Programme"	has the meaning given in Schedule 18 (<i>Handback Procedure</i>);
"Handback Requirements"	has the meaning given in Schedule 18 (<i>Handback Procedure</i>);
"Handback Works"	has the meaning given in Schedule 18 (<i>Handback Procedure</i>);
"Handing Over Certificate"	means a certificate in the form set out in Schedule 22 (<i>Certificates</i>) issued by the Authority in accordance with Clause 16.27 (<i>Handing Over Certificate</i>);
"Handing Over Certificate Criteria"	means, for each Temporary Use Area, the criteria set out in Part 2 (<i>Handing Over Certificate Criteria</i>) of Schedule 10 (<i>PTU Criteria</i>) as needing to be satisfied in respect of that Temporary Use Area for a Handing Over Certificate for that Temporary Use Area to be issued and "Handing Over Certificate Criterion" shall be interpreted accordingly;

"Handing Over Dispute"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Hazardous Material"	means any natural or artificial substance whether in solid or liquid form or in the form of a gas, vapour or ionising radiation and whether alone or in combination or in reaction with any other substance capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health or welfare, including but not limited to any controlled special hazardous toxic or dangerous waste or radioactive material or any other unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value;
"Health and Safety Regime"	means the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
"High Value Change"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"High Value Change Stage 2 Submission"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"Highway Authority"	has the meaning given in the Highways Act;
"Highways Act"	means the Highways Act 1980;
"Hold Co"	means Future Valleys Hold Co Limited (registered under number 12855952) whose registered office is Fulcrum, 105 Piccadilly, Mayfair, London, W1J 7NJ;
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
"Holding Company"	has the meaning given in section 1159 of the Companies Act 2006;
"Indemnifier"	has the meaning given in Clause 53.3 (<i>Conduct of Claims</i>);
"Indirect Losses"	has the meaning given in Clause 58.1 (<i>Exclusions</i>);
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Breach"	means a breach of any provisions of Schedule 19 (<i>Record Provisions</i>), or Section 4 (<i>Insurance Arrangements</i>) of Schedule 15 (<i>Insurance Requirements</i>);
"Information Commissioner"	has the meaning given in the Data Protection Laws;
"Information Systems"	means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

"Initial Action"	has the meaning given in Clause 25.2A;
"Initial Funding Agreements"	means: [REDACTED];
"Initial Plan"	has the meaning given in Clause 25.11;
"Initial Plan Activities"	has the meaning given in Clause 25.14.1;
"Injurious Affection Costs"	means any Compensation Claim or Compensation Loss arising under section 10 of the Compulsory Purchase Act 1965 or otherwise in relation to injurious affection or nuisance or infringement of rights in relation to the manner of construction of the Project Facilities including any statutory or agreed interest but, in each case, excluding: (a) any Compensation Claim or Compensation Loss arising solely from the existence of the Works; (b) any Land Compensation Costs; and (c) Operational Compensation Costs;
"Injurious Affection Party"	means any person entitled to Injurious Affection Costs in connection with the Project;
"Injurious Affection Party Surveyor's Certificate"	means a certificate in the form set out in Appendix 2 (<i>Injurious Affection Party Surveyor's Certificate</i>) of Schedule 5 (<i>Land Matters</i>);
"Insurance Proceeds Account"	means the account in the joint names of Project Co and the Authority with the Account Bank (as defined in the Common Terms Agreement) as referred to in the Insurance Proceeds Account Agreement;
"Insurance Proceeds Account Agreement"	means the agreement substantially in the form set out in Schedule 25 (<i>Insurance Proceeds Account Agreement</i>) with such amendments as may be agreed between the parties thereto (acting reasonably);
"Insurance Term"	means any term and/or condition required to be included in a policy of insurance by Clause 57 (<i>Insurance</i>) and/or Schedule 15 (<i>Insurance Requirements</i>) but excluding any risk;
"Insurances"	means, as the context requires, all or any of the insurances required to be maintained by Project Co pursuant to this Agreement;
"Intellectual Property"	means all registered or unregistered trademarks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how;
"Intellectual Property Rights"	means the Intellectual Property which (or the subject matter

	of which) is created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for the use by or on behalf of or for the benefit of Project Co) for the purposes of the design or construction of the Works, the operation, maintenance, improvement and/or testing of the Project Facilities or the conduct of any other Project Operation or otherwise for the purposes of this Agreement;
"Intercreditor Agent"	means [REDACTED];
"Intercreditor Agreement"	means an agreement entitled "Intercreditor Agreement" entered into between, amongst others, Project Co, Hold Co, the Senior Funders, the Intercreditor Agent and the Security Trustee dated on or about Financial Close.
"Interested Parties"	means those persons listed in paragraph 1 of Part 6 (<i>Interested Parties</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>) and any person who is a successor to, or assignee or transferee of, any such person or who takes over the responsibility of any such person;
"Interface Protocol"	means the interface protocol agreed between Project Co and the Authority set out in Section 4 (<i>Interface Protocol</i>) of Schedule 12 (<i>Service Requirements</i>);
"Interim Project Report"	means a report prepared by Project Co, incorporating (as a minimum) the details set out at Schedule 31 (<i>Interim Project Report</i>);
"Interim Snagging Items Completion Certificate"	means the certificate in the form set out in Schedule 22 (<i>Certificates</i>) issued by the Authority in accordance with Clause 16.10E (<i>Snagging Items</i>);
"IT"	means information technology systems, hardware and software;
"ITS Active Equipment"	has the meaning given in Part 1 (<i>General Requirements</i>) of Section 3 (<i>Authority's Construction Requirements</i>) of Schedule 6 (<i>Construction Matters</i>);
"Joint Insurance Cost Report"	has the meaning given in paragraph 1 of Section 4 (<i>Insurance Arrangements</i>) of Schedule 15 (<i>Insurance</i>);
"Judicial Review"	means any application for judicial review (including any application for leave) made under Part 54 of the Civil Procedure Rules seeking review of any determination, decision, order or omission of the Authority or any application for a declaration (not made pursuant to such Part 54) which concerns the legality of any determination, decision, order or omission of the Authority or any statutory challenge, action or appeal which proceeds on similar principles;
"Key Design Data"	means: (a) all Design Data expressly required by the Project Agreement to be submitted in accordance with the

Review Procedure;

- (b) a design statement/summary to accompany each submitted design package (for each discipline) to the Authority which shall include, but not limited to:
 - (i) a design methodology;
 - (ii) design assumptions;
 - (iii) list of (reference to) all relevant documents used to prepare the design package, including but not limited to standards, specifications, interim advice notes, guidance and best practice guidance;
 - (iv) elements of high risk or complexity;
 - (v) list of softwares used;
 - (vi) quality assurance (e.g. checking/review/verification procedure); and
 - (vii) list of output documents,
- (c) relevant general arrangement drawings, sections and details;
- (d) Departures from Standards packages and supporting evidence to demonstrate these have been approved in accordance with the PAG 101 procedure;
- (e) evidence that all Consents, have been obtained;
- (f) evidence of compliance with all consult and/or comply requirements of the Project Agreement;
- (g) evidence of compliance with the checking/review/verification procedure in the design statement; and
- (h) all Certificates required by the Project Agreement.

but shall exclude those items referred to in paragraph 3.2 of Appendix 3 (*Design and Certification Procedure*) of Schedule 8 (*Review Procedure*);

"Key Ratios"

has the meaning given in Schedule 16 (*Change Protocol*);

"Key Structure"

means any of the following structures:

- (a) Nant Melyn Viaduct;
- (b) Nant Hir (South) Viaduct;
- (c) Nant Ffrwd Viaduct;
- (d) Taf Fawr Viaduct; and

<

"Landscape Architect"	means [REDACTED];
"Lane"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Lane Occupation"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Lane Occupation Charge" or "LDC"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Lane Occupation Period"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Lane Occupation Road"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Latent Defect"	has the meaning given in Clause 25.1 (<i>Latent Defects</i>);
"Latent Defect Identified Risk"	means the items described in Schedule 37 (<i>Latent Defect Identified Risks</i>) which has not been caused (wholly or in part) or exacerbated by, any act or omission of Project Co or a Project Co Party since the Commencement Date in breach of Project Co's Works, Services and/or Restricted Service obligations under this Agreement;
"Law"	means: (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any enforceable community right within the meaning of section 2(1) of the European Communities Act 1972; (c) any applicable guidance, direction or determination with which the Authority and/or Project Co is bound to comply (including the Welsh Language Standards) to the extent that the same are published and publicly available or the existence or contents of them have been notified to Project Co by the Authority; and (d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales, in each case in force in England and Wales or Wales alone;
"LD Delay Period"	has the meaning given in Clause 25.19.3;
"LD Extension Period"	means the period commencing on the date of achievement of Deemed PTU and expiring on the date of expiry of the LD Delay Period (for the avoidance of doubt with the LD Delay Period having commenced on the Phase Completion Date for the relevant Phase, if earlier than the date of Deemed PTU);
"LD Insurance Cost"	has the meaning given in clause 25.16.7;
"LD Rectification Costs"	means, in respect of any Key Structure, the actual reasonably and properly incurred direct cost of undertaking any Initial

Action, any Initial Plan Activities and/or the LD Rectification Works in respect of that Key Structure in accordance with Clause 25, including agreed LD Insurance Costs but excluding:

- (a) any costs, where and to the extent that Project Co makes recovery or will make recovery (or being entitled to, fails to pursue such recovery or achieve such recovery as a result of Project Co or any Project Co Party causing any insurance policy to become void or unenforceable or Project Co or any Project Co Party failing to comply with the requirements of this Agreement or any insurance policy required pursuant to this Agreement) from insurances maintained by Project Co whether pursuant to this Agreement or otherwise;
- (b) any costs arising to the extent owing to Project Co failing to comply with the provisions of Clause 25.2A and/or failing to undertake the steps set out in and in accordance with the Key Structure Defect Notice, Initial Plan and/or the LD Rectification Plan (each as agreed or determined in accordance with the provisions of Clause 25);
- (c) any such costs to the extent resulting directly or indirectly from the LD Rectification Works being executed, or the contractual arrangements in respect thereof being administered, other than in accordance with the LD Rectification Plan;
- (d) any such costs incurred to the extent arising as a result of the Key Structures Latent Defect (and/or its consequences) having been exacerbated by any act or omission of Project Co (other than any act of Project Co carried out, as required, in accordance with this Agreement);
- (e) increased costs associated with performing the Project Operations as a consequence of the Latent Defect or the carrying out of the Initial Action, Initial Plan Activities (provided that the Initial Action and the Initial Plan Activities are agreed or determined to have been undertaken in respect Key Structures Latent Defects) and/or LD Rectification Works (other than the cost of undertaking the Initial Action, Initial Plan Activities and/or LD Rectification Works);
- (f) any costs incurred in rectifying defects in any LD Rectification Works;
- (g) any costs arising (wholly or in part) from Project Co's breach of this Agreement and/or its negligent acts or omissions;
- (h) loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or consequential loss or indirect loss of any nature;

- (i) any element of profit applied by Project Co; and
- (j) any amount or any such costs which are in excess of the fixed costs agreed for carrying out the LD Rectification Works as specified in the LD Rectification Plan,

provided that such costs shall be reduced to the extent Project Co fails to use all reasonable endeavours to mitigate such costs.

"LD Rectification Period"	has the meaning given in Clause 25.19.2;
"LD Rectification Plan"	has the meaning given in Clause 25.16;
"LD Rectification Works"	has the meaning given in Clause 25.19.1;
"LD Retention Amount"	has the meaning given in Clause 25.34.3;
"Liaison Committee"	has the meaning given in Schedule 24 (<i>Liaison Procedure</i>);
"Liaison Forum"	has the meaning given in the Roads Liaison Procedure;
"Liaison Parties" and "Liaison Party"	has the meaning given in the Roads Liaison Procedure;
"Liaison Procedures"	has the meaning given in the Roads Liaison Procedure;
"Liaison Procedures Register"	has the meaning given in the Roads Liaison Procedure;
"Lifecycle Assets"	means each item, asset or part of the Project Facilities to be renewed or replaced during the Project Term as identified in the Lifecycle Schedule or as may be identified by the parties applying Good Industry Practice;
"Lifecycle Efficiencies Plan"	means the plan for Lifecycle Efficiencies set out in Project Co's Proposals and which shall form part of the Asset Management Plan;
"Lifecycle Profile"	means the amounts profiled to be spent by Project Co on the replacement or renewal of Lifecycle Assets as shown in the Financial Model at Worksheet "RevCosts" Row 136 as at the Commencement Date;
"Lifecycle Replacement"	means any works for the renewal of any Lifecycle Assets that are necessary to ensure that the Project Facilities are maintained in accordance with the Service Level Specification and Method Statements and that the Project Facilities comply with the Authority's Construction Requirements and Project Co's Proposals throughout the Project Term;
"Lifecycle Report"	means the report prepared by Project Co pursuant to Clause 23.8 (<i>Lifecycle Profile and Spend</i>);
"Lifecycle Review Date"	means the fifth (5)th, tenth (10)th, fifteenth (15)th and twentieth (20)th anniversaries of the Commencement Date and not less than three (3) years prior to the Expiry Date;

"Lifecycle Schedule"	means the detailed annual Lifecycle Replacement schedule showing when the Lifecycle Assets will be renewed or replaced, and forming part of the Schedule of Programmed Maintenance;
"Lifecycle Spend"	means the actual amount spent by Project Co on the replacement or renewal of Lifecycle Assets;
"Local Authority Road"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"LOCs Accrued"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"LOCs Cap"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"LOCs Deductible"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Low Value Change"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"Main Line Order"	means the Neath to Abergavenny Trunk Road (A465) (Abergavenny to Hirwaun Dualling and Slip Roads) and East of Abercynon to East of Dowlais Road (A4060), Cardiff to Glan Conwy Trunk Road (A470) (Connecting Roads) Order 1999 (SI 1999/2720), as supplemented and amended by the Neath to Abergavenny Trunk Road (A465) (Abergavenny to Hirwaun Dualling and Slip Roads) and East of Abercynon to East of Dowlais Trunk Road (A4060), Cardiff to Glan Conwy Trunk Road (A470) (Connecting Roads) Order 1999 (Dowlais Top to Hirwaun) (Amendment) Order 2019;
"Maintenance Works"	means any works for maintenance or repair of the Project Facilities that are necessary to ensure that the Project Facilities are maintained in accordance with the Service Level Specification and Method Statements and that the Project Facilities comply with the Authority's Construction Requirements and Project Co's Proposals (including, without limitation, the renewal or replacement of any plant) throughout the Project Term but excluding for the avoidance of doubt Lifecycle Replacement;
"Major Highway Works"	means major highway works as defined in section 86(3) of the NRSWA;
"Member of the Same Fund Group"	means in relation to a Fund: (a) any general partner, limited partner or other partner or participant in, or member, trustee or nominee of that Fund or the holders of any unit trust which is a participant or partner in or member of that Fund (but only in connection with the dissolution of the Fund or any distribution of assets in the Fund pursuant to the operation of the Fund in the ordinary course of business);

- (b) any other Fund which has the same general partner, limited partner, other partner, participant, member, trustee or nominee as that Fund;
- (c) any other Fund managed or advised by the same Fund Manager as that Fund (or a Fund Manager which is a Member of the Same Group as that Fund Manager);
- (d) the Fund Manager of that Fund (or a Fund Manager of any other Fund which is a Member of the Same Fund Group as that Fund); or
- (e) any Member of the Same Group as the Fund or any general partner, limited partner or other partner in, or participant, member, trustee, nominee or Fund Manager of that Fund;

"Member of the Same Group" in relation to an undertaking, means any parent undertaking of that undertaking for the time being and any undertaking which, in relation to the undertaking and/or any such parent undertaking, is a subsidiary undertaking for the time being;

"Method Statements" means the method of providing a Service as set out or identified in Section 2 (*Method Statements*) of Schedule 12 (*Service Requirements*) as amended from time to time in accordance with Clause 38 (*Change Protocol*) and Clause 20 (*The Services*);

"Minor Works" has the meaning given in Schedule 35 (*Network Management*)

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

"Month" has the meaning given in Schedule 14 (*Payment Mechanism*);

"Monthly Invoice" has the meaning given in Clause 39.2.6;

"Monthly Service Payment" or "MSP" has the meaning given in Schedule 14 (*Payment Mechanism*);

"Monthly Service Report"	means a monthly report in a form to be agreed to be prepared by Project Co and provided to the Authority in accordance with the relevant provisions in Section 1 (<i>Service Level Specification</i>) of Schedule 12 (<i>Service Requirements</i>) and Clause 39 (<i>Payment</i>) (and any other provisions of this Agreement which refer to the Monthly Service Report);
"Narrow Lane"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"NEET"	means not in education, employment or training;
"Net Present Value"	has the meaning given in Schedule 23 (<i>Refinancing</i>);
"New Order"	means any line, side road, de-trunking, compulsory purchase or other order, any certificate, approval, revocation, consent or variation of any existing order, and any statutory instrument or other subordinate legislation made in any such case in respect of the Project Facilities in accordance with the terms of this Agreement;
"New Structure"	has the meaning given in Schedule 18 (<i>Handback Requirements</i>);
"Night"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Non-Compliant Shareholder"	has the meaning given in Clause 56.2 (<i>Tax Compliance</i>);
"Notice Date"	has the meaning given in Section 5 (<i>Definitions</i>) of Schedule 17 (<i>Compensation on Termination</i>);
"NRSWA"	means the New Roads and Street Works Act 1991;
"NRSWA Codes of Practice"	means the codes of practice issued from time to time pursuant to Part III of the NRSWA;
"NRSWA Regulations"	means regulations issued pursuant to Part III of the NRSWA;
"Occasion of Tax Non-Compliance"	means: (a) any tax return of Project Co or a Shareholder submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging Project Co or the relevant Shareholder under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which Project Co or the relevant Shareholder was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar

regime; and/or

- (b) Project Co's or the relevant Shareholder's tax affairs giving rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of this Agreement or to a penalty for civil fraud or evasion;

"Operating Company" means any organisation which is employed by the Authority to manage and maintain any part of the Trunk Roads from time to time (excluding Project Co and any Project Co Party);

"Operational Compensation Claim" means any Compensation Claim brought by an Operational Compensation Costs Party;

"Operational Compensation Costs" means any Compensation Claim or Compensation Loss arising under Part 1 of the Land Compensation Act 1973 or in relation to the use or operation of the Project Facilities and including statutory or agreed interest but excluding Land Compensation Costs and Injurious Affection Costs;

"Operational Compensation Costs Party" means any person entitled to Operational Compensation Costs;

"Operational Insurances" means the insurances required by Clause 57.2 (*Project Co Insurances*) and **"Operational Insurance"** means any one of such insurances;

"Operational Term" means in respect of a Phase the period from the Phase Actual Completion Date until the end of the Project Term;

"Operational Term Community Benefits Payment" means the shortfall by which Project Co failed to achieve a Operational Term KPI Target in relation to the relevant CB Target Area multiplied by the corresponding amount stated in the column headed "Operational Lump Sum Payment (indexed)" for that CB Target Area;

"Operational Term KPI Target" means the target set out in the column headed "Operational Term KPI Target" in:

- (a) Part 2 (*Authority Community Benefit Requirement KPIs*) of Section 1 (*Authority's Community Benefit Requirements*) of Schedule 29 (*Community Benefits*); and/or
- (b) Part 1 (*ACBR Enhancements and Additional Community Benefit Project Co Proposals*) of Section 2 (*Project Co's Community Benefit Method Statements*) of Schedule 29 (*Community Benefits*);

"Option Period" has the meaning given in Clause 57.14.3 (*Uninsurable Risks*);

"Orders" means:

- (a) the Roads Orders;
- (b) the Compulsory Purchase Order; and/or
- (c) any further order made following a request by Project Co

pursuant to paragraph 11 of part 1 (*General Requirements*) of section 3 (*Authority's Construction Requirements*) of schedule 6 (*Construction Matters*);

"Original Senior Commitment"	means the amount committed in respect of the Senior Funding Agreements as at Financial Close (as adjusted to take into account any Qualifying Change);
[REDACTED]	[REDACTED]
"Pass Through Insurance Cost" or "PTIC"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Payment Calculation Schedule"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Payment Commencement Date"	means, [REDACTED];
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
"Payment Mechanism"	means Schedule 14 (<i>Payment Mechanism</i>);
"Payment Year"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Performance Failure"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Performance Failure Deduction" or "PFD"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Performance Failure Notice"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Performance Failure Points" or "PFP"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Performance Guarantees"	means the guarantees to Project Co in respect of the Construction Contract and the Service Contract which, as at the date of this Agreement are in the Agreed Form;
"Performance Standard"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Permanent Areas"	means those parts of the Site denoted "Permanent trunk road", "Permanent easements" and "Title mitigation" on the Site Plans;

"Permit to Use"	means the permit in the form contained in the Annex to Appendix 3 (<i>Design and Certification Procedure</i>) of Schedule 8 (<i>Review Procedure</i>) issued by the Authority in accordance with Clause 16 (<i>Permits to Use</i>) in respect of each Phase;
"Permitted Borrowing"	means without double-counting, any: (a) advance to Project Co or Hold Co under the Senior Funding Agreements; (b) Additional Permitted Borrowing; and (c) interest and, in respect of the original Senior Funding Agreements only (as entered into at the date of this Agreement, prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Funding Agreements, except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;
"Permitted Traffic Management"	means in relation to traffic management that remains in place within any Phase in order to comply with paragraph D.3.5 and D3.6 of Part 1 of Chapter 8 of the Traffic Signs Manual owing to the existence of traffic management in the neighbouring Phase;
"Persistent Breach"	means a breach for which a final warning notice (referred to in Clause 47.2 (<i>Termination for Persistent Breach by Project Co</i>)) has been issued, which has continued for more than fourteen (14) days or recurred in three (3) or more months within the six (6) month period after the date on which such final warning notice is served on Project Co;
"Personal Data"	means personal data (as that term is defined in the Data Protection Laws) processed by either party in connection with their respective rights and obligations in this Agreement;
"PFD Section"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"PFD Whole"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"PFP Section"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"PFP Whole"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Phase"	means, as the context may require, [REDACTED] as described in Section 2 (<i>Phasing</i>) of Schedule 7 (<i>The Programme</i>) and "Phases" shall be construed accordingly;
[REDACTED]	[REDACTED];

[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
"Phase Actual Completion Date"	means [REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
[REDACTED]	[REDACTED];
"Phase Plans"	means the plans attached at Appendix 4 (<i>Phase Plans</i>) of Schedule 5 (<i>Land Matters</i>);
"Phase Snagging Items Completion Certificate"	means the certificate in the form set out in Schedule 22 (<i>Certificates</i>) issued by the Authority in accordance with Clause 16.10C (<i>Snagging Items</i>);
"Physical Damage Policies"	means the policies of insurance referred to in paragraph 1 (<i>Contractors' 'All Risks' Insurance</i>) of Section 1 (<i>Policies to be Taken Out by Project Co and Maintained During the Design and Construction Phase</i>) and paragraph 1 (<i>Property Damage Insurance</i>) of Section 2 (<i>Policies to be Taken Out By Project Co and Maintained from the Relevant Phase Actual Completion Date</i>) of Schedule 15 (<i>Insurance Requirements</i>);
"Planning Permission"	means any planning permission, approval of reserved matters, listed building consent, conservation areas consent and/or other consent or approval reasonably required from time to time for the carrying out of the Works and/or operation of the Project Facilities (including without limitation for any Authority Change);
"Plant Crossing"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);

"Pounds Sterling"	means the currency issued by the Bank of England from time to time;
"Preliminary Design"	means Project Co's design proposals contained in Part 4 (<i>Design</i>) of Project Co's Proposals and Schedule 38 (<i>Drawings</i>);
"Programme"	means the programme set out in Schedule 7 (<i>The Programme</i>) as revised and issued by Project Co (or on its behalf) from time to time pursuant to Clause 14 (<i>Programme and Dates for Completion</i>);
"Programmed Maintenance"	means the Maintenance Work which Project Co is to carry out in accordance with the Schedule of Programmed Maintenance and Part 4 (<i>Programmed Maintenance and Lifecycle Replacement</i>) of section 1 (<i>Service Level Specification</i>) of Schedule 12 (<i>Service Requirements</i>);
"Programmed Maintenance Information"	has the meaning given in Clause 22.3 (<i>Programmed Maintenance Works</i>);
"Prohibited Act"	has the meaning given in Clause 49 (<i>Corrupt Gifts and Payments</i>);
"Project"	has the meaning given in Recital A;
"Project Co Change"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"Project Co Event of Default"	has the meaning given in Clause 44 (<i>Project Co Event of Default</i>);
"Project Co Factors"	has the meaning given in paragraph 1 of Section 4 (<i>Project Co Factors</i>) of Schedule 15 (<i>Insurance Requirements</i>);
[REDACTED]	[REDACTED];
"Project Co Party"	means Project Co's agents and contractors (including without limitation the Contractor and the Service Providers) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and "Project Co Parties" shall be construed accordingly;
"Project Co's Community Benefits Method Statements"	means those method statements set out in Section 2 (<i>Project Co's Community Benefit Statements</i>) of Schedule 29 (<i>Community Benefits</i>);
"Project Co's Key Personnel"	means the personnel identified in Schedule 3 (<i>Key Personnel</i>);
"Project Co's Proposals"	means the document at Section 4 (<i>Project Co's Proposals</i>) of Schedule 6 (<i>Construction Matters</i>) as amended from time to time in accordance with Clause 38 (<i>Change Protocol</i>);
"Project Co's Representative"	means the person appointed by Project Co pursuant to Clause 8 (<i>Representatives</i>);
"Project Co's RS Target Date"	means [REDACTED];

"Project Data"	means: (a) all Design Data; (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Services; and (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or this Agreement;
"Project Documents"	means the Ancillary Documents and the Funding Agreements;
"Project Emergency"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Project Facilities"	means: (a) the Permanent Areas; (b) the Temporary Highways Areas until the issue of the Taking Over Certificate in respect of each such area; and (c) the Temporary Use Areas until the issue of the Handing Over Certificate in respect of each such area, and the assets of all kinds located in, on, within, under and over the areas referred to in limbs (a), (b) and (c) above;
"Project Operations"	means the carrying out of the Works and the management and provision of the Services and the performance of all other obligations of Project Co under this Agreement from time to time;
"Project Road"	means: (a) the Trunk Roads; and (b) the Side Roads, provided that in relation to any Temporary Areas forming part of the Project Road upon the issue of the relevant Taking Over Certificate or Handing Over Certificate (as applicable) such Temporary Area will no longer form part of the Project Road;
"Project Shortfalls"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Project Term"	means the period commencing at midnight on the date of this Agreement and ending on the earlier of the Expiry Date and the Termination Date;
"Proposed Mitigating Measures"	has the meaning given in Clause 56.2.2(a) (<i>Tax Compliance</i>);

"Protective Measures"	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures;
"Protester"	means any person or persons engaged in Protester Action;
"Protester Action"	means any action taken or threatened to be taken by any person or persons protesting against the carrying out of any part of the Project Operations or use of the Project Road, or users of the Project Road, or of roads in general which directly or indirectly affects performance of the Project Operations including without limitation action or threatened action which results in: (a) increases in the cost of performing the Project Operations (including increased security costs); and (b) delays in performing the Project Operations;
"PTU Criteria"	means the criteria set out in Part 1 (<i>PTU Criteria</i>) of Schedule 10 (<i>PTU Criteria</i>);
"PTU Dispute"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Qualifying Change"	means (unless expressly stated otherwise): (a) a Low Value Change in respect of which the parties have agreed the method of implementation; or (b) a High Value Change which has received Stage 2 Approval pursuant to paragraph 8.2.1 of Section 4 (<i>High Value Changes</i>) of Schedule 16 (<i>Change Protocol</i>), in each case provided that any necessary changes required to be made to any Project Document and/or Ancillary Document pursuant to Schedule 16 (<i>Change Protocol</i>) have been given effect to and become unconditional;
"Quality Plans"	means the Design Quality Plan, the Construction Quality Plan, the Services Quality Plan and the Restricted Services Quality Plan, as required to be implemented by Project Co in accordance with Clause 18 (<i>Quality Assurance</i>);
"Quarter"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Quarterly Works Monitoring Date"	has the meaning given in Clause 29.10.2;
"Quarterly Works Monitoring Report"	has the meaning given in Clause 29.10.2;

"Rectification Period"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Refinancing"	has the meaning given in Schedule 23 (<i>Refinancing</i>);
"Register of Commitments"	means the register of environmental actions and commitments referred to in the Environmental Statement and contained in the Dataroom;
"Reinstatement Plan"	has the meaning given in Clause 57.26.2(a) (<i>Reinstatement</i>);
"Reinstatement Works"	has the meaning given in Clause 57.26.2 (<i>Reinstatement</i>);
"Relevant Authority"	means either: (a) any person identified in paragraphs 1 to 4 of part 7 (<i>Relevant Authorities</i>) of Section 1 (<i>Third Part Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>); (b) any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom, or of the European Union, (with jurisdiction in each case) or of the Welsh Ministers or the National Assembly for Wales; and (c) any other person whose authority is or may be required for the carrying out of all or any part of the Project Operations or which has any authority or right in respect of any part of any of the Project Facilities under any Law including, without limitation, statutory undertakers;
"Relevant Change in Law"	has the meaning given in Clause 37.3 (<i>Relevant Changes in Law</i>);
"Relevant Claim Information"	means all technical data, calculations, plans, drawings, photographs and other material required by the Authority in connection with its responsibilities in relation to the subject matter of a Land Compensation Claim or Operational Compensation Claim;
"Relevant Event"	has the meaning given in Schedule 16 (<i>Change Protocol</i>);
"Relevant Incident"	has the meaning given in Clause 57.26.2;
"Relevant Minister"	means a Minister of the Crown, being the holder of an office in Her Majesty's Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council;
"Relevant Payment"	has the meaning given in Clause 57.14.3 (<i>Uninsurable Risks</i>);
"Relevant Proceeds"	has the meaning given in Clause 57.26.2;
"Relevant Service Transfer Date"	has the meaning given in Clause 27.10 (<i>No Employee Transfer</i>);

"Relevant Tax Authority"	means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which Project Co or, as the case may be, the relevant person is established;
"Relevant Tax Liability"	has the meaning given in Clause 50.6.3;
"Relief"	has the meaning given in Clause 50.6.1;
"Relief Events"	has the meaning given in Clause 35 (<i>Relief Events</i>);
"Renewal Date"	has the meaning given in Section 4 (<i>Insurance Arrangements</i>) of Schedule 15 (<i>Insurance Requirements</i>);
"Renewed Authorisation Period"	has the meaning given in Clause 33B.6.2 (<i>Implementation of Contracting Out Order</i>);
"Reportable Incident"	means any incident or event having an actual adverse effect on: (a) an electronic communications network within the meaning of section 32(1) of the Communications Act 2003; (b) any device or group of interconnected or related devices, one or more of which, pursuant to a program, perform automatic processing of digital data; or (c) digital data stored, processed, retrieved or transmitted by elements covered under paragraph (a) or (b) for the purposes of their operation, use, protection and maintenance, and which has a significant impact on the use of the Project Road and/or the Authority or its agents discharging their statutory duties or functions that affect the Project Facilities;
"Reporting Failure Deductions"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);
"Required Action"	has the meaning given in Clause 26.7 (<i>Authority's Remedial Rights</i>);
"Requirements of Interested Parties"	means the Requirements of Relevant Authorities and Requirements of Other Interested Parties;
"Requirements of Other Interested Parties"	means the requirements of Interested Parties (other than any Relevant Authority) set out or referred to in paragraphs 2, 3 and 4 of Part 6 (<i>Interested Parties</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);

"Requirements of Relevant Authorities"

means:

- (a) any requirements of any Relevant Authority (in its capacity as such) from time to time which that Relevant Authority is legally empowered to impose on the Authority or on Project Co and which relates to the Project Facilities and/or the Project Operations; and
- (b) those requirements of the Relevant Authorities set out or referred to in paragraph 5 of Part 7 (*Relevant Authorities*) of Section 1 (*Third Party Agreements*) of Schedule 32 (*Statutory Framework and Third Party Agreements*) as at the date of the Agreement.

"Reserved Rights"

means the matters referred to in Section 2 (*Reserved Rights*) of Schedule 5 (*Land Matters*);

"Response Duration"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Responsible Authority"

has the meaning given in the NRSWA;

"Restricted Person"

means either:

- (a) not used; or
- (b) any person who has a material interest in the manufacture, production, sale or distribution of pornography, or arms and weapons or the production of tobacco products and/or alcoholic beverages; or
- (c) a person who poses, or could pose (in the reasonable opinion of the Authority) a threat to national security; or
- (d) any person whose tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:
 - (i) HMRC successfully challenging it under the General Anti-Abuse Rule ("**GAAR**") or the Halifax Abuse Principle;
 - (ii) the Relevant Tax Authority challenging it under any tax rules or legislation that have an effect equivalent or similar to the GAAR or the Halifax Abuse Principle; and/or
 - (iii) the failure of an avoidance scheme which the person was involved in and which was, or should have been, notified under the DOTAS or any equivalent or similar regime in a jurisdiction in which the person is established;

"Restricted Services"	means the activities as described in Section 1 (<i>Restricted Services Activities</i>) of Schedule 33 (<i>Restricted Services</i>) as subsequently amended or adjusted in accordance with this Agreement;
"Restricted Services Availability Criteria"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Availability Failure"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Availability Failure Deduction" or "RSAFD"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Commencement Date"	means the date of issue by the Authority of the Restricted Services Commencement Notice in accordance with Clause 21.3.1;
"Restricted Services Commencement Notice"	means the notice issued by the Authority pursuant to Clause 21.3.1;
"Restricted Services Completion Date"	means, in respect of each Project Road, as applicable: (a) in respect of the Permanent Areas the date a Permit to Use is issued in respect of such Permanent Area; or (b) in respect of roads, means of access, roundabouts and de-trunked sections within a Temporary Use Area, the date of issue of the relevant Handing Over Certificate; or (c) in respect of a Temporary Highways Area, the date of issue of the relevant Taking Over Certificate; or (d) in respect of roads to be demolished, the date from which such Project Road is closed to motorised vehicles;
"Restricted Services Deductions" or "RSDs"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Deductions Cap"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Deductions Period"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Exception"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Method Statements"	means the method statements set out in Section 3 (<i>Restricted Services Method Statements</i>) of Schedule 33 (<i>Restricted Services</i>);

"Restricted Services Performance Failure"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Performance Failure Deductions" or "RSPFD"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Period"	means the period from the Restricted Services Commencement Date to the Restricted Services Completion Date;
"Restricted Services Quality Plan"	means the document produced in accordance with Section 4 (<i>Restricted Services Quality Plan</i>) of Schedule 33 (<i>Restricted Services</i>);
"Restricted Services Readiness Certificate"	means a certificate in the form set out in Section 5 (<i>Restricted Services Readiness Certificate</i>) of Schedule 33 (<i>Restricted Services</i>);
"Restricted Services Readiness Criteria"	means the criteria listed on the Restricted Services Readiness Certificate;
"Restricted Services Sections"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Restricted Services Service Level Specification"	means the services level specification set out in Section 2 (<i>Restricted Services Level Specification</i>) of Schedule 33 (<i>Restricted Services</i>);
"Retail Prices Index" or "RPIX"	means the Retail Prices Index (All Items Excl Mortgage Interest) as published by the Office for National Statistics from time to time (the " Index "), or, failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
"Retained Obligations"	means those obligations set out or referred to in Part 2 (<i>Retained Obligations</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework & Third Party Agreements</i>);
"Retained Rights"	means those rights set out or referred to in Part 4 (<i>Retained Rights</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework & Third Party Agreements</i>);
"Retention Fund"	has the meaning given in Schedule 18 (<i>Handback Requirements</i>);
"Revenue"	means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of Project Co;
"Review Procedure"	means the review procedure set out in Schedule 8 (<i>Review Procedure</i>);

"Revised Senior Debt Termination Amount"	has the meaning given in Section 5 (<i>Definitions</i>) of Schedule 17 (<i>Compensation on Termination</i>);
"Revoked Function"	has the meaning given in Clause 33B.4 (<i>Revocation of authorisation</i>);
[REDACTED]	[REDACTED];
"Road Safety Audit Findings"	means matters set out in the Road Safety Audit decisions log in accordance with GG119 of the DMRB;
"Roads Liaison Procedure"	means any of the procedures set out in Section 3 (<i>Roads Liaison Procedure</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);
"Roads Orders"	means: (a) the Main Line Order and/or (b) the Side Roads Order;
"RS Dispute"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Running Lane"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Schedule of Programmed Maintenance"	means the programme referred to in Clause 22.1 (<i>Programmed Maintenance Works</i>) to be submitted to the Authority's Representative by Project Co in accordance with Schedule 8 (<i>Review Procedure</i>);
"Schedules"	means Schedules 1 to 39 attached to this Agreement;
"Seasonal Planting"	means all works involving seeding or planting which are not practical to be completed by the Phase Completion Dates due to seasonal constraints and therefore will not be considered as a requirement for the issue of the Permit to Use;
"Second Party"	has the meaning given in Clause 40.3 (<i>VAT</i>);
"Sectional Performance Failure"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Security Trustee"	means [REDACTED];
"Senior Debt"	has the meaning given in Section 5 (<i>Definitions</i>) of Schedule 17 (<i>Compensation on Termination</i>);
"Senior Debt LADs Amount"	has the meaning given in Clause 25.32;
"Senior Debt Rate"	means [REDACTED];
"Senior Debt Service Costs"	means interest and debt service costs incurred in respect of the Senior Funding Agreements less:

- (a) sums which are in arrears; and
- (b) all sums reserved by Project Co and which Project Co is entitled to use to make such payments, without breaching the Senior Funding Agreements;

"Senior Funders"

means:

[REDACTED];

"Senior Funding Agreements"

means:

[REDACTED]

as at the date of this Agreement and as amended as permitted under Clause 4 (*Project Documents*);

"Service Contract"

means the contract dated on or around the date of this Agreement between Project Co and the Service Provider (which as at the date of this Agreement is in the Agreed Form), by which Project Co will procure the performance of the Services (as amended or replaced from time to time in accordance with this Agreement);

"Service Level Specification"

means the requirements of the Authority set out in Section 1 (*Service Level Specification*) of Schedule 12 (*Service Requirements*) as amended from time to time in accordance with Clause 38 (*Change Protocol*);

"Service Provider"

means [REDACTED];

"Service Provider's Collateral Agreement"

means the collateral agreement among the Authority, Project Co and the Service Provider in the form set out in Section 2 (*Service Provider's Collateral Agreement*) of Schedule 9 (*Collateral Agreements*);

"Service Rectification Period"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Services"

means the services to be provided, managed and/or procured by Project Co for the Authority in accordance with Schedule 12 (*Service Requirements*) and Schedule 35 (*Network Management*) as subsequently amended or adjusted in accordance with this Agreement;

"Services Fee"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Services Management Activities"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Services (Non-Specific)"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Services (Non-Specific) Failure"

has the meaning given in Schedule 14 (*Payment Mechanism*);

"Services Quality Plan"	means the document produced in accordance with Part 1 (<i>Authority's Quality Plan Requirements</i>) of Section 3 (<i>Service Quality Plan</i>) of Schedule 12 (<i>Service Requirements</i>), as initially set out in Part 2 (<i>Project Co Services Quality Plan</i>) of Section 3 (<i>Services Quality Plan</i>) of Schedule 12 (<i>Service Requirements</i>);
"Services (Specific) "	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Shareholder(s)"	means any person(s) who from time to time, as permitted by this Agreement, holds share capital in Project Co or Hold Co which persons are, as at the date of this Agreement, listed as such in Schedule 21 (<i>Project Co Information</i>);
"Shareholders' Agreement"	means the agreement between the Shareholders relating to Project Co, including any agreement relating to the subscription of equity (or other shareholder funding) by the Shareholders in Project Co or Hold Co;
"Shares"	means the shares in Hold Co and/or Project Co;
"Shuttle Working"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Side Roads"	means each and all of those highways and private means of access identified and described in the Side Roads Order and identified on the relevant plans forming part of the Side Roads Order to be constructed, improved, modified, stopped up in accordance with the Side Roads Order);
"Side Roads Order"	means: (a) the Neath to Abergavenny Trunk Road (A465) (Abergavenny to Hirwaun Dualling and Slip Roads) and East of Abercynon to East of Dowlais Trunk Road (A4060) and Cardiff to Glan Conwy Trunk Road (A470) (Connecting Roads) (Dowlais Top to Hirwaun) (Side Roads) Order 2019; and/or (b) the Neath to Abergavenny Trunk Road (A465) (Abergavenny to Hirwaun Dualling and Slip Roads) and East of Abercynon to East of Dowlais Trunk Road (A4060) and Cardiff to Glan Conwy Trunk Road (A470) (Connecting Roads) (Dowlais Top to Hirwaun) (Side Roads) Order 2019 (Variation) Order 2020;
"Site"	means together, at the relevant time, the Permanent Areas and the Temporary Areas;
"Site Conditions"	means the condition of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical, topographical and archaeological conditions;
"Site Plans"	means the site plan attached at Appendix 3 (<i>Site Plans</i>) of Schedule 5 (<i>Land Matters</i>);

"Slip Road"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"SMEMP"	has the meaning given in Part 1 (<i>Definitions</i>) of Section 1 (<i>Service Level Specification</i>) of Schedule 12 (<i>Service Requirements</i>);
"SMEs"	means small and medium sized enterprises that are legally independent, have a turnover of no more than fifty million pounds (£50,000,000) and have no more than two hundred and fifty (250) employees;
"Snagging Completion Date"	means the date of the Final Snagging Items Completion Certificate issued by the Authority in respect of all Phases pursuant to Clause 16.10E (<i>Snagging Items</i>);
"Snagging Dispute"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"Snagging Items"	means: (a) where agreed with the Authority pursuant to paragraph 13A of Part 1 (<i>PTU Criteria</i>) of Schedule 10 (<i>PTU Criteria</i>) the vacation, clearance and/or reinstatement of any Temporary Use Area; and/or (b) seeding, planting or any minor defects, deficiencies or omissions of a snagging nature whose remediation cannot reasonably be expected to affect the provision of the Services, disrupt the use of the Permanent Areas, prejudice the safe use of the Permanent Areas or prevent the Authority from issuing a Permit to Use for the relevant Phase and the remediation of which does not in aggregate exceed either: (i) save for in the case of Seasonal Planting twenty (20) Business Days (or such longer period as may be reasonable taking into account the lead time for supplies or materials); or (ii) in the case of Seasonal Planting three hundred and sixty five (365) days, but "Snagging Items" shall exclude Establishment Works;
"Snagging List"	means the list to be prepared by the Authority in accordance with Clause 16.9 (<i>Snagging Items</i>) containing Snagging Items;
"Snagging Programme"	has the meaning given in Clause 16.9 (<i>Snagging Items</i>);
[REDACTED]	[REDACTED];
"Specific Change in Law"	means any Change in Law which specifically refers to:

	(a) the provision of works or services the same as or similar to the Works or the Services; or
	(b) the holding of shares in companies whose main business is providing works or services the same as or similar to the Works or the Services;
"Specified Goods"	means [REDACTED];
"Statutory Authority"	means the Welsh Ministers acting in its capacity of carrying out its statutory functions;
"Statutory Undertaker"	means an undertaker for the purposes of Part III of the NRSWA as defined in section 48(4) of the NRSWA;
"Street Authority"	has the meaning given in section 49(1) of the NRSWA;
"Structure"	has the meaning given in Part 1 (<i>General Requirements</i>) of Section 3 (<i>Authority's Construction Requirements</i>), of Schedule 6 (<i>Construction Matters</i>);
"Sub-Contractor"	means any third party (including the Contractor and a Services Provider) who enters into any Sub-Contract;
"Sub-Contracts"	means the contracts entered into by or between Project Co, the Contractor and/or a Service Provider and other third parties in relation to any aspect of the Project Operations;
"Submitted Item"	has the meaning given in Paragraph 1.2 of Schedule 8 (<i>Review Procedure</i>);
"Subordinated Debt"	has the meaning given in Section 5 (<i>Definitions</i>) of Schedule 17 (<i>Compensation on Termination</i>);
"Subordinated Funder"	means a person providing finance under a Subordinated Funding Agreement;
"Subordinated Funding Agreements"	means [REDACTED] each as at the date of this Agreement or as amended as permitted under Clause 4 (<i>Project Documents</i>);
"Subsidiary"	has the meaning given in section 1159 of the Companies Act 2006;
"Suitable Substitute Contractor"	has the meaning given in Section 5 (<i>Definitions</i>) of Schedule 17 (<i>Compensation on Termination</i>);
"Surveyor"	means such person as may be appointed by Project Co from time to time to fulfil the functions of the "surveyor" under Section 4 (<i>Injurious Affection</i>) of Schedule 5 (<i>Land Matters</i>);
"Taking Over Certificate"	means a certificate in the form set out in Schedule 22 (<i>Certificates</i>) to be issued by the Authority in accordance with Clause 16.17 (<i>Taking Over Certificate</i>);

"Taking Over Certificate Criteria"	means for each Temporary Highways Area the criteria set out in Part 3 (<i>Taking over Certificate Criteria</i>) of Schedule 10 (<i>PTU Criteria</i>) as needing to be satisfied in respect of that Temporary Highways Areas for a Taking Over Certificate for that Temporary Highways Area to be issued and "Taking Over Certificate Criterion" shall be interpreted accordingly;
"Taking Over Dispute"	has the meaning given in Appendix A (<i>Fast Track Dispute Resolution Procedure</i>) of Schedule 20 (<i>Dispute Resolution Procedure</i>);
"[REDACTED]Area"	means the plot references referred to in the Compulsory Purchase Order, being: a) [REDACTED]; and b) [REDACTED];
"[REDACTED] Date"	[REDACTED]
"Temporary Areas"	means together, at the relevant time, the Temporary Highways Areas and Temporary Use Areas or any part thereof;
"Temporary Highways Area"	means the areas denoted as such on the Site Plans in each case from the Land Access Date until the issue of the relevant Taking Over Certificate in respect of that Temporary Highways Area;
"Temporary Highways Area Target Date"	means, in respect of each Temporary Highways Area, the date specified as such, for that Temporary Highways Area, in Appendix 1 of Schedule 7 (<i>The Programme</i>);
"Temporary Traffic Management Measure"	has the meaning given in Schedule 35 (<i>Network Management</i>);
"Temporary Use Area"	means the areas denoted as such on the Site Plans in each case from the Land Access Date until the issue of the relevant Handing Over Certificate in respect of that Temporary Use Area;
"Temporary Use Area Target Date"	means, in respect of each Temporary Use Area, the date specified as such, for that Temporary Use Area, in Appendix 2 of Schedule 7 (<i>The Programme</i>);
"Temporary Works"	means the works required, to the extent necessary, to enable the Works to be constructed and or to undertake routine or emergency maintenance to the Works once complete;
"Temporary Works Check Certificate"	means a certificate in the form set out in the Annex (<i>Certificates</i>) to Appendix 3 (<i>Design and Certification Procedure</i>) of Schedule 8 (<i>Review Procedure</i>);
"Termination Date"	means the date on which termination of this Agreement takes effect in accordance with its terms;
"Third Party"	means any person other than the Authority, an Authority Party, Project Co or a Project Co Party and "Third Parties"

shall be construed accordingly;

"Third Party Agreements"	means the agreements listed in Part 1 (<i>List of Third Party Agreements</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>);
"Third Party Requirements"	means the requirements of a Third Party in respect of its Temporary Use Area as set out in the Delegated Obligations, the Register of Commitments and/or Appendix 1/15 (<i>Accommodation Works</i>) to Part 4 (<i>Specification</i>) of Section 3 (<i>Authority's Construction Requirements</i>) of Schedule 6 (<i>Construction Matters</i>);
"Title Conditions"	means title conditions set out in Section 1 (<i>Title Conditions</i>) of Schedule 5 (<i>Land Matters</i>);
"TMA"	means the Traffic Management Act 2004;
"TMA Codes of Practice"	means the codes of practice issued from time to time pursuant to the TMA;
"TMA Regulations"	means regulations issued pursuant to the TMA;
"TOC Person"	means any local highway authority (including the Statutory Authority) and/or the South Wales Trunk Road Agency, to whom any Temporary Highways Area are to be handed over in accordance with Clauses 16.14 to 16.23 (<i>Taking Over Certificate</i>);
"TPL Risk"	means a risk which is required to be insured under the third party liability insurance policy;
"Traffic Authority"	has the meaning given in the TMA;
"Traffic Manager"	means such person appointed by the Statutory Authority from time to time to discharge the Statutory Authority's functions under the Traffic Management Act 2004;
"Traffic Regulation Orders"	means orders made under the Road Traffic Regulation Act 1984;
"Traffic Sign"	means all traffic signs, road markings, and delineators either prescribed in the Traffic Signs Regulations and General Directions 2016 and subsequent amendment regulations or authorised by the Secretary of State in accordance with Sections 64 and 65 of the Road Traffic Regulation Act 1984;
"Traffic Signs Manual"	means the manual of that name and any associated advice (including all local transport notes) that are issued by the Department and published by The Stationery Office;
"Traffic Signs Provisions"	means the Road Traffic Regulation Act 1984, The Traffic Signs Regulations and General Directions 2016 (SI 2016/362) and any authorisation given under section 64, or direction given under section 65, of the Road Traffic Regulation Act 1984;

"Transfer Regulations"	means the Transfer of Undertaking (Protection of Employment) Regulations 2006 (SI No. 246);
"Transferring Staff"	has the meaning given in Clause 27.10 (<i>No Employee Transfer</i>);
"Transport Authority"	has the meaning given in the NRSWA;
"Transport for Wales Agreements"	means: (a) an overbridge agreement between (1) Transport for Wales; (2) Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited; and (3) Project Co in relation to the Project; and (b) a basic asset protection agreement between (1) Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited; and (2) Project Co in relation to the Project;
"Trespasser"	means any person (other than a Protester) on, but not entitled to be on, the Site;
"Trunk Roads"	means each of: (a) the A465 Trunk Road; (b) the A4060 Trunk Road; and (c) the A470 Trunk Road.
"Trunk Road Sections"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Type C Works"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Unavoidable Fixed Costs"	means the fixed costs incurred by Project Co which first fall due for payment by Project Co during the period of indemnity but excluding: (a) costs which could have reasonably been mitigated or avoided by Project Co; (b) payments to Project Co's Associated Companies; (c) payments which are not entirely at arm's length; (d) payments to holders of equity in Project Co, providers of Subordinated Debt and any other financing costs other than Senior Debt Service Costs; (e) indirect losses suffered or allegedly suffered by any person; (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations; (g) payments Project Co can recover under contract or in respect of which Project Co has a remedy against

another person in respect of the same liability; and

- (h) payments to the extent that Project Co has such funds available to it including:
 - (i) reserves which Project Co can draw upon without breaching the Senior Funding Agreements;
 - (ii) standby or contingent facilities or funds of Senior Debt or equity which Project Co is entitled to have available; and
 - (iii) payments representing any profits of the Project (to the extent not already excluded in (d) above);

"Uninsurable"

means, in relation to a risk, either that:

- (a) insurance is not available to Project Co in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

"Unprogrammed Maintenance Work"

has the meaning given in Clause 22.8 (*Programmed and Unprogrammed Maintenance*);

"User"

means the users of the Project Road, excluding any employee or agent of Project Co or any Project Co Party using the Project Road in connection with the performance of the Project Operations;

"Utilities"

means utilities or other Apparatus, assets or equipment located in, on, under, over, across, along or adjacent to the Site;

"Utilities Agreement"

means:

- (a) those agreements listed in Part 1 (*List of Third Party Agreements*) of Section 1 (*Third Party Agreements*) of Schedule 32 (*Statutory Framework and Third Party Agreements*); and
- (b) any other agreements with, or consents, releases, notices or variations properly required for the purposes of carrying out the Works to be obtained from and/or served on, any public or private utility, drainage, sewage, water, electricity, gas or telecommunications undertaker, authority or company or any service provider or company, body or authority for the requisitioning, design, commissioning, installation, laying, relaying, construction, repair, maintenance, use or diversion or disconnection and/or connection to any services and/or services media of any kind including without prejudice to the generality

thereof gas, water, electricity, signals and pulses, telecommunications, drainage, sewers, wires, cables, conduits and apparatus;

"Utilities Third Party"	means a third party on whom a Utilities Agreement is to be served or from whom a Utilities Agreement is required to be given or executed;
"Utility Services"	means any utilities required for the performance of the Project Operations and Restricted Services including electricity, water, biofuel, natural gas and fuel oil supplies;
"VAT"	means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
"VAT Sum"	has the meaning given in Clause 40 (<i>VAT and Construction Industry Tax Deduction Scheme</i>);
"Vitiating Act"	has the meaning given in Endorsement 2, Section 3 (<i>Endorsements</i>) of Schedule 15 (<i>Insurance Requirements</i>);
"Warning Notice"	means a notice validly served by the Authority's Representative on Project Co under Clause 26.3 (<i>Grounds for Warning Notices</i>), specifying that it is a Warning Notice and setting out the circumstances that have given rise to the issue thereof;
"Warranty Party"	means: (a) Socotec UK Limited; and (b) Nicholls Colton Group Ltd;
"Weekend"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Weekday"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Well-being of Future Generations Act"	means the Well-being of Future Generations (Wales) Act 2015;
"Welsh Language Standards"	means the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards (No.1) Regulations 2015;

"WGCo"	has the meaning given in the Shareholders' Agreement;
"Whole Road Performance Failure"	has the meaning given in Schedule 14 (<i>Payment Mechanism</i>);
"Works"	means the design (including the preparation of all Design Data), construction, installation testing, commissioning and completion of the Project Facilities (including any temporary works) to be performed by Project Co in accordance with this Agreement (as varied, amended or supplemented from time to time in accordance with this Agreement) [REDACTED]; and
"Works for Road Purposes"	has the meaning given in section 86(2) NRSWA.

SECTION 2

INTERPRETATION

This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 1 The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
- 2 Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of the Schedules are references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and parts of the Schedules to this Agreement and references to Sections, Appendices and Attachments (if any) are references to Sections, Appendices and Attachments to or contained in this Agreement.
- 3 The Schedules (including Sections, Parts, Appendices and Attachments thereto, if any) to this Agreement are integral parts of this Agreement and a reference to this Agreement includes a reference to the Schedules (including Sections, Parts Appendices and Attachments thereto, if any).
- 4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- 5 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- 6 The language of this Agreement is English. All correspondence, notices, drawings, Design Data, test reports, certificates, specifications and information shall be in English. All name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall comply with Welsh Language Standards (including any amending, supplemental or replacement Law from time to time) and shall be bilingual (in English and Welsh), where required by the Authority provided that all operating and maintenance instructions (and any other complex technical documents) are permitted in English only.
- 7 Save where stated to the contrary, references to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
- 8 References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same provided that the provisions of this paragraph shall be without prejudice to the operation of Clause 37 (*Changes in Law*) and Schedule 16 (*Change Protocol*) which shall operate in relation to a Change in Law on the basis set out in this Agreement.
- 9 Any reference in this Agreement which immediately prior to 31 January 2020 (“**Exit Day**”) was a reference to (as it has effect from time to time):
 - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to

the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and

(b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;

- 10 Any reference to the European Communities Act 1972 shall be read on and after Exit Day as a reference to the European Communities Act 1972 as applicable immediately prior to Exit Day.
- 11 Without prejudice to Clause 61.8 (*Assignment*), references to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the relevant functions and relevant responsibilities of such public organisation.
- 12 Without prejudice to Clause 61.8 (*Assignment*), references to other persons (other than the Authority and Project Co) shall include their successors and assignees.
- 13 References to a deliberate act or omission of the Authority or any Authority Party shall be construed having regard to the interactive nature of the activities of the Authority and of Project Co and the expression shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 14 The words in this Agreement shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 15 Reference to "parties" means the parties to this Agreement and references to "a party" mean one of the parties to this Agreement.
- 16 In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 17 All of Project Co's obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Authority and to be performed at Project Co's own cost and expense.
- 18 Unless expressly stated otherwise, references to amounts or sums expressed to be "indexed" or "index linked" are references to amounts or sums in 1 April 2019 ("**Base Date**") prices which require to be adjusted whenever the provision containing the amount or sum is given effect in accordance with this Agreement to reflect the effects of inflation after that date. The adjustment shall be measured by changes in the relevant index published for that Contract Year as calculated in accordance with the following formula:

$$\text{Amount or sum in April 2019 prices} \times \frac{\text{RPIX}_d}{\text{RPIX}_0}$$

Where RPIX_d is the value of the Retail Prices Index published or determined with respect to the month most recently preceding the date when the provision in question is to be given effect and RPIX₀ is the value of the Retail Prices Index in respect of the Base Date.

- 19 Reference to a document being in the Agreed Form is a reference to the form of the relevant document (or where appropriate, the form of the relevant document on disk) agreed between the parties and for the purpose of identification either (i) initialled by each of them or on their behalf or (ii) entered into on or around the Commencement Date.

- 20 The operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the rights or obligations of the parties under this Agreement.
- 21 Words in parenthesis and italics appearing after a Clause reference or a reference to a Schedule are inserted for ease of reference only. If there is any discrepancy between the Clause reference and the words appearing in parenthesis and italics after the Clause reference, the Clause reference shall prevail.
- 22 Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a prescribed number of Business Days after a stipulated date or event, or "no later than" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event, the latest time for performance shall be 5pm UK time on the last Business Day for performance of the obligations concerned.
- 23 Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a prescribed number of Business Days before a stipulated date or event, or "no later than" or "by" a stipulated date or event which is a prescribed number of Business Days before a stipulated date or event, the latest time for performance shall be 5pm UK time on the last Business Day for performance of the obligations concerned.

SECTION 3

TECHNICAL DEFINITIONS

SECTION 4

GLOSSARY

SCHEDULE 2

COMPLETION DOCUMENTS

SECTION 1

DOCUMENTS TO BE DELIVERED BY PROJECT CO

Unless an original document is specifically requested, a copy (certified by an officer of Project Co as being a true copy) of each of the following documents is to be delivered by Project Co to the Authority in accordance with Clause 2.1 (*Execution and Delivery of Documents*) of this Agreement:

- 1 Not Used.
- 2 The Shareholders' Agreement and certification from Project Co that the Shareholders' Agreement has become (or will become, simultaneously with delivery of the other documents referred to in this Schedule 2 (*Completion Documents*)) unconditional in accordance with its terms, accompanied by evidence of the same.
- 3 The Initial Funding Agreements and certification from Project Co that (1) the Initial Funding Agreements have become unconditional (other than any condition relating to the conditionality of this Agreement) and (2) that all conditions to the availability of funds to Project Co under the Initial Funding Agreements have been satisfied or waived, accompanied by evidence of the same.
- 4 The Construction Contract, the Service Contract and the Performance Guarantees, executed by the parties to such agreements.
- 5 An original of the Funders' Direct Agreement, the Collateral Agreements and the brokers letters of undertaking relating to the Insurances referred to in paragraph 14 below in the Agreed Form, executed by the parties to such agreements (other than the Authority).
- 6 Extracts from the minutes of the meeting of the board of directors (certified as true and accurate by a director of the relevant company) of each of Project Co, each Shareholder [REDACTED], Hold Co and each of the other parties (except for [REDACTED]) to the documents listed in Section 1 (Documents to be delivered by Project Co) of Schedule 2 (Completion Documents), at which resolutions were passed approving the execution, delivery and performance of each relevant document to which such person is expressed to be a party and in each case authorising relevant persons to execute and deliver each such document and any other documents to be delivered by it pursuant to it. For the avoidance of doubt, this requirement shall not extend to the Senior Funders. [REDACTED] or [REDACTED].
- 7 A copy of the power of attorney of [REDACTED] in favour of [REDACTED] on 7 October 2020 before the [REDACTED] confirming that the directors and/or representatives referred to are duly empowered to execute agreements on behalf of [REDACTED].
- 8 A copy of the power of attorney of [REDACTED] in favour of [REDACTED] confirming that the directors and/or representatives referred to are duly empowered to execute agreements on behalf of [REDACTED].
- 9 A copy of the power of attorney of [REDACTED] in favour of [REDACTED] confirming that the directors and/or representatives referred to are duly empowered to execute agreements on behalf of [REDACTED].

- 10 A certificate of a director of each of the companies required to provide minutes in paragraph 6 above (save for the Checker) setting out the names and specimen signatures of persons referred to in the relevant certified extract who intend to execute and deliver each document.
- 11 Evidence of the share subscriptions required under the Shareholders' Agreement and other shareholder funding commitments having been made by the Shareholders in Project Co and Hold Co.
- 12 Project Co's and Hold Co's Certificate of Incorporation and of any Certificate of Incorporation on Change of Name.
- 13 The Articles of Association of Project Co and Hold Co.
- 14 The insurance broker's letter of undertaking, evidence of the insurances required in accordance with Clause 57 (*Insurance*) having been taken out by Project Co and that the policies comply with the requirements of this Agreement.
- 15 Electronic copies of the Financial Model audited by [REDACTED].
- 16 Evidence that Project Co has agreed to be treated as the only "client" for the Project for the purposes of the CDM Regulations.
- 17 [REDACTED].
- 18 [REDACTED].
- 19 [REDACTED].
- 20 An original duly executed copy of this Agreement.

SECTION 2

DOCUMENTS TO BE DELIVERED BY THE AUTHORITY

The Authority shall deliver to Project Co the following documents:

- 1 An original copy of the Funders' Direct Agreement, the Collateral Agreements, [REDACTED] and this Agreement, duly executed by the Authority.
- 2 A letter from the Director of Welsh Government Legal Services confirming the execution arrangements.

**SCHEDULE 3
KEY PERSONNEL**

[REDACTED]

SCHEDULE 4

FUNDERS' DIRECT AGREEMENT

THIS AGREEMENT IS MADE ON

AMONG:

- (1) The Welsh Ministers of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the "**Authority**")
- (2) [♦] (the "**Agent**" for the Senior Funders) on behalf of itself and the Senior Funders; and
- (3) [♦] company no [♦] whose registered office is at [♦] ("**Project Co**")

IT IS AGREED AS FOLLOWS:

1 INTERPRETATIONS

1.1 Definitions²

In this Agreement, unless the context otherwise requires:

"Appointed Representative"	means a Representative that has been notified to the Authority pursuant to a Step-In Notice;
"Authority Project Documents"	means the Design Build Finance and Maintain Agreement and all other documents to which the Authority and Project Co are parties pursuant to the Design Build Finance and Maintain Agreement;
"Collateral Agreements"	means [♦];
"Collateral Agreement Counterparty"	means one of the parties to the Collateral Agreements (other than the Authority or Project Co);
"Design Build Finance and Maintain Agreement"	means an agreement dated [♦] between Project Co and the Authority relating to the [♦];
"Enforcement Event"	means [♦] ³ ;
"Event of Default"	[shall have the meaning given to it in the Credit Agreement];
"Event of Insolvency"	means [the circumstances referred to in [Clause 44.1.1] of the Design Build Finance and Maintain Agreement;
"Expert"	means an expert appointed pursuant to Clause 17 (<i>Dispute Resolution</i>) to determine a dispute relating to

² A number of terms are defined by reference to various funding agreements. If this is the case a Master Definition Schedule should be appended to the Direct Agreement setting out all such definitions so that the intended meaning of all such terms is clear to all parties.

³ Definition to include not only the occurrence of an event of default under the credit agreement but also the taking of action to enforce repayment.

	this Agreement;
"Final Payment Date"	means [♦];
"Notice of Expert Determination"	has the meaning given in Clause 17.3;
"Project Co Event of Default"	shall have the meaning given to it in the Design Build Finance and Maintain Agreement;
"Referral Notice"	has the meaning given in Clause 17.5;
"Referring Party"	has the meaning given in Clause 17.4;
"Representative"	means: (a) the Agent, any Senior Funder and/or any of their Associates; (b) an administrator, administrative receiver, receiver or receiver and manager of Project Co appointed under the Security Documents; (c) a person directly or indirectly owned or controlled by the Agent and/or any Senior Funders; or (d) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed);
"Required Period"	means subject to Clause 4 (<i>No Liquid Market</i>) the period starting on the date of a Termination Notice and: (a) prior to the Actual Completion Date, ending eighty (80) Business Days later; and (b) on or following the Actual Completion Date, ending sixty (60) Business Days later;
"Responding Party"	has the meaning given in Clause 17.5;
"Response"	has the meaning given in Clause 17.6;
"Security Documents"	[list the security documents forming part of the Senior Funding Agreements];
"Senior Debt Discharge Date"	means the date on which all amounts owing by Project Co to the Senior Funders under the Senior Funding Agreements have been irrevocably paid in full;
"Senior Funders"	means [insert details if not included in Design Build Finance and Maintain Agreement];
"Step-In Date"	means the date on which the Agent gives the Authority a Step-In Notice;

"Step-In Notice"	means the notice given by the Agent to the Authority pursuant to Clause 5 (<i>Representative</i>) stating that the Agent is exercising the step-in rights under this Agreement and identifying the Appointed Representative;
"Step-In Period"	means the period from the Step-In Date up to and including the earlier of: (a) the Step-Out Date; (b) the date of any transfer under Clause 8 (<i>Novation</i>); (c) the date of any termination for breach under Clause 6 (<i>Step-In Period</i>); and (d) the date of expiry of the Design Build Finance and Maintain Agreement;
"Step-Out Date"	means the date falling twenty (20) Business Days after the date of a Step-Out Notice;
"Step-Out Notice"	means a notice from the Agent or Appointed Representative to the Authority pursuant to Clause 7 (<i>Step-Out</i>);
"Suitable Substitute Contractor"	means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as: (a) having the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Authority Project Documents; and (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of Project Co under the Authority Project Documents;
"Termination Notice"	means a notice given by the Authority to the Agent under Clause 3.2 (<i>No Termination Without Notice</i>);
"Unrestricted Assets"	means those [Assets], excluding any revenues or cash balances or claims outstanding at the date of transfer under any Sub-Contract, which are required by the Authority or its nominee or any replacement of Project Co for the purposes of the construction, operation or maintenance of the Project Facilities following termination, assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Design Build Finance and Maintain Agreement.

1.2 Interpretation

- 1.2.1 Capitalised terms defined in the Design Build Finance and Maintain Agreement shall have the same meaning in this Agreement.
- 1.2.2 The clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.2.3 Unless the context otherwise requires:
- (a) a reference in this Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Agreement;
 - (b) references to this Agreement or to any other such document shall include any permitted variation, amendment or supplements to such document;
 - (c) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted;
 - (d) references to a person includes firms and corporations and their successors and permitted assignees or transferees;
 - (e) words in this Agreement importing any one gender include both other genders and may be used interchangeably; and
 - (f) words in this Agreement importing the singular meaning, include the plural meaning and vice versa.

2 CONSENT TO SECURITY

- 2.1 The Authority acknowledges notice of, and consents to, the security interest granted over Project Co's rights under the Authority Project Documents⁴ effected by Project Co in favour of the Senior Funders under the Security Documents.
- 2.2 The Authority confirms that it has not received notice of any other security interest granted over Project Co's rights under the Authority Project Documents.
- 2.3 Except as specifically provided for in this Agreement the Authority has no obligations (whether express, implied, collateral or otherwise) to the Agent and/or the Senior Funders in connection with this Agreement or the Authority Project Documents or the Project.
- 2.4 The Authority acknowledges notice of and consents to the security interest granted by Hold Co in favour of the Agent over the entire issued share capital of Project Co.⁵

⁴ It may be appropriate to incorporate an acknowledgement of the creation of security over other project documents (eg any leases to Project Co if applicable). It may also be appropriate to include in this Clause an acknowledgement (if applicable) that Service Payments due from the Authority are to be made to a designated account of Project Co held by the Agent.

⁵ This Clause is not mandatory and will only be relevant in cases where a holding company structure is adopted by the sponsors.

- 2.5 [For the purposes of Clause 39.3 (*Manner of payment*) of the Design Build Finance and Maintain Agreement, Project Co and the Agent hereby authorise and instruct the Authority (and the Authority agrees) to pay all sums payable to Project Co under the Authority Project Documents to the [account] and Project Co and the Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Agent upon giving reasonable notice⁶, the Authority shall pay any sum which it is obliged to pay to Project Co under the Authority Project Documents to a bank account specified by the Agent.]
- 2.6 The Authority shall not be obliged to make any enquiry as to the authority of the Agent in doing any act or entering into any document or making any agreement under or in connection with this Agreement and the Authority shall be entitled to assume that the Agent is duly authorised by each of the Senior Funders to assume the obligations expressed to be assumed by it under this Agreement and to undertake on behalf of each Senior Funder in the terms of this Agreement so as to bind each Senior Funder as if it were a party hereto.

3 NO TERMINATION WITHOUT NOTICE

- 3.1 Subject only to Clause 3.2 (*No Termination Without Notice*), the Authority may serve notice terminating the Design Build Finance and Maintain Agreement at any time if it is entitled to do so under the terms of the Design Build Finance and Maintain Agreement.
- 3.2 The Authority shall not terminate or serve notice terminating the Design Build Finance and Maintain Agreement in respect of a Project Co Event of Default or a Persistent Breach without giving to the Agent:
- 3.2.1 at least the Required Period of prior written notice (a "**Termination Notice**") stating:
- (a) that a Project Co Event of Default or a Persistent Breach has occurred and the proposed Termination Date; and
 - (b) the grounds for termination in reasonable detail, and
- 3.2.2 not later than the date falling twenty (20) Business Days after the date of a Termination Notice a notice containing details of any amount owed by Project Co to the Authority, and any other liabilities or obligations of Project Co of which the Authority is aware (having made proper enquiry) which are:
- (a) accrued and outstanding at the time of the Termination Notice; and/or
 - (b) which will fall due on or prior to the end of the Required Period, under the Design Build Finance and Maintain Agreement.
- 3.3 On becoming aware of an Enforcement Event the Agent shall give notice thereof to the Authority stating that an Enforcement Event has occurred and giving reasonable details thereof (an "**Enforcement Event Notice**") whereupon, subject to payment by the Agent of the Authority's reasonable costs and expenses in respect thereof (being such costs and expenses as would not have been incurred in respect of the provision of such information had an Enforcement Event Notice not been served) the provisions

⁶ The Authority should not be exposed to the possibility that it may be too late to revoke a payment to Project Co which has already been set up, such that the Authority is at risk of having to pay twice.

of Clause 3.2.2 shall apply as if references therein to a Termination Notice were to an Enforcement Event Notice.

- 3.4 The Authority will copy to the Agent any non-payment notice which the Authority serves on Project Co pursuant to Clause 44.1.10 (*Payment*).

4 NO LIQUID MARKET

- 4.1 At any time during the Required Period the Agent may issue a written notice (the "**No Liquid Market Notice**") to the Authority setting out the reasons why the Agent does not believe that a Liquid Market exists.
- 4.2 On or before the date falling fourteen (14) Business Days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Agent of its opinion as to whether or not a Liquid Market exists. Where the Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority's belief. If the parties do not agree whether or not a Liquid Market exists, then either party may refer the dispute to be determined in accordance with Clause 17 (*Disputes*) below.
- 4.3 If the parties agree or it is determined in accordance with Clause 17 (*Disputes*) that no Liquid Market exists, the Design Build Finance and Maintain Agreement shall automatically terminate and the provisions of Clause 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of Schedule 17 (*Compensation on Termination*) to the Design Build Finance and Maintain Agreement shall apply.
- 4.4 If any dispute relating to this Clause 4 (*No Liquid Market*) is determined pursuant to Clause 17 (*Disputes*), the Required Period shall be extended by the period of time spent determining such dispute pursuant to Clause 17 (*Disputes*).

5 REPRESENTATIVE

- 5.1 Subject to Clause 5.2 (*Representative*) and without prejudice to the Agent's rights under the Security Documents, the Agent may give the Authority a Step-In Notice at any time:
- 5.1.1 during which a Project Co Event of Default, Persistent Breach or an Enforcement Event⁷ is subsisting (whether or not a Termination Notice has been served); or
- 5.1.2 during the Required Period.
- 5.2 The Agent shall give the Authority not less than five (5) Business Days prior notice of:
- 5.2.1 its intention to issue a Step-In Notice; and
- 5.2.2 the identity of the proposed Appointed Representative.
- 5.3 On the issue of the Step-In Notice, the Appointed Representative shall assume jointly and severally with Project Co the rights of Project Co under the Authority Project Documents and thereafter, until the end of the Step-In Period the Authority shall deal with the Appointed Representative and not Project Co.

⁷ If Senior Funders are taking enforcement action, then there is no objection to there being a right of step-in, although in practice funders may not wish to step in if there is no Project Co Event of Default (and therefore no threat of termination of the Design Build Finance and Maintain Agreement).

6 STEP-IN PERIOD

- 6.1 Notwithstanding Clause 3 (*No Termination Without Notice*) above, the Authority may terminate the Design Build Finance and Maintain Agreement if:
- 6.1.1 any amount referred to in Clause 3.2.2(a) above has not been paid to the Authority on or before the Step-In Date; or
 - 6.1.2 any amount referred to in Clause 3.2.2(b) above has not been paid on or before the last day of the Required Period;
 - 6.1.3 amounts, of which the Authority was not aware (having made proper enquiry) at the time of the Termination Notice, subsequently become payable and are not discharged on or before the date falling twenty (20) Business Days after the date on which the liability of Project Co for these amounts is notified to the Agent or if later the Step-In Date; or
 - 6.1.4 grounds arise after the Step-In Date in accordance with the terms of the Design Build Finance and Maintain Agreement provided that Deductions and/or Warning Notices that arose pursuant to Schedule 14 (*Payment Mechanism*) or Clause 26.3 (*Grounds for Warning Notices*) to the Design Build Finance and Maintain Agreement (as applicable) prior to the Step-In Date shall not be taken into account during the Step-In Period but such Deductions and/or Warning Notices (to the extent applicable under the terms of the Design Build Finance and Maintain Agreement) shall be taken into account after the Step-Out Date.
- 6.2 The Authority shall not terminate the Design Build Finance and Maintain Agreement during the Step-In Period on grounds:
- 6.2.1 that the Agent has served a Step-In Notice or enforced any Security Document; or
 - 6.2.2 arising prior to the Step-In Date of which the Authority was aware (having made proper enquiry) and whether or not continuing at the Step-In Date unless:
 - (a) the grounds arose prior to the Actual Completion Date, and the Actual Completion Date does not occur on or before the date twelve (12) months after the date on which the Authority would have been entitled to terminate the Design Build Finance and Maintain Agreement for non-completion of the Works under Clause 44.1.2 (*Long stop*) of the Design Build Finance and Maintain Agreement; or
 - (b) the grounds arose after the Actual Completion Date, and neither the Appointed Representative nor Project Co is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Design Build Finance and Maintain Agreement which:
 - (i) arose prior to the Step-In Date; and
 - (ii) is continuing (and capable of remedy); and
 - (iii) would have entitled the Authority to terminate the Design Build Finance and Maintain Agreement; or

- (c) the grounds (whenever they first arose) did not give rise to any right to terminate until after the Step-In Notice; or

6.2.3 arising solely in relation to Project Co.

7 STEP-OUT

- 7.1 The Appointed Representative may at any time during the Step-In Period deliver to the Authority a Step-Out Notice which shall specify the Step-Out Date.
- 7.2 On expiry of the Step-In Period:
 - 7.2.1 the Appointed Representative will be released from all of its obligations and liabilities to the Authority under the Authority Project Documents arising prior to the end of the Step-In Period and rights of the Appointed Representative against the Authority will be cancelled;⁸ and
 - 7.2.2 the Authority shall no longer deal with the Appointed Representative and shall deal with Project Co in connection with the Authority Project Documents.
- 7.3 Project Co shall continue to be bound by the terms of the Design Build Finance and Maintain Agreement, notwithstanding the occurrence of a Step-In Notice, a Step-In Period, a Step-Out Notice, Step-Out Date, any action by the Agent or Appointed Representative or the Senior Funders and/or any provision of this Agreement.

8 NOVATION

- 8.1 Subject to Clause 8.2 (*Novation*), at any time:
 - 8.1.1 after an Enforcement Event has occurred; or
 - 8.1.2 during the Step-In Period,
 - the Agent may, subject to Clause 8.2 (*Novation*), on not less than twenty (20) Business Days' prior notice to the Authority and any Appointed Representative, procure the transfer of Project Co's rights and liabilities under the Authority Project Documents to a Suitable Substitute Contractor in accordance with the provisions of Clause 8.4 (*Novation*).
- 8.2 The Authority shall notify the Agent as to whether any person to whom the Agent proposes to transfer Project Co's rights and liabilities under the Authority Project Documents is a Suitable Substitute Contractor, on or before the date falling twenty (20) Business Days after the date of receipt from the Agent of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.
- 8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor and it shall, without limitation, be reasonable for the Authority to withhold its consent if there are unremedied breaches under the Authority Project Documents and there is no rectification plan reasonably acceptable to the Authority in respect of the breaches.

⁸ The effect of this provision is that rights and obligations which are outstanding from the Step-in Period are preserved and will be reflected in the amount of compensation payable by the Authority on early termination of the Design Build Finance and Maintain Agreement. It is not therefore necessary for the Authority to retain rights of action against the Appointed Representative after the end of the Step-in Period.

- 8.4 Upon the transfer referred to in Clause 8.1 (*Novation*) becoming effective:
- 8.4.1 Project Co, the Appointed Representative and the Authority will be released from their obligations under the Authority Project Documents to each other (the "**discharged obligations**");
 - 8.4.2 the Suitable Substitute Contractor and the Authority will assume obligations towards each other which differ from the discharged obligations only insofar as they are owed to or assumed by the Suitable Substitute Contractor instead of Project Co or the Appointed Representative;
 - 8.4.3 the rights of Project Co and the Appointed Representative against the Authority under the Authority Project Documents and vice versa (the "**discharged rights**") will be cancelled;
 - 8.4.4 the Suitable Substitute Contractor and the Authority will acquire rights against each other which differ from the discharged rights only insofar as they are exercisable by or against the Suitable Substitute Contractor instead of Project Co or the Appointed Representative;
 - 8.4.5 any then subsisting ground for termination of the Design Build Finance and Maintain Agreement by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked;
 - 8.4.6 the Authority shall enter into a direct agreement with the Suitable Substitute Contractor and a representative of the Senior Funders lending to the Suitable Substitute Contractor on substantially the same terms as this Agreement; and
 - 8.4.7 any Deductions and/or Warning Notices that arose pursuant to [Schedule 14 (*Payment Mechanism*)], Clause 26.3 (*Grounds for Warning Notices*) [or due to [unavailability]] prior to that time shall, without prejudice to the rights of the Authority to make financial deductions, not be taken into account in determining whether a Project Co Event of Default has occurred.

9 MISCELLANEOUS

- 9.1 The Authority shall at Project Co's expense, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Contractor taking a transfer in accordance with Clause 8.1 (*Novation*) may require for perfecting any transfer or release under Clause 5 (*Representative*) above, Clause 7 (*Step-Out*) above and Clause 8 (*Novation*) above including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative or Suitable Substitute Contractor reasonably requires.
- 9.2 The Authority shall not take any action to wind up, dissolve, appoint an administrator, seek an interim order appointee under paragraph 13(1)(d) of Schedule B1 of the Insolvency Act 1986 (as amended) or sanction a voluntary arrangement (or similar) or take any other similar or analogous step in relation to Project Co.
- 9.3 Subject to Clause 16 (*Survivorship*), this Agreement shall remain in effect until the earlier of:
 - 9.3.1 the Final Payment Date;
 - 9.3.2 the date of termination of the Design Build Finance and Maintain Agreement; or

- 9.3.3 the date of transfer of Project Co's rights and liabilities under the Authority Project Documents to a Suitable Substitute Contractor pursuant to Clause 8.1 above.
- 9.4 The Agent, in respect of Clauses 9.4.1, 9.4.2 and 9.4.3, and Project Co, in respect of Clause 9.4.4 shall promptly notify the Authority of:
- 9.4.1 any Enforcement Event and any action taken in connection with such Enforcement Event, any decisions to accelerate the maturity of any amounts owing by Project Co to the Senior Funders under the Senior Funding Agreements and/or any decisions to demand repayment;
- 9.4.2 the date referred to in Clause 9.3.1 above on or before the date falling twenty (20) Business Days after its occurrence:
- 9.4.3 the details and amount of any proposed Additional Permitted Borrowing including:
- (a) the circumstances giving rise to it and reasons for it; and
 - (b) the terms on which it will be borrowed;
- 9.4.4 on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Funding Agreements (as the same may be amended (whether or not with the approval of the Authority)) and, to the extent it is aware (having made reasonable and proper enquiry):
- (a) the amount of any [Distribution] made by Project Co; and
 - (b) the amount of any credit balance on any account of Project Co.⁹
- 9.5 Project Co joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.
- 9.6 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Design Build Finance and Maintain Agreement, the provisions of this Agreement shall prevail.
- 9.7 Notwithstanding any provision in the Collateral Agreements to the contrary, the Authority agrees that, subject to Clauses 9.8 and 9.9 (*Miscellaneous*), it will not, in respect of any particular Collateral Agreement, exercise or seek to exercise any of its step-in rights or other rights (other than design, Intellectual Property or similar rights) under such Collateral Agreement until the earliest of:

⁹ For a Bond Transaction, 9.4.4 may be replaced by a new Clause as follows if the Authority thinks this is appropriate:

- (a) on each [Payment Date] during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Funding Agreements and to the extent it is aware (having made reasonable and proper enquiry);
- (b) on each [Payment Date] and the first Business Day of each calendar month following a Distribution made by Project Co the amount of any Distribution made; and
- (c) on each [Payment Date] and on the first Business Day of each calendar month following five (5) Business Days written notice from the Authority the amount of any credit balance on any account of Project Co.

- 9.7.1 the Senior Debt Discharge Date; or
- 9.7.2 the date on which the Agent has given its written consent to such exercise; or
- 9.7.3 the time when in respect of any such Collateral Agreement either:
 - (a) the Senior Funders have failed to exercise any corresponding right to such Collateral Agreement under their own Security Documents and the time for exercising such right has ended in accordance with the terms thereof; or
 - (b) the Agent has confirmed in writing to the Authority (following any request from the Authority for such confirmation, to which the Agent shall be obliged to respond promptly) that it does not intend to exercise any of its rights under the relevant Security Document or that it has no further claim thereunder; or
 - (c) the Senior Funders have stepped in to or otherwise directly or indirectly taken control over the rights of Project Co under the relevant Sub-Contract (in accordance with their rights under their Security Documents) and then stepped out from, or otherwise relinquished control of such rights under or in connection with such Sub-Contract; or
- 9.7.4 the date falling [♦] months after the date on which the Design Build Finance and Maintain Agreement has been terminated in accordance with its terms and the terms of this Agreement.
- 9.8 In addition to its rights under Clause 9.7 (*Miscellaneous*), where the Design Build Finance and Maintain Agreement has not been terminated but a counterparty has a right to terminate its Sub-Contract for breach by Project Co of the terms of such Sub-Contract the Authority may pay directly, or undertake to make a payment directly to the counterparty concerned, amounts properly due and payable pursuant to the Sub-Contract and may set off any such sums against any payments payable by the Authority to Project Co under the Design Build Finance and Maintain Agreement so as to satisfy them pro tanto, provided always that the Authority shall not exercise its rights under this Clause 9.8 (*Miscellaneous*) in respect of any particular Sub-Contract in circumstances where the Senior Funders have stepped in to or otherwise directly or indirectly taken control over the relevant Sub-Contract and have not stepped out of it or otherwise relinquished such control unless the Authority reasonably believes that the Senior Funders are not seeking to preserve continuity of service or build obligation (as relevant) under the relevant Sub-Contract with reasonable diligence (or under any equivalent service or build obligation under the Sub-Contract).
- 9.9 In addition to its rights under Clause 9.7 (*Miscellaneous*), where the Design Build Finance and Maintain Agreement has been terminated, the Authority shall from the Termination Date be able to exercise any of its step-in rights or other rights under or in respect of any of the Collateral Agreements; however notwithstanding the terms of the Collateral Agreements or any other provisions of this Clause 9.9 (*Miscellaneous*), each of the relevant Sub-Contractors (and any guarantors thereof as relevant) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the relevant Sub-Contracts in respect of the period prior to the Termination Date in relation to which the Agent acting on behalf of Project Co and the Senior Funders shall retain the benefit of all and any rights to all such costs, claims, damages, losses and liabilities.
- 9.10 Except in accordance with the provisions of Clauses 9.7 to 9.9 (*Miscellaneous*) (inclusive) the Authority shall not, prior to the Senior Debt Discharge Date:

- 9.10.1 claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Collateral Agreements;
 - 9.10.2 take any action to wind up, dissolve, appoint an administrator, seek an interim order appointee (under paragraph 1.3(1)(d) of Schedule B1 of the Insolvency Act 1986 (as amended)) or sanction a voluntary arrangement (or similar) or take any similar analogous step in relation to any Sub-Contractors; or
 - 9.10.3 save with the prior written consent of the Agent, compete on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Collateral Agreements, the Design Build Finance and Maintain Agreement or any other Project Document or otherwise) with the rights of the Senior Funders on any formal insolvency of any Sub-Contractor or Project Co, nor claim to be subrogated to the rights of any Senior Funders.
- 9.11 The Authority agrees and undertakes that if it receives any amount in contravention of the provisions of Clause 9.10 (*Miscellaneous*) above it will promptly turn the same over to the Agent and pending such payment hold the same on trust for the Agent and the Senior Funders.
- 9.12 Notwithstanding the terms of the Design Build Finance and Maintain Agreement and Security Documents, the Agent agrees that the Authority may exercise its rights to have transferred to it or its nominee any Unrestricted Assets following the Termination Date and the Agent will not exercise or seek to exercise any enforcement rights and shall on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, release its security over them.
- 9.13 Notwithstanding the terms of any Senior Funding Agreements, the parties agree and shall, to the extent it is within their power, direct that all insurance proceeds receivable or received by Project Co under the insurances referred to in Clause 57 (*Insurance*) of the Design Build Finance and Maintain Agreement shall be paid directly into the Insurance Proceeds Account and applied in accordance with the Design Build Finance and Maintain Agreement.

10 ASSIGNMENT

- 10.1 No party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement save as provided in this Clause 10 (*Assignment*).
- 10.2 The Agent may assign, novate or transfer its rights and obligations under this Agreement and in respect of the Security Documents to a successor Agent in accordance with the Senior Funding Agreements without the consent of the Authority and any such assignment novation or transfer shall not constitute a Change in Control for the purposes of Clause 62.6 (*Ownership Information and Changes in Control*) of the Design Build Finance and Maintain Agreement. The Authority also agrees that any enforcement by the Agent of the security referred to in Clause 2.4 (*Consent to Security*) above (and any subsequent transfer of share capital in Project Co) following an Enforcement Event shall not constitute a Project Co Event of Default under Clause 44.1.6 (*Change in Control*) of the Design Build Finance and Maintain Agreement.
- 10.3 Any Senior Funder may assign or transfer its rights under the [Senior Funding Agreements] in accordance with the terms of the [Senior Funding Agreements].
- 10.4 The Authority shall transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Design Build Finance and Maintain Agreement and the Agent and the Senior Funders shall co-operate with the Authority

in completing the formalities of any transfer or assignment including by executing any additional documents as may be required by the Authority.

- 10.5 If Clause 10.2 (*Assignment*) applies in relation to the Agent, the Authority shall enter into a new direct Agreement with the new Agent on substantially the same terms as this Agreement.

11 ENTIRE AGREEMENT

Unless otherwise stated in this Agreement, this Agreement and the Authority Project Documents constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

12 WAIVER

- 12.1 The failure of any party to exercise any contractual right or remedy shall not constitute a waiver thereof until communication in writing under Clause 12.2 (*Waiver*).

- 12.2 No waiver shall be effective unless it is communicated in writing to the other party.

- 12.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

13 SEVERABILITY

If any term, condition or provision contained in this Agreement 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 Agreement.

14 CONFIDENTIALITY

The Agent shall be bound to comply with the obligations on the part of Project Co contained in Clause 65 (*Confidentiality*) of the Design Build Finance and Maintain Agreement in relation to all information and matters obtained from any other party under or in connection with the Project.

15 NOTICES CONSENTS AND APPROVALS

- 15.1 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, by hand or by email.

- 15.2 Any notice served under or in connection with this Agreement is to be in writing and shall be deemed to have been served:-

15.2.1 if delivered by hand at the time of delivery; or

15.2.2 if posted upon the earlier of (i) actual receipt, and (ii) [three (3)] Business Days after posting,

15.2.3 provided that in either case, a notice or other communication received on a non-Business Day or after 5pm in the place of receipt shall be deemed to be received at 9am on the next following Business Day in such place; or

15.2.4 notices given by email shall be deemed to have been received:

- (a) at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the email address specified in Clauses 15.3 to 15.5 (*Notices Consents and Approvals*)), if sent on a Business Day between the hours of 9am and 4pm; or
- (b) by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and provided that within twenty-four (24) hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient in accordance with the provisions of this Clause 15 (*Notices, Consents and Approvals*) and where such notice is addressed to the Authority, copied to [♦].¹⁰

- 15.3 Any notice to be given to the Authority should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by the Authority.
- 15.4 Any notice to be given to the Agent should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by the Agent.
- 15.5 Any notice to be given to Project Co should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by Project Co.
- 15.6 Any consent or approval under this Agreement is required to be obtained before the act or event to which it applies is carried out or done and is to be treated as effective only if the consent or approval is given in writing.

16 SURVIVORSHIP

Notwithstanding the provisions of Clause 9.3.2, Clauses 9.7 to 9.13 (*Miscellaneous*) (inclusive), 11, 13, 14, 15, 17, 18 and 19 shall survive termination of this Agreement.

17 DISPUTES

- 17.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause 17 (*Dispute Resolution*).
- 17.2 If a dispute arises in relation to any aspect of this Agreement, the Parties shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 17.3 Without prejudice to Clause 17.2, either of the Authority or the Agent may give the other notice of its intention to refer the dispute to an Expert for determination ("**Notice of Expert Determination**"). The Notice of Expert Determination shall include a brief statement of the issue to be referred and the redress sought.
- 17.4 The Authority and the Agent shall attempt to agree the identity of the Expert within five (5) Business Days of the date of issue of the Notice of Expert Determination. In

¹⁰ Insert Welsh Minister's details.

the event that the Authority and the Agent cannot agree the identity of the Expert within such period, either of them may request the President for the time being of the Chartered Institute of Arbitrators to nominate a suitable individual, and such individual shall be the Expert for the purposes of this Clause 17 (*Dispute Resolution*). The Expert shall (unless otherwise agreed) be an independent individual with knowledge of and experience in project financed projects in the highways sector. The Party giving the Notice of Expert Determination ("**Referring Party**") shall send a copy of the Notice of Expert Determination to the Expert as soon as he has been appointed.

- 17.5 Within five (5) Business Days of the service of the Notice of Expert Determination, or as soon thereafter as the Expert is appointed, the Referring Party shall serve its statement of case ("**Referral Notice**") on the Expert and the other Party ("**Responding Party**"). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Expert Determination, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.
- 17.6 The Responding Party shall serve its statement of case ("**Response**") on the Expert and the Referring Party within a period of time to be directed by the Expert. The Response shall include any arguments in response to the Referral Notice and any additional evidence on which the Responding Party relies.
- 17.7 The Expert shall have absolute discretion as to how to conduct resolution of the dispute, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. He shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Parties shall comply with any request or direction of the Expert in relation to resolution of the dispute.
- 17.8 The Expert shall provide to the Authority and the Agent his written decision on the dispute within ten (10) Business Days after the date of receipt of the Referral Notice (or such other period as the Parties may agree). The Expert shall state the reasons for his decision. Unless and until revised, cancelled or varied by the courts of England and Wales, the Expert's decision shall be binding on all Parties who shall forthwith give effect to the decision.
- 17.9 The Expert's costs shall be borne as the Expert shall specify or, in default, equally by the Authority and the Agent. Each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.
- 17.10 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential. The Expert shall not 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 Expert's work.
- 17.11 Either of the Authority or the Agent may within ninety (90) days of receipt of the Expert's decision give notice to the other of its intention to refer the dispute to the courts of England and Wales for final determination.
- 17.12 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 17 (*Dispute Resolution*) and shall give effect forthwith to every decision of the Expert and the courts delivered under this Clause 17 (*Dispute Resolution*).

18 **COUNTERPARTS**

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

19 **GOVERNING LAW**

19.1 Subject to Clause 17 (*Disputes*) above, this Agreement is governed by the laws of England and Wales.

19.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed the day and year first above written:

SCHEDULE 5
LAND MATTERS

SECTION 1 - TITLE CONDITIONS

1. All title conditions, rights, real burdens, covenants and other rights identified in Appendix 1 of this Schedule 5 (*Land Matters*).
2. All third party rights and rights of way in respect of the Site which were or should have been apparent from a visual inspection of the Site or which were or should have been apparent from the Site investigations pursuant to Clause 7.3 (*Project Co Investigation*) and Clause 10 (*The Site*).
3. All conditions contained in any agreements entered into pursuant to Clause 9.6 (*Additional Access Rights*).
4. Any restrictions or conditions on access and/or methods of working in the Register of Commitments.
5. The [REDACTED] Area will not be made available to Project Co until the [REDACTED] Date.

SECTION 2 – NOT USED

SECTION 3 – ANCILLARY RIGHTS

Ancillary Rights means a non-exclusive licence to enter and remain upon those parts of the Site that Project Co and/or any Project Co Party requires access to in order to carry out the Works or provide the Services or Restricted Services.

SECTION 4 - INJURIOUS AFFECTION

General

1. Project Co's Responsibilities

- 1.1 Project Co shall on the terms set out in this Section 4 (*Injurious Affection*) of Schedule 5 (*Land Matters*) take all steps and carry out all activities and works necessary to:
- 1.1.1 enable the duties of the Authority with respect to a Compensation Claim of a Compensation Party to be properly, promptly and fully satisfied and/or procure that the Authority's duties with respect to a Compensation Claim of a Compensation Party are properly, promptly and fully satisfied;
 - 1.1.2 enable the Authority, as the case may be, having taken into account all material considerations, freely and timeously to exercise all directions, powers and rights with respect to a Compensation Claim of a Compensation Party;
 - 1.1.3 enable the Authority to act properly in respect of the human rights of any Compensation Party; and
 - 1.1.4 minimise any Compensation Claim and any associated Compensation Losses of a Compensation Party.

2. Rights of the Authority

Nothing in this Section 4 (*Injurious Affection*) of Schedule 5 (*Land Matters*) shall derogate from or limit (or be deemed to derogate from or limit) the ability or obligation of the Authority to exercise its respective discretions, powers and rights or require (or be deemed to require) the Authority to act other than in accordance with the relevant Law and in a manner appropriate to the Authority.

3. Injurious Affection Claims

- 3.1 Project Co shall, save where it elects otherwise pursuant to Paragraph 3.2, be responsible at its own cost and expense for negotiating and paying all Compensation Claims made by any Injurious Affection Party in accordance with and on the terms set out in this Section 4 (*Injurious Affection*) of Schedule 5 (*Land Matters*).
- 3.2 Project Co may, at its discretion and on written notice to the Authority, elect not to negotiate or administer a claim made by any Injurious Affection Party brought under s.10 of the Compulsory Purchase Act 1965. On receipt of such written notice, the Authority will therefrom be responsible for the negotiation of such Compensation Claim. Any election made by Project Co pursuant to this Paragraph shall be without prejudice to Project Co's obligations under Paragraph 1 and Project Co shall, notwithstanding any election made pursuant to this Paragraph 3.2, be responsible, at its own cost and expense, for:
- 3.2.1 paying all Compensation Claims made by any Injurious Affection Party; and
 - 3.2.2 reimbursing the costs reasonably and properly incurred by the Authority in administering and/or negotiating, in accordance with Project Co's instructions, any such Compensation Claims on behalf of Project Co.
- 3.3 Where an Injurious Affection Party makes a Compensation Claim for Injurious Affection Costs, Project Co shall:
- 3.3.1 promptly commence negotiations with the Injurious Affection Party; and

- 3.3.2 conduct such negotiations in good faith.
- 3.4 In the negotiation of any Compensation Claim of an Injurious Affection Party for Injurious Affection Costs, Project Co shall submit to the Authority a report no later than five (5) Business Days after the beginning of each calendar month. The report shall include:
 - 3.4.1 the name, address and interest of the Injurious Affection Party in relation to which a Compensation Claim for Injurious Affection Costs has been made;
 - 3.4.2 the details of the Compensation Claim of the Injurious Affection Party, including the amount of such Compensation Claim and the nature, detailed design and specification of any Accommodation Works requested; and
 - 3.4.3 the details of any negotiations between Project Co and the Injurious Affection Party with respect to such Compensation Claim.
- 3.5 Without prejudice to Clauses 30 (*No Delegation of Functions*), 33B (*Implementation of Contracting Out Order*) and 33C (*Delegated Functions*), nothing in this Section 4 (*Injurious Affection*) of Schedule 5 (*Land Matters*) shall authorise or be deemed to authorise Project Co to, and Project Co shall not, at any time act in a manner which would amount to or suggest any:
 - 3.5.1 delegation of the statutory duties or functions of the Authority; or
 - 3.5.2 fetter on the discretion of the Authority.
- 4. **Notification of Agreement of Compensation Claims of Injurious Affection Parties**
 - 4.1 Project Co shall not make any payment, reject any Compensation Claim for Injurious Affection Costs, carry out any Accommodation Works or make any binding or sealed offer to any Injurious Affection Party other than in accordance with this Paragraph 4.
 - 4.2 Prior to making any payment, rejecting any Compensation Claim for Injurious Affection Costs, carrying out any Accommodation Works or making a binding or sealed offer to any Injurious Affection Party, Project Co shall make a submission to the Authority in accordance with the Review Procedure. The submission shall include:
 - 4.2.1 the name, address and interest of the Injurious Affection Party in relation to which a Compensation Claim for Injurious Affection Costs has been made;
 - 4.2.2 copies of all previous reports submitted pursuant to Paragraph 3.4 with respect to the relevant Injurious Affection Party; and
 - 4.2.3 where Project Co proposes to reject the Compensation Claim of the Injurious Affection Party, justification for that recommendation, taking into account the statutory duties and functions of the Authority, Good Industry Practice and any relevant Law;
 - 4.2.4 where Project Co proposes to accept the Compensation Claim of the Injurious Affection Party:
 - (a) an Injurious Affection Party Surveyor's Certificate duly certified by the Surveyor stating that the sum proposed, including (if applicable) the value of any Accommodation Works, is properly due and payable by Project Co in respect of that interest by virtue of the statutory duties and functions of the Authority (whether or not delegated to Project Co), Good Industry Practice and any relevant Law; and

- (b) confirmation that the Injurious Affection Party will accept payment and (if applicable) the carrying out of any Accommodation Works by Project Co (as detailed in the Injurious Affection Party Surveyor's Certificate submitted pursuant to Paragraph 4.2.4(a)) in full and final settlement of its Compensation Claim against the Authority for Injurious Affection Costs, together with any written confirmation as may be available.
- 4.3 The Review Procedure shall apply to any submission made pursuant to Paragraph 4.2 save that paragraph 1.2.2 of Schedule 8 (*Review Procedure*) shall not apply and the Authority shall not be deemed to have returned a submission until it has in fact returned a submission marked "no comment", "received", "received with comments" or "comments".
- 4.4 Any period of time within which the Authority is compelled, pursuant to this Section 4 (*Injurious Affection*) of Schedule 5 (*Land Matters*) (including any response times under the Review Procedure in relation to any submission made pursuant to Paragraph 4.2), to respond to Project Co shall only apply where Project Co has complied with Paragraph 4.5.
- 4.5 Project Co shall keep the Authority properly and fully informed of any negotiations with the relevant Injurious Affection Party and provide all evidence and information reasonably necessary for the Authority to decide whether any proposed payment or any Accommodation Works are properly due and payable by virtue of the statutory duties or functions of the Authority (whether or not delegated to Project Co), Good Industry Practice and any relevant Law. If the Authority decides that it has insufficient evidence or information to make a decision under this Paragraph, it shall inform Project Co as soon as practicable of any further evidence or information it requires.
- 4.6 Without prejudice to Paragraph 5, where there is no objection to the proposal to reject a Compensation Claim of an Injurious Affection Party in accordance with the Review Procedure, Project Co shall be authorised to and shall notify the Injurious Affection Party that the Compensation Claim has been rejected.
- 4.7 Without prejudice to Paragraph 5, where there is no objection to the proposed payment to, or the carrying out of any Accommodation Works for, an Injurious Affection Party in accordance with the Review Procedure, Project Co shall be authorised to and shall make the proposed payment and carry out any Accommodation Works. Such payment shall be on terms that record that it is in full and final settlement of the Compensation Claim of the Injurious Affection Party for Injurious Affection Costs.
- 4.8 Subject to Paragraph 4.3, if the Authority returns a submission made in accordance with Paragraph 4.2 marked "comments", Project Co shall either:
 - 4.8.1 amend the submission in accordance with such comments and re-submit the submission in accordance with Paragraph 4.2; or
 - 4.8.2 within ten (10) Business Days of receipt of such comments notify the Authority that it intends to renegotiate the Compensation Claim (in which case the provisions of Paragraph 4.9 shall apply).
- 4.9 Where, following a renegotiation of the proposed Compensation Claim in accordance with the provisions of Paragraphs 1.1 to 4.8, either:
 - 4.9.1 Project Co is unable to reach agreement with the Injurious Affection Party on a proposed payment or any Accommodation Works; or
 - 4.9.2 the Authority returns a submission made in accordance with Paragraph 4.2 marked "comments",

then Project Co shall give a notice to the Authority notifying it of its intention to refer to the Lands Tribunal the issue of the amount properly payable, including any Accommodation Works, to the Injurious Affection Party.

- 4.10 The Authority shall have the right in its absolute discretion at all times to be provided on request with such information as is reasonably available relating to any negotiations between Project Co and any Injurious Affection Party.
- 4.11 Project Co shall comply with Appendix 1/15 (*Accommodation Works*) of Part 4 (*Specification*) of Section 3 (*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*) and paragraph 12 (*Accommodation Works*) of Part 1 (*General Requirements*) of Section 3 (*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*).

5. **Authority dealing with claims of Injurious Affection Parties**

- 5.1 The Authority may, at any time, by not less than five (5) Business Days' written notice to Project Co and without prejudice to Project Co's continuing obligations pursuant to Paragraph 1 of this Section 4 (*Injurious Affection*), relieve Project Co of its obligations to administer Injurious Affection Compensation Claims under Paragraphs 3, 4 and 7 of this Section 4 (*Injurious Affection*), where either:

- 5.1.1 Project Co is, in the opinion of the Authority (acting reasonably), failing to comply with its obligations pursuant to Paragraphs 3 and 4; or

- 5.1.2 Project Co is unable to provide the confirmation in Paragraph 4.2.4(b).

- 5.2 If the Authority gives a notice under Paragraph 5.1, the Authority shall be entitled to recover on demand from Project Co an amount equivalent to any payment, including any amount paid in respect of Accommodation Works being carried out, made to an Injurious Affection Party, together with interest at the Default Interest Rate from the date of payment of each such sum by the Authority to the date of repayment by Project Co (inclusive of both dates), together with all reasonable administrative costs incurred by the Authority in connection with the payment.

- 5.3 Where Project Co objects to any notice given by the Authority pursuant to Paragraph 5.1, either party may refer such matter for resolution under the Dispute Resolution Procedure.

- 5.4 Where any Dispute arising under Paragraph 5.3 is referred to the Dispute Resolution Procedure and it is determined pursuant to such procedure that the amount actually payable, including any Accommodation Works, to an Injurious Affection Party under this Section 4 (*Injurious Affection*) is less than any sum paid by Project Co to the Authority under Paragraph 5.2, then the Authority shall refund such excess with interest thereon at the Default Interest Rate to Project Co within forty (40) Business Days of such determination.

6. **References to the Lands Tribunal by the Authority**

- 6.1 Where the Authority wishes to conduct legal proceedings in the Lands Tribunal in accordance with Paragraph 7.4, withdrawing the right in Paragraph 7.1, and the Authority is unable to reach agreement with the Injurious Affection Party, Project Co shall at its own cost and expense:

- 6.1.1 promptly provide the Authority with such administrative support as it may reasonably request; and

- 6.1.2 promptly provide the Authority with all records, documents and information relating to the relevant Injurious Affection Party held by or on behalf of Project Co.

- 6.2 If the amount finally payable to an Injurious Affection Party (whether agreed or by negotiation with the Authority and the Injurious Affection Party or determined by the Lands Tribunal, a higher court or otherwise) differs materially from the sum specified in the Injurious Affection

Party Surveyor's Certificate submitted pursuant to Paragraph 4.2 in relation to that Injurious Affection Party, then Project Co shall pay on demand to the Authority an amount equal to:

- 6.2.1 all Compensation Claims and Compensation Losses incurred by, or on behalf of, the Authority in the course of, or ancillary to, determining the amount payable to the relevant Injurious Affection Party; and
- 6.2.2 any costs awarded against the Authority by the Lands Tribunal or any higher court,

and Project Co shall indemnify the Authority (for itself and on behalf of the Authority) against all such Compensation Claims and Compensation Losses.

- 6.3 For the avoidance of doubt, and notwithstanding that the Authority has conducted proceedings in the Lands Tribunal, Project Co shall pay any amounts which it is required to pay under this Section 4 (*Injurious Affection*) and which are agreed or determined to be properly due and payable.

7. References to, and conduct in, the Lands Tribunal by Project Co

- 7.1 Subject to Paragraph 7.4, Project Co is authorised to and may, on behalf of and in the name of the Authority in the implementation of the provisions of Paragraph 1 of this Section 4 (*Injurious Affection*), refer to the Lands Tribunal any dispute with an Injurious Affection Party about the amount properly due and payable to that Injurious Affection Party and conduct any subsequent proceedings.
- 7.2 Project Co shall bear, at its own expense, all costs associated with any such reference to the Lands Tribunal, including the costs of the relevant Injurious Affection Party and any other party in relation to whom the Lands Tribunal makes a costs order against the Authority.
- 7.3 Project Co shall at its own cost and expense provide the Authority with copies of all documents associated with any reference to the Lands Tribunal, including notices of reference, written evidence, details of any applications and any orders, decisions, sealed offers, undertakings and consent orders.
- 7.4 The Authority may in its absolute discretion, at any time, by notice to Project Co withdraw the right in Paragraph 7.1, in which case the provisions of Paragraph 6 shall apply and Project Co shall promptly take all steps necessary to transfer the conduct of such matter to the Authority.
- 7.5 Project Co shall not, without the prior written consent of the Authority, appeal any decision of the Lands Tribunal.
- 7.6 The Authority shall offer all such assistance to Project Co as is reasonably necessary in relation to proceedings conducted by Project Co in the Lands Tribunal, including the provision of documentary evidence and witnesses to provide oral or written evidence.

8. Land Compensation Claims and Operational Compensation Claims

- 8.1 The Authority shall save where caused or contributed to by a breach by Project Co of its obligations under this Agreement, be responsible for negotiating, settling and paying and otherwise dealing with all Land Compensation Claims and Operational Compensation Claims.
- 8.2 Where the Authority is responsible for a Land Compensation Claim or Operational Compensation Claim pursuant to Paragraph 8.1, the Authority may take such steps as it considers, in its discretion, appropriate.

8.3 Project Co shall:

- 8.3.1 take all reasonable measures to minimise any Land Compensation Claims and Operational Compensation Claims;
- 8.3.2 offer all such information including Relevant Claim Information and assistance to the Authority as is reasonably necessary for the Authority to comply with Paragraph 8.1 including, on request, carrying out at the cost of the Authority any Accommodation Works agreed in lieu of any entitlement to compensation;
- 8.3.3 immediately provide to the Authority any notices, statements, proofs or other documents sent to it or as part of or in connection with any Land Compensation Claim or Operational Compensation Claim and shall immediately notify the Authority of any fact or issue relevant to such Land Compensation Claim or Operational Compensation Claim; and
- 8.3.4 not negotiate with, express any opinion to or otherwise make any representation to any person in relation to any Land Compensation Claim or Operational Compensation Claim.

APPENDIX 1 – TITLE CONDITIONS

1. All title conditions, rights, real burdens, restrictions, covenants, agreements, easements and other matters of any nature subsisting on the below titles:

No.	Property	Title Number
Authority Owned Plots		
1.	Lyndhurst, Hirwaun Road, Hirwaun, Aberdare, CF44 9HR	CYM616271
2.	8 Johnson Park, Hirwaun, Aberdare, CF44 9NB	WA931104
3.	12 Johnson Park, Hirwaun, Aberdare, CF44 9NB	WA856691
4.	13 Johnson Park, Hirwaun, Aberdare, CF44 9NB	WA800878
5.	3 Ivy Cottages, Hirwaun, Aberdare, Rhondda Cyon Taff, CF44 0LX	CYM410757
6.	Land adjacent to Bryn Y Gog Bungalow	CYM548213
7.	Court Lodge, Keepers Lane, Croesbychan, Aberdare, CF44 0PJ	WA748749
8.	Ty Gwyn Farm, Llwydcoed, Aberdare, CF44 0LX	WA608307
9.	Fairfield Place, Baverstocks, Llwydcoed, Aberdare, CF44 0LX	WA710705
10.	Land at former Coed Meyrick Farm, Swansea Road, Merthyr Tydfil, CF48 1NU	CYM396310
11.	Cilsanws House, Cefn Coed, Merthyr Tydfil, CF48 2HN	WA694894
12.	Bucklands, Cefn Coed, Merthyr Tydfil, CF48 2HN	WA911845
13.	Former Unit 10, Pant Industrial Estate, Dowlais, Merthyr Tydfil, CF48 2SR	WA493430
14.	Matthews Filling Station (Maggies Kitchen), Pant Industrial Estate, Dowlais, Merthyr Tydfil, CF48 2SR	CYM120365
15.	Guest Cottages, Penywern, Merthyr Tydfil, CF48 3NT	WA788637, WA505732
Cefn Coed Cemetery		
16.	Land at Cefn Coed Cemetery, Cefn Coed, Merthyr Tydfil	CYM318133

2. The Licence to Occupy relating to land at Cefn Coed Cemetery Cefn Coed Merthyr Tydfil dated 2 June 2020 between (1) the Welsh Ministers and (2) Merthyr Tydfil County Borough Council.
3. Any conditions, restrictions or other matters referred to in the Transport for Wales Agreements.

APPENDIX 2 – INJURIOUS AFFECTION PARTY SURVEYOR'S CERTIFICATE

Form of certificate to be provided in accordance with Paragraph 19.2(a) of this Section 4.

Agreement between the [the Authority] and [♦] dated [♦] ("**Agreement**") relating to the [♦] Project. Expressions used in the Agreement have the same meanings in this certificate.

1. Identity of Injurious Affection Party
2. Compensation proposed to be paid including all consideration both in money and in kind, and comprising:
 - 2.1 total compensation payable for injurious affection (excluding the value of any IAPA Works to be carried out) in accordance with the attached summary Schedule:

£.....
 - and
 - 2.2 total estimated value of any IAPA Works to be carried out in accordance with the attached summary Schedule (if applicable):

£.....
- together being the total consideration payable to the Injurious Affection Party ("**Price**").
3. **I certify that:**
 - 3.1 the Price is properly due and payable to the Injurious Affection Party by virtue of the statutory duties and functions of the Authority and Good Industry Practice and any relevant Law; and
 - 3.2 this certificate has been prepared in accordance with Good Industry Practice.

Signed

Name

The Surveyor
Position.....

Date

APPENDIX 3 - SITE PLANS

[REDACTED]

APPENDIX 4 - PHASE PLANS

[REDACTED]

SCHEDULE 6
CONSTRUCTION MATTERS

SECTION 1
PLANNING/CONSENTS

[REDACTED]

SECTION 2

SAFETY DURING CONSTRUCTION

- 1 In this Section 2 (*Safety During Construction*) of Schedule 6 (*Construction Matters*) and wherever used elsewhere in this Agreement:
 - 1.1 **"the client", "the Principal Designer", "Principal Contractor" and "the Executive"** shall have the same meanings as are ascribed to them in the CDM Regulations.
- 2 In so far as not already done, within five (5) Business Days of the date of execution of this Agreement, Project Co shall make and serve on the Authority a notice in writing pursuant to and in the form (if any) required by CDM Regulation 4(8) that Project Co agrees to be treated as the only client in relation to the Project Operations for the purposes of the CDM Regulations. Notwithstanding Project Co agreeing in writing to be treated as the only client pursuant to CDM Regulation 4(8), the Authority will comply with its remaining duties as set out in CDM Regulation 4(8). During the Project Term, Project Co shall not, and shall not seek to, withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the client in relation to the Project Operations for all the purposes of the CDM Regulations. The Authority will endorse its consent, in writing, to such election on the said notice and return it to Project Co within five (5) Business Days of receipt.
- 3 Project Co warrants that it has the skills, knowledge, organisational capability and experience to, and shall, observe, perform and discharge or shall procure the observance, performance and discharge of:
 - 3.1 all the obligations, requirements and duties of the client arising under the CDM Regulations in connection with the Project Operations; and
 - 3.2 all obligations incumbent on the client under any code of practice or guidance for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc Act 1974 issued in connection with the CDM Regulations.
- 4 Project Co shall provide to the Authority's Representative:
 - 4.1 in a substantially complete form on the Actual Completion Date; and
 - 4.2 in final form within three (3) months of the Actual Completion Date,one (1) electronic copy (on computer disk, tape or other format) of the revised and updated health and safety file and construction phase plan (current at that date) prepared by the Principal Designer pursuant to the CDM Regulations in relation to the Project Operations and electronic or paper copies of every amendment or update made to such file during the Project Term.
- 5 Project Co shall be the dutyholder for the purposes of the Control of Asbestos Regulations 2012.
- 6 Without prejudice to Project Co's obligations pursuant to Clause 5.2.1 (*General Standards*), in support of its approach to health and safety, Project Co shall undertake the following in respect of the Project Operations:
 - 6.1 Project Co shall be appointed as the Principal Designer and Principal Contractor as required by CDM Regulations;
 - 6.2 Project Co shall implement a behavioural safety programme for all personnel involved in delivery of the Authority's Construction Requirements with at least as great a focus on identifying unsafe conditions and safe behaviours as on identifying unsafe behaviours;

- 6.3 Project Co shall be a member of the Constructing Better Health (CBH) scheme or equivalent, and shall use its best endeavours to ensure that all subcontractors of any tier involved in delivery of the Authority's Construction Requirements hold equivalent membership. Project Co shall ensure that the CBH standards for workplace health management, fitness for task assessment of safety critical and non-safety critical personnel in line with the CBH Health Assessment Matrix, or equivalent, are implemented for personnel involved in delivery of the Authority's Construction Requirements, and that outcomes from the health checks are recorded in the CBH National Database or equivalent. Project Co shall ensure that personnel undertaking duties within the Site are registered with CBH or equivalent, and are issued with a CBH card, or equivalent;

- 6.4 Project Co shall adopt the principles of the UK Contractors Group in respect of worker engagement, or equivalent, and shall use its best endeavours to ensure that all subcontractors of any tier involved in delivery of the Authority's Construction Requirements adopt these principles or equivalent. Project Co shall ensure that worker engagement is supported at project, work gang and individual levels;

- 6.5 Not Used

- 6.6 Project Co shall develop leading and lagging key performance indicators in respect of its health and safety activities, and shall monitor and report on performance against these key performance indicators on a monthly basis.

- 6.7 Not Used

SECTION 3

AUTHORITY'S CONSTRUCTION REQUIREMENTS

[REDACTED]

SECTION 4

PROJECT CO'S PROPOSALS

[REDACTED]

SECTION 5

QUALITY PLANS (DESIGN AND CONSTRUCTION)

[REDACTED]

SCHEDULE 7
THE PROGRAMME

SECTION 1: PROGRAMME

[REDACTED]

APPENDIX 1

TEMPORARY HIGHWAYS AREA TARGET DATE

[REDACTED]

APPENDIX 2

TEMPORARY USE AREA TARGET DATE

[REDACTED]

SECTION 2: PHASING

Phasing of the Works will be carried out in accordance with the Phase Plans. The following Phase descriptions are intended by way of overview only and shall not take precedence over the content of said Phase Plans.

[REDACTED]

SCHEDULE 8

REVIEW PROCEDURE

1 REVIEW

- 1.1 The provisions of this Schedule 8 (*Review Procedure*) shall apply whenever any item, document or course of action is required to be reviewed, approved, or otherwise processed in accordance with Schedule 8 (*Review Procedure*).
- 1.2 Subject to any express provision of this Agreement, the manner, form and timing of any submission to be made by Project Co to the Authority's Representative for review under this Schedule 8 (*Review Procedure*) shall be a matter for Project Co to determine. Each submission under this Schedule 8 (*Review Procedure*) shall be accompanied by a copy of the proposed document to be reviewed (including, where applicable, any Key Design Data or any variations or amendments to the Key Design Data (if any) and any information, documentation and/or Certificates required pursuant to Appendix 3 of this Schedule 8 (*Review Procedure*) or otherwise pursuant to the terms of this Agreement or a statement of the proposed course of action (the entire contents of a submission being referred to in this Schedule 8 (*Review Procedure*) as a "**Submitted Item**"). In relation to each Submitted Item, the following procedure shall apply:
 - 1.2.1 the Authority's Representative shall as soon as practicable and (subject to paragraph 1.6 below) in any event within twenty (20) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the parties may agree), return one copy of the relevant Submitted Item to Project Co endorsed "no comment" or (subject to and in accordance with paragraphs 3 (*Grounds for Objection*) and 4 (*Effect of Review*)) "received with comments" or "comments" as appropriate; and
 - 1.2.2 subject to paragraph 1.4 and save where paragraph 1.6 applies, if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with paragraph 1.2.1, within twenty (20) Business Days (or within such other period as the parties may agree in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to Project Co endorsed "no comment"; and
- 1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 3 (*Grounds for Objection*) he shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that the Authority's Representative comments on a Submitted Item other than on the basis set out in this Schedule 8 (*Review Procedure*), or fails to comply with the provisions of this paragraph:
 - 1.3.1 Project Co shall request written clarification of the basis of the comments from the Authority as soon as practically possible and in any event within ten (10) Business Days of the receipt of the comment;
 - 1.3.2 within fifteen (15) Business Days of receipt of the request for written clarification from Project Co in accordance with paragraph 1.3.1, the Authority shall by notice to Project Co, either withdraw or modify the comment or confirm that the comment stands, failing which the comment shall be deemed to be withdrawn;

- 1.3.3 following receipt of the Authority's notice in accordance with paragraph 1.3.2 above, if Project Co maintains that any comment or modified comment as the case may be is not on grounds permitted by the Agreement, the parties shall use their best endeavours to reach agreement;
 - 1.3.4 if no agreement is reached after ten (10) Business Days of the Authority's notice in accordance with paragraph 1.3.2, either party may refer the issue for determination under the Dispute Resolution Procedure in accordance with Schedule 20 (*Dispute Resolution Procedure*); and
 - 1.3.5 if neither party is given notice of referral in accordance with paragraph 1.3.4 within twenty (20) Business Days of the Authority's notice made in accordance with paragraph 1.3.2, or other such period agreed by the parties in each case, Project Co's objection shall be deemed to be withdrawn.
- 1.4 In the case of any Submitted Item of the type referred to in paragraph 3.8, a failure by the Authority's Representative to endorse and return such Submitted Item within the period specified in paragraph 1.2.2 shall be deemed to constitute an objection by the Authority's Representative to such Submitted Item. If the parties fail to agree the form and content of such Submitted Item, within forty (40) Business Days following the expiry of the period specified in paragraph 1.2.2, the matter shall be determined in accordance with Schedule 20 (*Dispute Resolution Procedure*).
- 1.5 Within three (3) Business Days after Financial Close for the period to the First Quarter Date (as defined below) and no later than twenty (20) Business Days prior to each subsequent Quarter Date, Project Co shall deliver to the Authority's Representative a schedule of the Submitted Items that Project Co intends to submit to the Authority's Representative ("**Review Submission Schedule**") during the period to the First Quarter Date or starting on the next Quarter Date (as the case may be) and concluding on the subsequent Quarter Date. The Review Submission Schedule shall include brief details of each proposed Submitted Item and the month in which it is to be submitted.

Project Co shall ensure that each Review Submission Schedule shall provide for a progressive and orderly flow of Submitted Items from Project Co to the Authority's Representative to allow sufficient time for review of each Submitted Item by the Authority's Representative in accordance with this Schedule 8 (*Review Procedure*). If any Review Submission Schedule indicates that a large number of Submitted Items will be submitted at one time or in close proximity to each other, the Authority's Representative may, at the Authority's Representative's discretion, request a longer period for review or a staggering of Submitted Items, and Project Co shall update the Review Submission Schedule to accommodate the Authority's Representative's request.

For the purposes of this paragraph 1.5, a reference to a "**Quarter Date**" shall mean the date which falls three (3) months following Financial Close ("**First Quarter Date**") and each subsequent date which falls after each subsequent three (3) consecutive month period after such First Quarter Date.

- 1.6 If Project Co fails:
- 1.6.1 to deliver a Review Submission Schedule to the Authority's Representative in accordance with paragraph 1.5; or
 - 1.6.2 to submit a Submitted Item in accordance with the timetable set out in the relevant Review Submission Schedule,

then the provisions of paragraph 1.7 below shall apply.

1.7 In the case of:

- 1.7.1 a failure falling within paragraph 1.6.1 or paragraph 1.6.2, the provisions of paragraph 1.2.1 shall be deemed to be varied for the purposes of such Submitted Items by the deletion of the words "and (subject to paragraph 1.6 below) in any event within twenty (20) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the parties may agree)"; and
- 1.7.2 a failure falling within paragraph 1.6.2 where the conditions specified in paragraph 1.8 are satisfied, there shall be substituted in the place of such deleted words the words "and, in any event within forty (40) Business Days unless the Authority's Representative considers in his absolute discretion that it is impracticable for the Authority to respond within forty (40) Business Days in which case the Authority's Representative shall respond as soon as reasonably practicable in view of the Authority's existing available resources".

1.8 The conditions referred to in paragraph 1.7.2 above are that:

- 1.8.1 Project Co demonstrates to the satisfaction of the Authority's Representative that the sole reason for the Submitted Item not being included in the Review Submission Schedule was that it was unforeseeable at the time the Review Submission Schedule was prepared; and
- 1.8.2 the total number of Submitted Items to which the forty (40) Business Day response time limit referred to in paragraph 1.7.2 applies shall not exceed ten per cent (10%) of the total number of Submitted Items specified in the Review Submission Schedule for the relevant quarter.

2 FURTHER INFORMATION

Project Co shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether it has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule 8 (*Review Procedure*). If Project Co does not submit any such information, data and documents, the Authority's Representative shall be entitled to:

- 2.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- 2.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine whether it has a legitimate basis for commenting or objecting in accordance with this Schedule 8 (*Review Procedure*).

3 GROUNDS OF OBJECTION

The expression "raise comments" in this paragraph shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 (*Further Information*) above, in accordance with any express provisions set out elsewhere in this Agreement or on the ground that the Submitted Item would (on the balance of probabilities) breach any Law but otherwise may raise comments in relation to a Submitted Item only as follows:

- 3.1 in relation to any Submitted Item if:

- 3.1.1 Project Co's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
- 3.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right; or
- 3.1.3 the proposed document or course of action within the Submitted Item would be:
 - (a) inconsistent with any Law, statutory duty or legal requirements;
 - (b) inconsistent with the Authority's Construction Requirements, Service Level Specification, Project Co's Proposals and/or Method Statements;
 - (c) inconsistent with the Requirements of Relevant Authorities;
 - (d) inconsistent with any other provision of this Agreement; or
 - (e) not in accordance with Good Industry Practice;
- 3.2 in relation to any Submitted Item submitted pursuant to Clause 4.1 (*Ancillary Documents*) if:
 - 3.2.1 the Authority's ability to perform its obligations under this Agreement would be adversely affected by the proposed course of action;
 - 3.2.2 the proposed course of action would be likely to result in an increase to the Authority's liabilities or potential or contingent liabilities under this Agreement;
 - 3.2.3 the proposed course of action would adversely affect any right of the Authority under this Agreement or its ability to enforce any such right; or
 - 3.2.4 Project Co's ability to perform its obligations under this Agreement would be materially adversely affected by the proposed course of action;
- 3.3 in relation to a proposal to amend Project Co's Proposals and rectify (part of) the Works submitted pursuant to Clause 12.19 (*Rectification of Project Co's Proposals*), on the grounds that, following the amendment and rectification proposed:
 - 3.3.1 Project Co's Proposals would not satisfy the Authority's Construction Requirements; and/or
 - 3.3.2 the structural, mechanical and/or electrical performance of the Project Facilities would not be of an equivalent standard of performance to that set out in Project Co's Proposals prior to their amendment or rectification (for the purpose of this comparison disregarding the fault which required the amendment or rectification to be made);
- 3.4 in relation to the submission of any revised Programme pursuant to Clause 14 (*Programme and Dates for Completion*) on the ground that the revised Programme would not (on the balance of probabilities) enable a Phase or Phases (as the case may be) to be completed by the relevant Phase Completion Date;
- 3.5 in relation to the submission of any Quality Plan or part of a Quality Plan or any changes to any Quality Plan pursuant to Clause 18.4 (*Quality Plans and Systems*) or Clause 18.7 (*Quality Plans and Systems*) or any quality manual or procedure in

accordance with Clause 18.9 (*Quality Manuals and Procedures*), on the grounds that such Quality Plans, or parts of or changes to such Quality Plans, quality manuals or procedures, or the quality management systems which they reflect, would not comply with:

- 3.5.1 in the case of the Design Quality Plan and the Construction Quality Plan referred to in Clause 18 (*Quality Assurance*), the requirements referred to in Section 5 (*Quality Plans (Design and Construction)*) of Schedule 6 (*Construction Matters*);
 - 3.5.2 in the case of the Services Quality Plan referred to in Clause 18 (*Quality Assurance*), the requirements referred to in Section 3 (*Services Quality Plan*) of Schedule 12 (*Service Requirements*); or
 - 3.5.3 in the case of the Restricted Services Quality Plan referred to in Clause 18 (*Quality Assurance*), the requirements referred to in Section 4 (*Restricted Services Quality Plan*) of Schedule 33 (*Restricted Services*);
- 3.6 in relation to the submission of any proposed revision or substitution for the Method Statements or any part of any Method Statement (as the case may be) pursuant to Clause 20.4 (*Project Co Services Changes*), on the grounds that:
- 3.6.1 the proposed revision or substitution is not in accordance with Good Industry Practice;
 - 3.6.2 the performance of the Services in accordance with the proposed revision or substitution would (on the balance of probabilities):
 - (a) be materially different from the performance of the Services in accordance with the Method Statement prior to such proposed revision or substitution; or
 - (b) be less likely to achieve compliance with the Service Level Specification; or
 - (c) have an adverse effect on the safety or enjoyment of any Users of, the Project Facilities; or
 - 3.6.3 the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the Services to the standard of performance in accordance with the Method Statement prior to such proposed revision or substitution and or, as relevant, result in a probable failure of the Handback Requirements;
- 3.7 in relation to the submission of any Schedule of Programmed Maintenance pursuant to Clause 22.1 (*Programmed Maintenance Works*), any revision to any Schedule of Programmed Maintenance pursuant to Clause 22.4 (*Programmed Maintenance Works*), any submission of Unprogrammed Maintenance Works pursuant to Clause 22.8 (*Programmed and Unprogrammed Maintenance*), or any written statement regarding deferral of Lifecycle Replacement and revision of the Lifecycle Schedule (forming part of the Schedule of Programmed Maintenance) pursuant to Clause 23.2 (*Lifecycle Replacement*), on the grounds that:
- 3.7.1 carrying out the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Authority and such interference could be avoided or mitigated by Project Co rescheduling the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works; or

- 3.7.2 Not used
- 3.7.3 the proposed method of performance of the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works would not be in accordance with the Service Level Specification; or
- 3.7.4 the safety of users of the Project Facilities would (on the balance of probabilities) be adversely affected; or
- 3.7.5 the period for carrying out the Programmed Maintenance, Lifecycle Replacement or the Unprogrammed Maintenance Works would (on the balance of probabilities) exceed the period reasonably required for the relevant works.
- 3.8 In relation to the submission of Project Co's proposals for the Handback Works, the Handback Programme and the Handback Amount pursuant to Schedule 18 (*Handback Procedure*), on the grounds that:
 - 3.8.1 in the case of the Handback Works, Project Co's proposals will not (on the balance of probabilities) ensure that the Handback Requirements are achieved by the Expiry Date;
 - 3.8.2 in the case of the Handback Programme, performance of the Handback Works in accordance with the programme is not (on the balance of probabilities) capable of achieving satisfaction of the Handback Requirements by the Expiry Date; and/or
 - 3.8.3 in the case of the Handback Amount, it does not represent the cost of carrying out the Handback Works according to the Handback Programme and the provisions of Schedule 18 (*Handback Procedure*).

4 EFFECT OF REVIEW

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" shall be complied with or implemented (as the case may be) by Project Co.
- 4.2 Subject to paragraph 4.5 below and Clause 12.13, if the Authority's Representative returns any Submitted Item to Project Co endorsed "received with comments", Project Co shall comply with such Submitted Item after amendment in accordance with the comments. Project Co need not resubmit any such amended Submitted Item but shall notify the Authority's Representative of how it will address each of the Authority's Representative's comments no later than twenty (20) Business Days after receipt of notification from the Authority's Representative in accordance with paragraph 1.2.1 or (if earlier) five (5) Business Days prior to commencement of any part of the Works and/or Services and/or Restricted Services which relies on the amended Submitted Item.
- 4.3 Subject to paragraph 4.5 below and Clause 12.13, if the Authority's Representative returns any Submitted Item to Project Co endorsed "comments", Project Co shall amend the Submitted Item to incorporate such comments and the Submitted Item shall be resubmitted to the Authority's Representative under this Review Procedure no later than twenty (20) Business Days after receipt of notification from the Authority's Representative in accordance with paragraph 1.2.1.
- 4.4 Subject to Clause 12.13 (*Review of Design Data and Certificates*), Project Co shall not commence any part of the Works, Services and/or Restricted Services which is reflected in a Submitted Item unless and until the Submitted Item has been endorsed "no comment" or "received with comments".

4.5 Where a Submitted Item is returned by the Authority's Representative endorsed "received with comments" or "comments" and Project Co considers that such endorsement is not on grounds permitted by this Agreement, Project Co or the Authority's Representative may refer the matter for determination in accordance with Schedule 20 (*Dispute Resolution Procedure*) and subject to Clause 12.13 Project Co shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

4.6 [REDACTED].

5 DOCUMENTATION MANAGEMENT

5.1 Project Co shall issue an electronic copy of all Submitted Items to the Authority and compile and maintain a register of the date and contents of the submission of all Submitted Items. Project Co shall provide hard copies of any Submitted Items where requested by the Authority (acting reasonably).

5.2 Project Co shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.

5.3 No review or comment by the Authority shall operate to exclude or limit Project Co's obligations or liabilities under this Agreement (or the Authority's rights under this Agreement).

6 CHANGES

6.1 No comment or any failure to give or make a comment under this Schedule 8 (*Review Procedure*) shall constitute a Change save to the extent provided in this Schedule 8 (*Review Procedure*).

6.2 If, having received comments from the Authority's Representative, Project Co considers that compliance with those comments would amount to a Change, Project Co shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the parties or determined pursuant to Schedule 20 (*Dispute Resolution Procedure*) that a Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Change and it shall be dealt with in accordance with Schedule 16 (*Change Protocol*). Any failure by Project Co to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to a Change shall constitute an irrevocable acceptance by Project Co that any compliance with the Authority's comments shall be without cost to the Authority and without any extension of time.

6.3 No alteration or modification to the design, quality and quantity of the Works arising from the development of Detailed Design or from the co-ordination of the design shall be construed or regarded as a Change.

7 OBSERVATIONS

7.1 The Authority's Representative may make observations in relation to any Submitted Item regardless of whether the Submitted Item is endorsed as "no comment", "received with comments" or "comments". Any observation of the Submitted Item shall be clearly labelled as such by the Authority's Representative so as to avoid confusion with any comments on the Submitted Item. Project Co is not obliged to respond to or take any action as a consequence of any observation.

7.2 Should Project Co decide to alter any Submitted Item following receipt of any observation from the Authority's Representative, such alterations shall be deemed to be a Proposal for the purpose of Appendix 3 (*Design and Certification Procedure*) of

Schedule 8 (*Review Procedure*) and shall be submitted to the Authority's Representative in accordance with this Review Procedure except where such alteration constitutes a Project Co Change in which case Schedule 16 (*Change Protocol*) shall apply.

- 7.3 No action by Project Co in relation to any observation made by the Authority's Representative shall relieve Project Co of any of his obligations under this Agreement.

8 NO OBJECTION

For the avoidance of doubt, a reference in this Agreement to there being "no objection" under the Review Procedure in relation to a particular matter means that such matter shall have been submitted in accordance with this Schedule 8 (*Review Procedure*) and returned (or deemed returned) with an endorsement of "no comment" or returned with an endorsement "received with comments", in the latter case the matter having been amended in accordance with such comments.

9 ADHERENCE

Documents or courses of action the subject of a Submitted Item in accordance with paragraph 1 (*Review*) and/or paragraph 2 (*Further Information*) above and returned (or deemed to have been returned) endorsed:

- 9.1 "no comment" shall be adhered to; or
- 9.2 "received with comments" shall, once amended in accordance with the comments, be adhered to.

APPENDIX 1 - Not Used

APPENDIX 2 - Not used

APPENDIX 3 - DESIGN AND CERTIFICATION PROCEDURE

[REDACTED]

SCHEDULE 9
COLLATERAL AGREEMENTS

SECTION 1

CONTRACTOR'S COLLATERAL AGREEMENT

COLLATERAL WARRANTY

AMONG:

- (1) The Welsh Ministers of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the "**Authority**");
- (2) [CONTRACTOR] (the "**Contractor**");
- (3) [PROJECT CO] ("**Project Co**"); and
- (4) [SECURITY TRUSTEE] ("**Security Trustee**").

WHEREAS:

- (A) The Authority and Project Co have agreed the terms on which Project Co will design, develop and construct and provide certain services in connection with the sections 5 (Dowlais to A470) and 6 (A470 to Hirwaun of the A465 (the "**Development**") at the Site (as that expression is defined in the Design Build Finance and Maintain Agreement) and, accordingly, have entered into the Design Build Finance and Maintain Agreement and the Project Documents.
- (B) [Description of financing arrangements].
- (C) [Description of documents entered into by Project Co as security for its obligations.]
- (D) The Contractor and Project Co have entered into an agreement (the "**Construction Contract**") of even date herewith relating to the provision of the Works (as defined in the Design Build Finance and Maintain Agreement) by the Contractor to enable Project Co to discharge its obligations to the Authority regarding such Works under the Design Build Finance and Maintain Agreement and the Project Documents.
- (E) This Contractor's Collateral Agreement (the "**Agreement**") is the Contractor's Collateral Agreement contemplated by the Design Build Finance and Maintain Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:

"Ancillary Documents"	has the meaning given in the Design Build Finance and Maintain Agreement;
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in England and Wales;
"Construction Contract"	has the meaning given in the Design Build Finance and Maintain Agreement;

"Design Build Finance and Maintain Agreement"	means the Design Build Finance and Maintain Agreement of even date herewith between (1) the Authority and (2) Project Co;
"Event of Project Co Default"	[has the meaning given in the Construction Contract];
"Funders"	means [♦];
"Funders' Contractor Direct Agreement"	means the agreement of even date herewith between, amongst others, Project Co, the Contractor and the Senior Funder;
"Funders' Direct Agreement"	means an agreement dated [on or about the date hereof] and made between (1) the Authority; (2) Project Co; and (3) [♦];
"Funding Agreements"	means [♦];
"Novation Agreement"	has the meaning given in Clause 4.5.2(a);
"Novation Effective Date"	means the date of performance of the obligations set out in Clause 4 (<i>Novation</i>);
"Parent Company Guarantee"	[has the meaning given in the Construction Contract];
"Proposed Novation Date"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Proposed Novation Notice"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Proposed Step-in Date"	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
"Proposed Substitute"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Security Documents"	has the meaning given in the Funders' Direct Agreement;
"Senior Funder"	means [insert details];
"Step-in Date"	means the date of issue of the Step-in Undertaking;
"Step-in Notice"	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
"Step-in Period"	means the period commencing on the Step-in Date and ending on the earliest of: (a) the date of the first anniversary of the Step-in Date (but subject always to Clause 4.7 (<i>Extension of Step-in Period</i>)); (b) the Step-out Date; (c) the Novation Effective Date; and (d) termination of the Construction Contract under Clause 3.3 (<i>Restriction of Right of Termination</i>);

"Step-in Undertaking"	has the meaning given in Clause 3.2.4;
"Step-out Date"	has the meaning given in Clause 3.4.1;
"Termination Notice"	has the meaning given in Clause 2.3 (<i>Termination Notice</i>).

1.2 Interpretation

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses are references to Clauses of this Agreement;
- 1.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.5 any reference to time of day shall be a reference to Cardiff time;
- 1.2.6 the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.11 references to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
- 1.2.12 all monetary amounts are expressed in Pounds Sterling;
- 1.2.13 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.14 the obligations of any Party under this Agreement are to be performed at that Party's own cost and expense;

- 1.2.15 terms used in this Agreement that are defined in the Design Build Finance and Maintain Agreement or the Ancillary Documents shall have the meanings given to them in the Design Build Finance and Maintain Agreement or the Ancillary Documents, as appropriate.

2 TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Construction Contract, provided that the Authority shall only be entitled to make a claim against the Contractor under this Clause 2.1 (*Contractor's Warranties and Undertakings*) if the Design Build Finance and Maintain Agreement has terminated and shall not be entitled to do so during the Step-in Period or after the Construction Contract has been novated under Clause 4 (*Novation*).

2.2 Liability of Contractor

Any liability arising from any claim for breach of the warranty under or pursuant to Clause 2.1 (*Contractor's Warranties and Undertakings*) shall be in addition to and without prejudice to any other present or future liability of the Contractor to the Authority (including, without prejudice to the generality of the foregoing, any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority provided always that the Contractor shall owe no greater duties or obligations to the Authority under this Agreement than it owes or would have owed to Project Co under the Construction Contract. Without prejudice to Clause 12 (*Aggregate Liability*), the Contractor shall be entitled in any action or proceedings brought by the Authority under this Agreement to rely on any limitation or exclusion of liability in the Construction Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against Project Co under the Construction Contract.

2.3 Termination Notice

- 2.3.1 The Contractor undertakes not to terminate the Construction Contract on account of an Event of Project Co Default without first giving the Authority not less than [fifteen (15)] Business Days' prior written notice specifying the grounds for that termination. Subject to Clause 2.3.2 below any such notice shall be a "**Termination Notice**".
- 2.3.2 Where the Contractor's right to terminate is subject to the terms of the Funders' Contractor Direct Agreement then the Contractor shall notify the Authority of the same as soon as reasonably practicable upon becoming aware of the provisions of the Funders' Contractor Direct Agreement applying. Thereafter as soon as the Contractor becomes entitled to terminate the Construction Contract free from the constraints contained in the Funders' Contractor Direct Agreement, whether upon the expiry of the Step-in Period ([as such term is defined in the Funders' Contractor's Direct Agreement]) or otherwise, then the Contractor undertakes to the Authority not to terminate the Construction Contract on account of an Event of Project Co Default (whether occurring before or after the Contractor's right to terminate the Construction Contract was free from the constraints of the Funders' Contractor Direct Agreement) without first giving the Authority not less than

[fifteen (15)] Business Days' prior notice specifying the grounds for that termination and noting that the Contractor's right of termination is not subject to the Funders' Contractor Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Construction Contract by Project Co or the Contractor, shall for the purposes of this Agreement also be a Termination Notice and the provisions of this Agreement shall apply accordingly.

- 2.3.3 Notwithstanding any provision of the Construction Contract to the contrary, on termination of the Design Build Finance and Maintain Agreement by the Authority, the Parties agree that the Construction Contract shall not come to an end except in accordance with the terms of this Agreement.
- 2.3.4 The Authority acknowledges that it shall not be entitled to exercise its rights under Clauses 3 (*Step-in and Step-out*) and 4 (*Novation*):
- (a) where the event giving rise to termination of the Design Build Finance and Maintain Agreement is a Contractor Event of Default (as that term is defined in the [Construction Contract]) whether or not at the relevant time there has been notice to terminate the Construction Contract for such Contractor Event of Default;
 - (b) until the Security Trustee has released its security over the Construction Contract; or
 - (c) until the Security Trustee has confirmed to the Authority in writing that it has no further claims or interest in the claims of Project Co or any Suitable Substitute Contractor (as such term is defined in the [Funders' Contractor Direct Agreement]) against the Contractor whether pursuant to the Security Documents, the Construction Contract or the enforcement of any rights under the Security Documents or the Funders' Contractor Direct Agreement.

3 STEP-IN AND STEP-OUT

3.1 Step-in Notice

- 3.1.1 If the Authority has terminated the Design Build Finance and Maintain Agreement in accordance with the terms of the Design Build Finance and Maintain Agreement or if the Authority has received a Termination Notice, then subject to the provisions of this Agreement, the Authority may give written notice to the Contractor (copied to the Security Trustee) (a "**Step-in Notice**") of the intention of the Authority to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date shall be:
- (a) no later than [five (5)] Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority; and
 - (b) no earlier than the date falling five (5) Business Days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Contractor.
- 3.1.2 Unless the Contractor otherwise consents, only one (1) Step-in Notice may be given during the period of this Agreement. Subject to Clause 5.1 (*Rights of Termination*) below, the Contractor shall not be entitled to terminate the Construction Contract until after the Proposed Step-in Date.

3.2 Notice of Obligations and Step-in Undertaking

3.2.1 Within [three (3)] Business Days of receipt of any Step-in Notice, the Contractor shall give written notice to the Authority of any sums of which the Contractor has actual knowledge which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, of which the Contractor has actual knowledge, which should have been performed or discharged by Project Co under the Construction Contract, in each case, as at the date of the Step-in Notice.

3.2.2 The Contractor shall inform the Authority in writing as soon as reasonably practicable of:

- (a) any change in such sums, obligations or liabilities referred to in Clause 3.2.1; and
- (b) any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be);

in each case of which the Contractor has actual knowledge, before the Step-in Date.

3.2.3 The Contractor shall give the Authority the information referred to in Clauses 3.2.1 and 3.2.2 in good faith and may not give any further notifications pursuant to Clause 3.2.2 less than [two (2)] Business Days prior to the Proposed Step-in Date. The Authority shall not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Project Co to the Contractor which are not notified to the Authority pursuant to Clauses 3.2.1 or 3.2.2.

3.2.4 Not later than the Proposed Step-in Date the Authority shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Authority shall promptly give the Contractor written notification of such decision and, at the same time, provide a copy of such notification to the Senior Funder. The Authority shall deliver to the Contractor on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Contractor (both the Authority and the Contractor acting reasonably) (the "**Step-in Undertaking**"), incorporating a clause in terms similar to Clause 11 (*Default Interest*) (but only to the extent that there will not be double counting of default interest accruing under the Construction Contract and this Agreement), and undertaking to the Contractor:

- (a) to pay or procure the payment to the Contractor, within [fifteen (15)] Business Days of demand by the Contractor, of any sum due and payable but unpaid by Project Co to the Contractor under the Construction Contract before the Step-in Date and which has been notified by the Contractor to the Authority in accordance with Clause 3.2.1 or 3.2.2;
- (b) to perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Project Co under the Construction Contract which shall have fallen due for performance or discharge before the Step-in Date and which have been notified by the Contractor to the Authority in accordance with Clause 3.2.1 or 3.2.2 within such period as the Contractor may reasonably require;

- (c) to pay or procure the payment of any sum due and payable by Project Co under the Construction Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, any sum due in respect of any Works carried out before the Step-in Date; and
 - (d) to perform or discharge or procure the performance or discharge of any obligations of Project Co under the Construction Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, to perform or discharge or to procure the performance or discharge of any obligations in respect of any Works carried out before the Step-in Date.
- 3.2.5 Following notification of the Authority's decision pursuant to Clause 3.2.4, the Security Trustee shall, on or before the Proposed Step-in Date, take any action which is necessary unconditionally and irrevocably to release the Construction Contract and the Parent Company Guarantee from the security constituted by the Security Documents.
- 3.2.6 Upon release by the Security Trustee of its security over the Parent Company Guarantee in accordance with Clause 3.2.5, Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Authority in accordance with Clause [*insert reference*] of the same.
- 3.2.7 If the Authority shall not have issued the Step-in Undertaking on or before the Proposed Step-in Date the Step-in Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Step-in Notice had not been given.

3.3 Restriction of Right of Termination

During or in respect of the Step-in Period, the Contractor confirms to the Authority that it shall continue to observe and perform its duties and obligations under the Construction Contract and shall, without prejudice to Clause 5.1 (*Rights of Termination*), only be entitled to exercise its rights of termination under the Construction Contract:

- 3.3.1 by reference to an Event of Project Co Default arising during the Step-in Period provided that no event of default by Project Co under the Design Build Finance and Maintain Agreement (whether resulting in termination of the Design Build Finance and Maintain Agreement or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Contractor to exercise such rights of termination during the Step-in Period; or
- 3.3.2 if the Authority, in breach of the terms of the Construction Contract, fails to pay when due any amount owed to the Contractor or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or
- 3.3.3 if such rights of termination arise in circumstances where there is no default under the Construction Contract by the Authority or the Contractor.

3.4 Step-Out

- 3.4.1 the Authority may, at any time, give the Contractor at least [thirty (30)] days' prior written notice to terminate the Step-in Period on a date specified in the notice (the "**Step-out Date**");
- 3.4.2 the Authority shall give the Contractor at least [thirty (30)] days' prior written notice that (subject to Clause 4.4.2) the Step-in Period will end due to the occurrence (subject to Clause 4.7 (*Extension of Step-in Period*)) of the first anniversary of the Step-in Date;

provided that:

- (a) the Authority has performed and discharged in full or procured the performance and discharge in full of any obligations of Project Co under the Construction Contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Contractor to monitor the performance of Project Co's other obligations under the Construction Contract; and
- (b) all liability under the Step-in Undertaking pursuant to any claims made up to the date specified in either Clause 3.4.1 or Clause 3.4.2 (as the case may be) shall have been fully and unconditionally discharged,

the Authority shall be released from the Step-in Undertaking on the expiry of the Step-in Period in accordance with Clauses 3.4.1 and 3.4.2. Such release shall not affect the continuation of Project Co's obligations towards the Contractor under the Construction Contract.

- 3.4.3 on expiry or termination of the Step-in Period pursuant to Clauses 3.4.1 and/or 3.4.2 any rights and powers under the Parent Company Guarantee which have been assigned to the Authority pursuant to Clause 3.2.6 shall be re-assigned to Project Co.

4 NOVATION

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*) or at any time during the Step-in Period the Authority may give notice (copied to the Security Trustee) (a "**Proposed Novation Notice**") to the Contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, transfer or other disposal, the rights and obligations of Project Co under the Construction Contract and specifying a date (the "**Proposed Novation Date**");

- 4.1.1 falling not later than [fifteen (15)] Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority;
- 4.1.2 falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Authority at a time when it is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*); and
- 4.1.3 falling not later than [twenty-eight (28)] Business Days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during a Step-in Period.

Save as provided in Clause 4.4 (*Consent Withheld*), only one (1) Proposed Novation Notice may be given during the period of this Agreement. Without

prejudice to Clauses 3.3 (*Restriction of Right of Termination*) and 5.1 (*Rights of Termination*), the Contractor shall not be entitled to terminate the Construction Contract during the notice period specified in a Proposed Novation Notice.

4.2 Information for Consent to Novation

If the Proposed Novation Notice specifies the Authority as the Proposed Substitute, the Contractor's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Authority, a novation in accordance with a Proposed Novation Notice shall only be effective if the Contractor consents to that novation in writing in accordance with Clause 4.3 (*Grant of Consent*) and the Authority shall (as soon as practicable) supply the Contractor with the following information (copied to the Security Trustee):

- 4.2.1 the name and registered address of the Proposed Substitute;
- 4.2.2 the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- 4.2.3 the names of the directors and the secretary of the Proposed Substitute;
- 4.2.4 details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- 4.2.5 the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Construction Contract.

4.3 Grant of Consent

The Contractor may withhold or delay consent to a novation only where the Proposed Substitute is not the Authority and the Authority has failed to show to the Contractor's satisfaction (acting reasonably) that:

- 4.3.1 the Proposed Substitute has the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co under the Construction Contract; and
- 4.3.2 the technical competence and financial standing of and the technical and financial resources available to the Proposed Substitute are sufficient to perform the obligations of Project Co under the Construction Contract.

The Contractor shall notify the Authority in writing, within [five (5)] Business Days of the later of receipt of a Proposed Novation Notice and all information required under Clause 4.2 (*Information for Consent to Novation*), as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent).

4.4 Consent withheld

If, in accordance with Clause 4.3 (*Grant of Consent*), the Contractor withholds its consent to a Proposed Novation Notice, the Authority shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of Clause 4.1 (*Proposed Substitute*), containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Authority) the Authority has good cause to believe would fulfil the requirements of Clauses 4.3.1

and 4.3.2, provided that only one Proposed Novation Notice may be outstanding at any one time, and provided further that:

- 4.4.1 where a Step-in-Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date specified in Clause 4.1.1 or 4.1.2 as appropriate; and
- 4.4.2 if the Proposed Novation Notice was served during the Step-in Period, any revised Proposed Novation Date shall be a date falling not later than [twenty-eight (28)] Business Days after the date of the revised Proposed Novation Notice.

4.5 Implementation of Novation

- 4.5.1 If the Contractor consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise), then on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*):
 - (a) following notification pursuant to Clause 4.1 (*Proposed Substitute*) and in the absence of any prior release in accordance with Clause 3.2.5, the Security Trustee shall, on or before the Proposed Novation Date, take any action which is necessary unconditionally and irrevocably to release the Construction Contract and the Parent Company Guarantee from the security constituted by the Security Documents; and
 - (b) Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Authority or other Proposed Substitute in accordance with clause [insert reference] of the same and on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*).
- 4.5.2 Subject to the prior performance by the Security Trustee and Project Co of their respective obligations under Clause 4.5.1(a) and Clause 4.5.1(b) the Proposed Substitute shall become a party to the Construction Contract in place of Project Co and, thereafter, shall be treated as if it was and had always been named as a party to the Construction Contract in place of Project Co; and
 - (a) the Contractor, Project Co and the Proposed Substitute shall enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Contractor (acting reasonably), pursuant to which:
 - (i) the Proposed Substitute shall be granted all of the rights of Project Co under the Construction Contract (including those arising prior to the end of the Step-in Period);
 - (ii) subject to the Contractor giving to the Proposed Substitute within [three (3)] Business Days of receipt of the Proposed Novation Notice such notice as is referred to in Clause 3.2.1 and to the provisions of Clauses 3.2.2 and 3.2.3, mutatis mutandis, the Proposed Substitute shall assume all of the obligations and liabilities of Project Co under the Construction Contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

provided that the Contractor will not be in breach of any of its obligations under this Agreement if the Proposed Substitute does not enter into one or other of such agreements.

4.5.3 On and after the Novation Effective Date:

- (a) the Contractor shall owe its obligations under the Construction Contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt, acknowledgement or acquiescence of the Proposed Substitute shall be a good discharge; and
- (b) if the Authority shall have entered into a Step-in Undertaking, the Authority will be released from the Step-in Undertaking, provided that:
 - (i) all obligations of the Authority under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged; and
 - (ii) the Authority has performed and discharged in full or procured the performance and discharge in full of the obligations of Project Co under the Construction Contract in relation to the maintenance of records and the provision of reports during the Step-in Period up to the Novation Effective Date so as to permit the Contractor to monitor the performance of Project Co's other obligations under the Construction Contract.

4.5.4 the Authority and the Contractor shall use all reasonable endeavours to agree and the Authority shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Construction Contract necessary to reflect Clause 3.2.2 and the fact that the Design Build Finance and Maintain Agreement may have terminated at the time of the Novation Effective Date.

4.6 Termination After Novation

After the Novation Effective Date the Contractor shall only be entitled to exercise its rights of termination under the Construction Contract:

- 4.6.1 in respect of any Event of Project Co Default arising after that date in accordance with the Construction Contract; or
- 4.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 4.5.2(a) which relate to matters arising prior to the end of the Step-in Period within [fifteen (15)] Business Days following the Novation Effective Date.

4.7 Extension of Step-In Period

As at the date of the first anniversary of the Step-in Date, if the Step-in Period has not previously ended, and:

- 4.7.1 the Authority is in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Contractor whether automatically or otherwise in accordance with Clause 4.3 (*Grant of Consent*)), the Step-in Period shall be extended and shall continue

until such date as is proposed by the Authority and agreed by the Contractor;
or

- 4.7.2 a contract has been entered into between the Authority and a Proposed Substitute (which has been approved by the Contractor in accordance with Clause 4.3 (*Grant of Consent*)) as at such date, the Step-in Period shall be extended and shall continue until the date such contract comes into force, provided that such date shall not be later than [thirty (30)] Business Days after the last date of execution of such contract.

5 RIGHTS AND OBLIGATIONS UNDER THE CONSTRUCTION CONTRACT

5.1 Rights of Termination

If:

- 5.1.1 no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires or within [♦] Business Days after termination of the Design Build Finance and Maintain Agreement by the Authority; or
- 5.1.2 a Step-in Undertaking is not issued on the Proposed Step-in Date; or
- 5.1.3 the Step-in Notice is withdrawn or, pursuant to Clause 3.2.7, deemed to have been withdrawn; or
- 5.1.4 the Step-in Period ends before the occurrence of the Novation Effective Date; or
- 5.1.5 in the absence of a Step-in Undertaking, the Contractor withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Clause 4.3 (*Grant of Consent*), and does not subsequently grant consent to a novation in accordance with Clause 4.4 (*Consent Withheld*) on or before the Proposed Novation Date; or
- 5.1.6 in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Clause 4.5 (*Implementation of Novation*) are not performed on the Proposed Novation Date; or
- 5.1.7 the Contractor is entitled to terminate the Construction Contract under Clause 3.3 (*Restriction of Right of Termination*) or 4.6 (*Termination after Novation*); or
- 5.1.8 the Authority exercises its right to Step-out under Clause 3.4.1,
- the Contractor shall, on and from the Step-out Date, be entitled to:
- 5.1.9 exercise all of its rights under the Construction Contract and act upon any and all grounds for termination available to it in relation to the Construction Contract whenever occurring; and/or
- 5.1.10 pursue any and all claims and exercise any and all rights and remedies against Project Co.

5.2 Project Co's Obligations to Continue

Until completion of a novation pursuant to Clause 4.5 (*Implementation of Novation*) (unless the terms of such novation expressly preserve an obligation or liability of Project Co), Project Co shall continue to be liable for all its obligations

and liabilities, whenever occurring, under or arising from the Construction Contract notwithstanding:

- 5.2.1 the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or
- 5.2.2 the service of a Proposed Novation Notice; or
- 5.2.3 any other provision of this Agreement.

6 REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

7 ASSIGNMENT

7.1 Binding on Successors and Assignees

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assignees. In the case of the Authority, its successors shall include any person to which the Welsh Ministers, in exercising their statutory powers to transfer property, rights and liabilities of the Authority upon the Authority ceasing to exist, transfers the rights and obligations of the Authority under this Agreement.

7.2 Restriction on Assignment

No Party shall assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- 7.2.1 Project Co shall not assign this Agreement to any party other than a party to whom Project Co's interests in the Design Build Finance and Maintain Agreement and Construction Contract are assigned in accordance with the terms of the Design Build Finance and Maintain Agreement and Construction Contract respectively;
- 7.2.2 the Authority shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Design Build Finance and Maintain Agreement in accordance with Clause 61 (*Sub-Contracting and Assignment*) of the Design Build Finance and Maintain Agreement and, otherwise, with Project Co's and the Contractor's consent (not to be unreasonably withheld or delayed);
- 7.2.3 nothing in this sub-clause shall restrict the rights of the Welsh Ministers to effect a statutory transfer;
- 7.2.4 the Contractor shall assign this Agreement to any party to whom it assigns the Construction Contract (in accordance with the terms of that agreement); and
- 7.2.5 the Security Trustee may assign or transfer its rights and obligations to a successor trustee of the Funders under the Funding Agreements without the consent of any other Party and this Clause 7.2 (*Restriction on Assignment*) shall not prevent any Funder assigning or transferring its rights under the

Funding Agreements and the Security Documents in accordance with the terms of the Funding Agreements.

7.3 No Loss

The Contractor agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no loss or a different loss has been suffered by such assignee.

8 CONFIDENTIALITY

8.1 The Parties shall be bound to observe, mutatis mutandis, the terms of Clause [♦] of the Construction Contract with respect to any information or document referred to in Clause [♦] of the Construction Contract which shall come into its possession pursuant to this Agreement.]

8.2 The Contractor agrees that the Authority shall be entitled to disclose the terms of this Agreement in accordance with Clause 65 (*Confidentiality*) of the Design Build Finance and Maintain Agreement.

9 NOTICES

9.1 Any notice or other communication given under this Agreement shall be deemed to be duly given if it is delivered by hand or sent by first class recorded post or emailed to the party named therein at the address or email address of such party shown in this Agreement or such other address or email address as such party may by notice or other communication in writing nominate for the purpose of service.

9.2 Any notice served under or in connection with this Agreement is to be in writing and shall be deemed to have been served:-

9.2.1 if delivered by hand at the time of delivery; or

9.2.2 if posted upon the earlier of (i) actual receipt, and (ii) [three (3)] Business Days after posting

provided that, in either case, a notice or other communication received on a non-Business Day or after 5pm in the place of receipt shall be deemed to be received at 9am on the next following Business Day in such place; or

9.3 Notices given by email shall be deemed to have been received:

9.3.1 at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the relevant email address specified in Clauses [9.4 to 9.7] (*Notices*)), if sent on a Business Day between the hours of 9am and 4pm; or

9.3.2 by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and provided that within twenty-four (24) hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient in accordance with the provisions of

this Clause 9 (*Notices*) and where such notice is addressed to the Authority, copied to [♦].¹¹

9.4 Any notice to be given to the [Authority] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing to the relevant party by the [Authority].

9.5 Any notice to be given to the [Security Trustee] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Security Trustee].

9.6 Any notice to be given to [Project Co] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Project Co].

9.7 Any notice to be given to the [Contractor] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Contractor].

9.8 Any consent or approval under this Agreement is required to be obtained before the act or event to which it applies is carried out or done and is to be treated as effective only if the consent or approval is given in writing.

10 PAYMENTS AND TAXES

10.1 Payments

All payments under this Agreement to any Party shall be made in Pounds Sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified to the other Parties from time to time.

10.2 VAT

10.2.1 All amounts stated to be payable by any Party under this Agreement shall be exclusive of any VAT properly payable in respect of the supplies to which they relate.

10.2.2 Each Party shall pay any VAT properly payable hereunder in respect of any supply made to it under this Agreement, provided that it shall first have received a valid tax invoice in respect of that supply which complies with the requirements of Part III Value Added Tax Regulations 1995.

10.3 Deductions from payments

All sums payable by a Party to any other Party under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation, save as may be required by Law.

11 DEFAULT INTEREST

Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

¹¹ Insert Welsh Ministers details.

12 AGGREGATE LIABILITY

Notwithstanding any other provision of this Agreement, the Contractor's aggregate liability from time to time under this Agreement and the Construction Contract shall not at any time exceed its maximum liability as stated in the Construction Contract.

13 PROFESSIONAL INDEMNITY INSURANCE

13.1 The Contractor by this Agreement covenants with the Authority that it has at its own cost taken out, or procured the taking out of, professional indemnity insurance with insurers of good repute and appropriately regulated with a limit of indemnity of not less than £[REDACTED] in the annual aggregate with at least one (1) annual reinstatement, in relation to the Works, provided always that:

13.1.1 such insurance shall be in place from the commencement of the Works until no less than twelve (12) years after the Actual Completion Date or, if earlier, after the date of termination of the Construction Contract;

13.1.2 the insurance premiums in respect of the insurance shall at all times be the responsibility of the Contractor;

13.1.3 if such insurance is not available to the Contractor (and/or design and build contractors engaged in projects of a similar scope, size, nature and complexity as the Contractor) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Authority will meet and the Contractor will outline the steps it intends to take to manage such risks. If the steps proposed by the Contractor are not acceptable to the Authority (acting reasonably), the Contractor and the Authority shall agree an alternative method of managing such risk.

13.1.4 The Contractor will, upon request, provide the Authority with reasonable evidence that the policy referred to in this Clause 13 (*Professional Indemnity Insurance*) is in full force and effect in accordance with the requirements of this Clause 13 (*Professional Indemnity Insurance*).

14 THIRD PARTY RIGHTS

For the purposes of the Contracts (Rights of Third Parties) Act 1999, it is agreed that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained herein except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with Clause 7 (*Assignment*).

15 AGENCY

15.1 No Delegation

No provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to any other Party.

15.2 No Agency

Save as otherwise provided in this Agreement, no other Party shall be or be deemed to be an agent of the other Parties nor shall any party hold itself out as having authority or power to bind the other Parties in any way.

15.3 Independent Contractor

The Parties shall, at all times, be independent contractors and nothing in this Agreement shall be construed as creating any partnership between the Parties or any relationship of employer and employee between the Parties.

16 WHOLE AGREEMENT

16.1 This Agreement (when read together with the Design Build Finance and Maintain Agreement, the Construction Contract and the Parent Company Guarantee) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter of this Agreement and expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement.

16.2 Nothing in this Agreement is intended to or shall operate so as to exclude or limit any liability for fraud or fraudulent misrepresentation.

17 WAIVER

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

18 SEVERABILITY

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

19 COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

20 AMENDMENTS

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

21 COUNTERPARTS

21.1 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full original of this Agreement for all purposes.

22 GOVERNING LAW AND JURISDICTION

22.1 Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

22.2 Jurisdiction

The Parties each submit to the jurisdiction of the Courts of England and Wales as regards any claim or matter arising in relation to this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as a Deed the day and year first above written

SECTION 2

SERVICE PROVIDER'S COLLATERAL AGREEMENT

COLLATERAL WARRANTY

AMONG:

- (1) The Welsh Ministers of Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the "**Authority**");
- (2) [SERVICE PROVIDER] (the "**Service Provider**");
- (3) [PROJECT CO] ("**Project Co**"); and
- (4) [SECURITY TRUSTEE] ("**Security Trustee**").

WHEREAS:

- (A) The Authority and Project Co have agreed the terms on which Project Co will design, develop and construct and provide certain services in connection with the redevelopment of the sections 5 (Dowlais to A470) and 6 (A470 to Hirwaun) of the A465 (the "**Development**") at the Site (as that expression is defined in the Design Build Finance and Maintain Agreement) and, accordingly, have entered into the Design Build Finance and Maintain Agreement and the Project Documents.
- (B) [Description of financing arrangements].
- (C) [Description of documents entered into by Project Co as security for its obligations.]
- (D) The Service Provider and Project Co have entered into an agreement of even date herewith relating to the provision of certain of the Services (as defined in the Design Build Finance and Maintain Agreement) by the Service Provider to enable Project Co to discharge its obligations to the Authority regarding such Services under the Design Build Finance and Maintain Agreement and the Project Documents (the "**Service Contract**").
- (E) This Service Provider's Collateral Agreement (the "**Agreement**") is one of the Service Providers' Collateral Agreements contemplated by the Design Build Finance and Maintain Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:

"Ancillary Documents"	has the meaning given in the Design Build Finance and Maintain Agreement;
"Business Day"	means a day other than a Saturday, Sunday or a bank holiday in England and Wales;
"Design Build Finance and Maintain Agreement"	means the Design Build Finance and Maintain Agreement of even date herewith between (1) the Authority and (2) Project Co;

"Event of Project Co Default"	[has the meaning given in the Service Contract];
"Funders"	means [♦];
"Funders' Service Provider Direct Agreement"	is the agreement of even date herewith between, amongst others, Project Co, the Service Provider and the Senior Funder;
"Funders' Direct Agreement"	means an agreement dated [on or about the date hereof] and made between (1) the Authority; (2) Project Co; and (3) [♦];
"Funding Agreements"	means [♦];
"Novation Agreement"	has the meaning given in Clause 4.5.2(a)
"Novation Effective Date"	means the date of performance of the obligations set out in Clause 4 (<i>Novation</i>);
"Parent Company Guarantee"	[has the meaning given in the Service Contract];
"Proposed Novation Date"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Proposed Novation Notice"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Proposed Step-in Date"	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
"Proposed Substitute"	has the meaning given in Clause 4.1 (<i>Proposed Substitute</i>);
"Security Documents"	has the meaning given in the Funders' Direct Agreement;
"Senior Funder"	means [insert details];
"Service Contract"	has the meaning given in the Design Build Finance and Maintain Agreement;
"Step-in Date"	means the date of issue of the Step-in Undertaking;
"Step-in Notice"	has the meaning given in Clause 3.1 (<i>Step-in Notice</i>);
"Step-in Period"	means the period commencing on the Step-in Date and ending on the earliest of: (a) the date of the first anniversary of the Step-in Date (but subject always to Clause 4.7 (<i>Extension of Step-in Period</i>)); (b) the Step-out Date; (c) the Novation Effective Date; and (d) termination of the Service Contract under Clause 3.3 (<i>Restriction of Right of Termination</i>);

"Step-in Undertaking"	has the meaning given in Clause 3.2.4;
"Step-out Date"	has the meaning given in Clause 3.4.1;
"Termination Notice"	has the meaning given in Clause 2.4 (<i>Termination Notice</i>).

1.2 Interpretation

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses are references to Clauses of this Agreement;
- 1.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.5 any reference to time of day shall be a reference to Cardiff time;
- 1.2.6 the words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- 1.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.11 references to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly;
- 1.2.12 all monetary amounts are expressed in Pounds Sterling;
- 1.2.13 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.14 the obligations of any Party under this Agreement are to be performed at that Party's own cost and expense;

- 1.2.15 terms used in this Agreement that are defined in the Design Build Finance and Maintain Agreement or the Ancillary Documents shall have the meanings given to them in the Design Build Finance and Maintain Agreement or the Ancillary Documents, as appropriate.

2 TERMINATION NOTICE AND AUTHORITY TERMINATION

2.1 Service Provider's Warranties and Undertakings

The Service Provider warrants and undertakes to the Authority that it has complied with and fulfilled and shall continue to comply with and fulfil its duties and obligations arising under or by virtue of the Service Contract, provided that the Authority shall only be entitled to make a claim against the Service Provider under this Clause 2.1 (*Service Provider's Warranties and Undertakings*) if the Design Build Finance and Maintain Agreement has terminated and shall not be entitled to do so during the Step-in Period or after the Service Contract has been novated under Clause 4 (*Novation*).

2.2 Liability of Service Provider

Any liability arising from any claim for breach of the warranty under or pursuant to Clause 2.1 (*Service Provider's warranties and Undertakings*) shall be in addition to and without prejudice to any other present or future liability of the Service Provider to the Authority (including, without prejudice to the generality of the foregoing, any liability in negligence) and shall not be released, diminished or in any other way be affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Authority by any person nor by any action or omission of any person whether or not such action or omission might give rise to an independent liability of such person to the Authority provided always that the Service Provider shall owe no greater duties or obligations to the Authority under this Agreement than it owes or would have owed to Project Co under the Service Contract. Without prejudice to Clause 12 (*Aggregate Liability*), the Service Provider shall be entitled in any action or proceedings brought by the Authority under this Agreement to rely on any limitation or exclusion of liability in the Service Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against Project Co under the Service Contract.

2.3 [Not used]

2.4 Termination Notice

- 2.4.1 The Service Provider undertakes not to terminate the Service Contract on account of an Event of Project Co Default without first giving the Authority not less than [fifteen (15)] Business Days' prior written notice specifying the grounds for that termination. Subject to Clause 2.4.2 below any such notice shall be a "**Termination Notice**".
- 2.4.2 Where the Service Provider's right to terminate is subject to the terms of the Funders' Service Provider Direct Agreement then the Service Provider shall notify the Authority of the same as soon as reasonably practicable upon becoming aware of the provisions of the Funders' Service Provider Direct Agreement applying. Thereafter as soon as the Service Provider becomes entitled to terminate the Service Contract free from the constraints contained in the Funders' Service Provider Direct Agreement, whether upon the expiry of the Step-in Period ([as such term is defined in the Funders' Service Provider Direct Agreement]) or otherwise, then the Service Provider undertakes to the Authority not to terminate the Service Contract on account of an Event of Project Co Default (whether occurring before or after the

Service Provider's right to terminate the Service Contract was free from the constraints of the Funders' Service Provider Direct Agreement) without first giving the Authority not less than [fifteen (15)] Business Days' prior notice specifying the grounds for that termination and noting that the Service Provider's right of termination is not subject to the Funders' Service Provider Direct Agreement. Any such notice, other than one given in circumstances where there is no default under the Service Contract by Project Co or the Service Provider, shall for the purposes of this Agreement also be a Termination Notice and the provisions of this Agreement shall apply accordingly.

2.4.3 Notwithstanding any provision of the Service Contract to the contrary, on termination of the Design Build Finance and Maintain Agreement by the Authority, the Parties agree that the Service Contract shall not come to an end except in accordance with the terms of this Agreement.

2.4.4 The Authority acknowledges that it shall not be entitled to exercise its rights under Clauses 3 (*Step-in and Step-out*) and 4 (*Novation*):

where the event giving rise to termination of the Design Build Finance and Maintain Agreement is a Service Provider Event of Default (as that term is defined in the [Service Contract]) whether or not at the relevant time there has been notice to terminate the Service Contract for such Service Provider Event of Default;

- (a) until the Security Trustee has released its security over the Service Contract; or
- (b) until the Security Trustee has confirmed to the Authority in writing that it has no further claims or interest in the claims of Project Co or any Suitable Substitute Contractor (as such term is defined in the [Funders' Service Provider Direct Agreement]) against the Service Provider whether pursuant to the Security Documents, the Service Contract or the enforcement of any rights under the Security Documents or the Funders' Service Provider Direct Agreement.

3 STEP-IN AND STEP-OUT

3.1 Step-in Notice

3.1.1 If the Authority has terminated the Design Build Finance and Maintain Agreement in accordance with the terms of the Design Build Finance and Maintain Agreement or if the Authority has received a Termination Notice, then subject to the provisions of this Agreement, the Authority may give written notice to the Service Provider (copied to the Security Trustee) (a "**Step-in Notice**") of the intention of the Authority to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date shall be:

- (a) no later than [five (5)] Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority; and
- (b) no earlier than the date falling five (5) Business Days prior to the date of expiry of the Termination Notice and no later than the date of expiry of the Termination Notice where a Termination Notice has been given by the Service Provider.

- 3.1.2 Unless the Service Provider otherwise consents, only one (1) Step-in Notice may be given during the period of this Agreement. Subject to Clause 5.1 (*Rights of Termination*) below, the Service Provider shall not be entitled to terminate the Service Contract until after the Proposed Step-in Date.

3.2 Notice of Obligations and Step-in Undertaking

- 3.2.1 Within [three (3)] Business Days of receipt of any Step-in Notice, the Service Provider shall give written notice to the Authority of any sums of which the Service Provider has actual knowledge which are due and payable but unpaid by Project Co and of any other material obligations or liabilities, of which the Service Provider has actual knowledge, which should have been performed or discharged by Project Co under the Service Contract, in each case, as at the date of the Step-in Notice.

- 3.2.2 The Service Provider shall inform the Authority in writing as soon as reasonably practicable of:

- (a) any change in such sums, obligations or liabilities referred to in Clause 3.2.1; and
- (b) any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be);

in each case of which the Service Provider has actual knowledge, before the Step-in Date.

- 3.2.3 The Service Provider shall give the Authority the information referred to in Clauses 3.2.1 and 3.2.2 in good faith and may not give any further notifications pursuant to Clause 3.2.2 less than [two (2)] Business Days prior to the Proposed Step-in Date. The Authority shall not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Project Co to the Service Provider which are not notified to the Authority pursuant to Clauses 3.2.1 or 3.2.2.

- 3.2.4 Not later than the Proposed Step-in Date the Authority shall decide if it is prepared to issue a Step-in Undertaking. If it does so decide, the Authority shall promptly give the Service Provider written notification of such decision and, at the same time, provide a copy of such notification to the Senior Funder. The Authority shall deliver to the Service Provider on the Proposed Step-in Date, a written undertaking in form and substance agreed with the Service Provider (both the Authority and the Service Provider acting reasonably) (the "**Step-in Undertaking**"), incorporating a clause in terms similar to Clause 11 (*Default Interest*) (but only to the extent that there will not be double counting of default interest accruing under the Service Contract and this Agreement), and undertaking to the Service Provider:

- (a) to pay or procure the payment to the Service Provider, within [fifteen (15)] Business Days of demand by the Service Provider, of any sum due and payable but unpaid by Project Co to the Service Provider under the Service Contract before the Step-in Date and which has been notified by the Service Provider to the Authority in accordance with Clause 3.2.1 or 3.2.2;
- (b) to perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Project Co under the Service Contract which shall have fallen due for performance or discharge before the Step-in Date and which have

been notified by the Service Provider to the Authority in accordance with Clause 3.2.1 or 3.2.2 within such period as the Service Provider may reasonably require;

- (c) to pay or procure the payment of any sum due and payable by Project Co under the Service Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, any sum due in respect of any Services provided before the Step-in Date; and
- (d) to perform or discharge or procure the performance or discharge of any obligations of Project Co under the Service Contract as a result of any act or omission occurring during the Step-in Period which shall arise from any act or omission occurring after the Step-in Date (but subject to Clauses 3.4 (*Step-Out*) and 4.5.3(b)) but not, to avoid doubt, to perform or discharge or to procure the performance or discharge of any obligations in respect of any Services provided before the Step-in Date.

3.2.5 Following notification of the Authority's decision pursuant to Clause 3.2.4, the Security Trustee shall, on or before the Proposed Step-in Date, take any action which is necessary unconditionally and irrevocably to release the Service Contract and the Parent Company Guarantee from the security constituted by the Security Documents.

3.2.6 Upon release by the Security Trustee of its security over the Parent Company Guarantee in accordance with Clause 3.2.5 Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Authority in accordance with Clause [*insert reference*] of the same.

3.2.7 If the Authority shall not have issued the Step-in Undertaking on or before the Proposed Step-in Date the Step-in Notice shall be deemed to have been withdrawn and the rights and obligations of the Parties shall be construed as if the Step-in Notice had not been given.

3.3 Restriction of Right of Termination

During or in respect of the Step-in Period, the Service Provider confirms to the Authority that it shall continue to observe and perform its duties and obligations under the Service Contract and shall, without prejudice to Clause 5.1 (*Rights of Termination*), only be entitled to exercise its rights of termination under the Service Contract:

- 3.3.1 by reference to an Event of Project Co Default arising during the Step-in Period provided that no event of default by Project Co under the Design Build Finance and Maintain Agreement (whether resulting in termination of the Design Build Finance and Maintain Agreement or otherwise, and notwithstanding that it has occurred during the Step-in Period) shall entitle the Service Provider to exercise such rights of termination during the Step-in Period; or
- 3.3.2 if the Authority, in breach of the terms of the Service Contract, fails to pay when due any amount owed to the Service Provider or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking or fails to procure such payment or performance or discharge; or

- 3.3.3 if such rights of termination arise in circumstances where there is no default under the Service Contract by the Authority or the Service Provider.

3.4 Step-Out

- 3.4.1 the Authority may, at any time, give the Service Provider at least [thirty (30)] days' prior written notice to terminate the Step-in Period on a date specified in the notice (the "**Step-out Date**");
- 3.4.2 the Authority shall give the Service Provider at least [thirty (30)] days' prior written notice that (subject to Clause 4.4.2) the Step-in Period will end due to the occurrence (subject to Clause 4.7 (*Extension of Step-In Period*)) of the first anniversary of the Step-in Date;

provided that:

- (a) the Authority has performed and discharged in full or procured the performance and discharge in full of any obligations of Project Co under the Service Contract in relation to the maintenance of records and the provision of reports during the Step-in Period so as to permit the Service Provider to monitor the performance of Project Co's other obligations under the Service Contract; and
- (b) all liability under the Step-in Undertaking pursuant to any claims made up to the date specified in either Clause 3.4.1 or Clause 3.4.2 (as the case may be) shall have been fully and unconditionally discharged,

the Authority shall be released from the Step-in Undertaking on the expiry of the Step-in Period in accordance with Clauses 3.4.1 and 3.4.2. Such release shall not affect the continuation of Project Co's obligations towards the Service Provider under the Service Contract.

- 3.4.3 On expiry or termination of the Step-In Period pursuant to Clauses 3.4.1 and/or 3.4.2 any rights and powers under the Parent Company Guarantee which have been assigned to the Authority pursuant to Clause 3.2.6 shall be re-assigned to Project Co.

4 NOVATION

4.1 Proposed Substitute

At any time that the Authority is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*) or at any time during the Step-in Period the Authority may give notice (copied to the Security Trustee) (a "**Proposed Novation Notice**") to the Service Provider that it wishes itself or another person (a "**Proposed Substitute**") to assume, by way of sale, transfer or other disposal, the rights and obligations of Project Co under the Service Contract and specifying a date (the "**Proposed Novation Date**");

- 4.1.1 falling not later than [fifteen (15)] Business Days after termination of the Design Build Finance and Maintain Agreement where this has been terminated by the Authority;
- 4.1.2 falling not later than the expiry of the Termination Notice where a Proposed Novation Notice is given by the Authority at a time when it is entitled to give a Step-in Notice pursuant to Clause 3.1 (*Step-in Notice*); and

- 4.1.3 falling not later than [twenty-eight (28)] Business Days after the date of the Proposed Novation Notice, where a Proposed Novation Notice is given during a Step-in Period.

Save as provided in Clause 4.4 (*Consent withheld*), only one (1) Proposed Novation Notice may be given during the period of this Agreement. Without prejudice to Clauses 3.3 (*Restriction of Right of Termination*) and 5.1 (*Rights of Termination*), the Service Provider shall not be entitled to terminate the Service Contract during the notice period specified in a Proposed Novation Notice.

4.2 Information for Consent to Novation

If the Proposed Novation Notice specifies the Authority as the Proposed Substitute, the Service Provider's consent to the novation shall be deemed to have been given automatically. Where the Proposed Substitute is not the Authority, a novation in accordance with a Proposed Novation Notice shall only be effective if the Service Provider consents to that novation in writing in accordance with Clause 4.3 (*Grant of Consent*) and the Authority shall (as soon as practicable) supply the Service Provider with the following information (copied to the Security Trustee):

- 4.2.1 the name and registered address of the Proposed Substitute;
- 4.2.2 the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- 4.2.3 the names of the directors and the secretary of the Proposed Substitute;
- 4.2.4 details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- 4.2.5 the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Service Contract.

4.3 Grant of Consent

The Service Provider may withhold or delay consent to a novation only where the Proposed Substitute is not the Authority and the Authority has failed to show to the Service Provider's satisfaction (acting reasonably) that:

- 4.3.1 the Proposed Substitute has the legal capacity, power and authorisation to become a party to and perform the obligations of Project Co under the Service Contract; and
- 4.3.2 the technical competence and financial standing of and the technical and financial resources available to the Proposed Substitute are sufficient to perform the obligations of Project Co under the Service Contract.

The Service Provider shall notify the Authority in writing, within [five (5)] Business Days of the later of receipt of a Proposed Novation Notice and all information required under Clause 4.2 (*Information for Consent to Novation*), as to whether or not it has decided to grant such consent (together with an explanation of its reasons if it has decided to withhold its consent).

4.4 Consent withheld

If, in accordance with Clause 4.3 (*Grant of Consent*), the Service Provider withholds its consent to a Proposed Novation Notice, the Authority shall be entitled to give one or more subsequent Proposed Novation Notices, pursuant to the provisions of Clause 4.1 (*Proposed Substitute*), containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which (where the replacement Proposed Substitute is not the Authority) the Authority has good cause to believe would fulfil the requirements of Clauses 4.3.1 and 4.3.2, provided that only one (1) Proposed Novation Notice may be outstanding at any one time, and provided further that:

- 4.4.1 where a Step-in-Notice has not been issued, any revised Proposed Novation Date shall be a date falling no later than the date specified in Clause 4.1.1 or 4.1.2 as appropriate; and
- 4.4.2 if the Proposed Novation Notice was served during the Step-in Period, any revised Proposed Novation Date shall be a date falling not later than [twenty-eight (28)] Business Days after the date of the revised Proposed Novation Notice.

4.5 Implementation of Novation

- 4.5.1 If the Service Provider consents to a novation pursuant to a Proposed Novation Notice (whether automatically or otherwise), then on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*):
 - (a) following notification pursuant to Clause 4.1 (*Proposed Substitute*) and in the absence of any prior release in accordance with Clause 3.2.5, the Security Trustee shall, on or before the Proposed Novation Date, take any action which is necessary unconditionally and irrevocably to release the Service Contract and the Parent Company Guarantee from the security constituted by the Security Documents; and
 - (b) Project Co shall immediately assign all its rights and powers under the Parent Company Guarantee to the Authority or other Proposed Substitute in accordance with Clause [insert reference] of the same, and on the Proposed Novation Date and without prejudice to Clause 5.1 (*Rights of Termination*).
- 4.5.2 Subject to the prior performance by the Security Trustee and Project Co of their respective obligations under Clause 4.5.1(a) and Clause 4.5.1(b) the Proposed Substitute shall become a party to the Service Contract in place of Project Co and, thereafter, shall be treated as if it was and had always been named as a party to the Service Contract in place of Project Co; and
 - (a) the Service Provider, Project Co and the Proposed Substitute shall enter into a novation agreement (the "**Novation Agreement**") and any other requisite agreements, in form and substance satisfactory to the Service Provider (acting reasonably), pursuant to which:
 - (i) the Proposed Substitute shall be granted all of the rights of Project Co under the Service Contract (including those arising prior to the end of the Step-in Period);
 - (ii) subject to the Service Provider giving to the Proposed Substitute within [three (3)] Business Days of receipt of the Proposed Novation Notice such notice as is referred to in Clause 3.2.1 and to the

provisions of Clauses 3.2.2 and 3.2.3 mutatis mutandis, the Proposed Substitute shall assume all of the obligations and liabilities of Project Co under the Service Contract (including those arising prior to the end of any Step-in Period and those arising during the period of the Proposed Novation Notice);

provided that the Service Provider will not be in breach of any of its obligations under this Agreement if the Proposed Substitute does not enter into one or other of such agreements.

4.5.3 On and after the Novation Effective Date:

- (a) the Service Provider shall owe its obligations under the Service Contract (whether arising before, on or after such date) to the Proposed Substitute and the receipt, acknowledgement or acquiescence of the Proposed Substitute shall be a good discharge; and
- (b) if the Authority shall have entered into a Step-in Undertaking, the Authority will be released from the Step-in Undertaking, provided that:
 - (i) all obligations of the Authority under the Step-in Undertaking which have accrued up to the Novation Effective Date and are identifiable as at that date shall have been fully and unconditionally discharged; and
 - (ii) the Authority has performed and discharged in full or procured the performance and discharge in full of the obligations of Project Co under the Service Contract in relation to the maintenance of records and the provision of reports during the Step-in Period up to the Novation Effective Date so as to permit the Service Provider to monitor the performance of Project Co's other obligations under the Service Contract.

4.5.4 the Authority and the Service Provider shall use all reasonable endeavours to agree and the Authority shall use reasonable endeavours to procure that the Proposed Substitute agrees any amendments to the Service Contract necessary to reflect Clause 3.2.2 and the fact that the Design Build Finance and Maintain Agreement may have terminated at the time of the Novation Effective Date.

4.6 Termination After Novation

After the Novation Effective Date the Service Provider shall only be entitled to exercise its rights of termination under the Service Contract:

- 4.6.1 in respect of any Event of Project Co Default arising after that date in accordance with the Service Contract; or
- 4.6.2 if the Proposed Substitute does not discharge the obligations and liabilities assumed by it under Clause 4.5.2(a) which relate to matters arising prior to the end of the Step-in Period within [fifteen (15)] Business Days following the Novation Effective Date.

4.7 Extension of Step-In Period

As at the date of the first anniversary of the Step-in Date, if the Step-in Period has not previously ended, and:

- 4.7.1 the Authority is in the course of conducting discussions in good faith with a Proposed Substitute (the novation to whom has been approved by the Service Provider whether automatically or otherwise in accordance with Clause 4.3 (*Grant of Consent*)), the Step-in Period shall be extended and shall continue until such date as is proposed by the Authority and agreed by the Service Provider; or
- 4.7.2 a contract has been entered into between the Authority and a Proposed Substitute (which has been approved by the Service Provider in accordance with Clause 4.3 (*Grant of Consent*)) as at such date, the Step-in Period shall be extended and shall continue until the date such contract comes into force, provided that such date shall not be later than [thirty (30)] Business Days after the last date of execution of such contract.

5 RIGHTS AND OBLIGATIONS UNDER THE SERVICE CONTRACT

5.1 Rights of Termination

If:

- 5.1.1 no Step-in Notice or Proposed Novation Notice is given before a Termination Notice expires or within [fifteen (15)] Business Days after termination of the Design Build Finance and Maintain Agreement by the Authority; or
- 5.1.2 a Step-in Undertaking is not issued on the Proposed Step-in Date; or
- 5.1.3 the Step-in Notice is withdrawn or, pursuant to Clause 3.2.7, deemed to have been withdrawn; or
- 5.1.4 the Step-in Period ends before the occurrence of the Novation Effective Date; or
- 5.1.5 in the absence of a Step-in Undertaking, the Service Provider withholds its consent to a novation pursuant to a Proposed Novation Notice, in accordance with Clause 4.3 (*Grant of Consent*), and does not subsequently grant consent to a novation in accordance with Clause 4.4 (*Consent Withheld*) on or before the Proposed Novation Date; or
- 5.1.6 in the absence of a Step-in Undertaking, the obligations of the Proposed Substitute set out in Clause 4.5 (*Implementation of Novation*) are not performed on the Proposed Novation Date; or
- 5.1.7 the Service Provider is entitled to terminate the Service Contract under Clause 3.3 (*Restriction of Right of Termination*) or 4.6 (*Termination after Novation*); or
- 5.1.8 the Authority exercises its right to Step-out under Clause 3.4.1,

the Service Provider shall, on and from the Step-out Date, be entitled to:
 - 5.1.9 exercise all of its rights under the Service Contract and act upon any and all grounds for termination available to it in relation to the Service Contract whenever occurring; and/or

- 5.1.10 pursue any and all claims and exercise any and all rights and remedies against Project Co.

5.2 Project Co's Obligations to Continue

Until completion of a novation pursuant to Clause 4.5 (*Implementation of Novation*) (unless the terms of such novation expressly preserve an obligation or liability of Project Co), Project Co shall continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Service Contract notwithstanding:

- 5.2.1 the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking; or
- 5.2.2 the service of a Proposed Novation Notice; or
- 5.2.3 any other provision of this Agreement.

6 REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the Party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the Parties shall be construed as if the relevant notice had not been given.

7 ASSIGNMENT

7.1 Binding on Successors and Assignees

This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assignees. In the case of the Authority, its successors shall include any person to which the Welsh Ministers, in exercising their statutory powers to transfer property, rights and liabilities of the Authority upon the Authority ceasing to exist, transfers the rights and obligations of the Authority under this Agreement.

7.2 Restriction on Assignment

No Party shall assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- 7.2.1 Project Co shall not assign this Agreement to any party other than a party to whom Project Co's interests in the Design Build Finance and Maintain Agreement and Service Contract are assigned in accordance with the terms of the Design Build Finance and Maintain Agreement and Service Contract respectively;
- 7.2.2 the Authority shall be entitled, without the consent of any other Party, to transfer all its rights and obligations hereunder, to any person to whom it assigns or otherwise disposes of the benefit of the Design Build Finance and Maintain Agreement in accordance with Clause 61 (*Sub-Contracting and Assignment*) of the Design Build Finance and Maintain Agreement and, otherwise, with Project Co's and the Service Provider's consent (not to be unreasonably withheld or delayed);
- 7.2.3 nothing in this sub-clause shall restrict the rights of the Welsh Ministers to effect a statutory transfer;

7.2.4 the Service Provider shall assign this Agreement to any party to whom it assigns the Service Contract (in accordance with the terms of that agreement); and

7.2.5 the Security Trustee may assign or transfer its rights and obligations to a successor trustee of the Funders under the Funding Agreements without the consent of any other Party and this Clause 7.2 (*Restriction on Assignment*) shall not prevent any Funder assigning or transferring its rights under the Funding Agreements and the Security Documents in accordance with the terms of the Funding Agreements.

7.3 No Loss

The Service Provider agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no loss or a different loss has been suffered by such assignee.

8 CONFIDENTIALITY

8.1 The Parties shall be bound to observe, mutatis mutandis, the terms of Clause [♦] of the Service Contract with respect to any information or document referred to in Clause [♦] of the Service Contract which shall come into its possession pursuant to this Agreement.]

8.2 The Service Provider agrees that the Authority shall be entitled to disclose the terms of this Agreement in accordance with Clause 65 (*Confidentiality*) of the Design Build, Finance and Maintain Agreement.

9 NOTICES

9.1 Any notice or other communication given under this Agreement shall be deemed to be duly given if it is delivered by hand or sent by first class recorded post or emailed to the party named therein at the address or email address of such party shown in this Agreement or such other address or email address as such party may by notice or other communication in writing nominate for the purpose of service.

9.2 Any notice served under or in connection with this Agreement is to be in writing and shall be deemed to have been served:-

9.2.1 if delivered by hand at the time of delivery; or

9.2.2 if posted upon the earlier of (i) actual receipt, and (ii) [three (3)] Business Days after posting

provided that, in either case, a notice or other communication received on a non-Business Day or after 5pm in the place of receipt shall be deemed to be received at 9am on the next following Business Day in such place; or

9.3 Notices given by email shall be deemed to have been received:

9.3.1 at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the relevant email address specified in Clauses [9.4 to 9.7] (*Notices*)), if sent on a Business Day between the hours of 9am and 4pm; or

- 9.3.2 by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and provided that within twenty-four (24) hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient in accordance with the provisions of this Clause 9 (*Notices*) and where such notice is addressed to the Authority, copied to [♦].¹²

- 9.4 Any notice to be given to the [Authority] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing to the relevant party by the [Authority].
- 9.5 Any notice to be given to the [Security Trustee] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Security Trustee].
- 9.6 Any notice to be given to [Project Co] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Project Co].
- 9.7 Any notice to be given to the [Service Provider] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Service Provider].
- 9.8 Any consent or approval under this Agreement is required to be obtained before the act or event to which it applies is carried out or done and is to be treated as effective only if the consent or approval is given in writing.

10 PAYMENTS AND TAXES

10.1 Payments

All payments under this Agreement to any Party shall be made in Pounds Sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified to the other Parties from time to time.

10.2 VAT

- 10.2.1 All amounts stated to be payable by any Party under this Agreement shall be exclusive of any VAT properly payable in respect of the supplies to which they relate.
- 10.2.2 Each Party shall pay any VAT properly payable hereunder in respect of any supply made to it under this Agreement, provided that it shall first have received a valid tax invoice in respect of that supply which complies with the requirements of Part III Value Added Tax Regulations 1995.

10.3 Deductions from payments

¹² Insert Welsh Minister's details.

All sums payable by a Party to any other Party under this Agreement shall be paid free and clear of all deductions or withholdings whatsoever in respect of taxation, save as may be required by Law.

11 DEFAULT INTEREST

Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not made on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

12 AGGREGATE LIABILITY

Notwithstanding any other provision of this Agreement, the Service Provider's aggregate liability from time to time under this Agreement and the Service Contract shall not at any time exceed its maximum liability as stated in the Service Contract.

13 THIRD PARTY RIGHTS

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained herein except for any person to whom the benefit of this Agreement is assigned or transferred in accordance with Clause 7 (*Assignment*).

14 AGENCY

14.1 No Delegation

No provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to any other Party.

14.2 No Agency

Save as otherwise provided in this Agreement, no other Party shall be or be deemed to be an agent of the other Parties nor shall any party hold itself out as having authority or power to bind the other Parties in any way.

14.3 Independent Contractor

The Parties shall, at all times, be independent contractors and nothing in this Agreement shall be construed as creating any partnership between the Parties or any relationship of employer and employee between the Parties.

15 WHOLE AGREEMENT

15.1 This Agreement (when read together with the Design Build Finance and Maintain Agreement, the Service Contract and the Parent Company Guarantee) contains or expressly refers to the entire agreement between the Parties with respect to the specific subject matter of this Agreement and expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the Parties with respect thereto and each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement.

15.2 Nothing in this Agreement is intended to or shall operate so as to exclude or limit any liability for fraud or fraudulent misrepresentation.

16 **WAIVER**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

17 **SEVERABILITY**

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

18 **COSTS AND EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

19 **AMENDMENTS**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of the Parties.

20 **COUNTERPARTS**

20.1 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full original of this Agreement for all purposes.

21 **GOVERNING LAW AND JURISDICTION**

21.1 Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

21.2 Jurisdiction

The Parties each submit to the jurisdiction of the Courts of England and Wales as regards any claim or matter arising in relation to this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as a Deed the day and year first above written:

SECTION 3

KEY SUB-CONTRACTOR COLLATERAL AGREEMENT

COLLATERAL WARRANTY

AMONG:

The Welsh Ministers having its principal offices at Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (the "**Beneficiary**" which expression shall include its successors in title or permitted assignees under this Agreement and/or the Beneficiary's appointee);

and

[**Project Co**], a company incorporated in [Scotland/England and Wales/Northern Ireland] under the Companies Acts (Registered Number [♦]) and having its Registered Office at [♦] ("**Project Co**" which expression shall include its successors in title or permitted assignees under this Agreement);

and

[♦] **LIMITED**, a company incorporated in [Scotland/England and Wales/Northern Ireland] under the Companies Acts (Registered Number [♦]) and having its Registered Office at [♦] (the "**Contractor**" which expression shall include its successors in title or permitted assignees under this Agreement);

and

[♦] **LIMITED**, a company incorporated in [Scotland/England and Wales/Northern Ireland] under the Companies Acts (Registered Number [♦]) and having its Registered Office at [♦] (the "**Consultant**").

WHEREAS:

- (A) The Beneficiary and Project Co have entered into an agreement for the design, build, finance and maintenance of sections 5 (Dowlais to A470) and 6 (A470 to Hirwaun) of the A465 (the "**Project**") on or about the date hereof (the "**DBFM Agreement**").
- (B) Project Co and the Contractor have entered into a contract (the "**Construction Contract**") on or about the date hereof for the design and construction of the Project (the "**Contract Works**").
- (C) The Contractor has entered or intends to enter into an agreement with the Consultant whereby the Consultant will provide certain [design] services (the "**Services**") in connection with the Project ("**the Appointment**") as more particularly described in the Appointment.
- (D) It is a condition of the Appointment that the Consultant enters this Agreement with the Beneficiary.
- (E) The Beneficiary shall be entitled to rely and is deemed to have relied on the Consultant's reasonable skill, care and diligence in respect of all matters covered by this Agreement insofar as they relate to the Services provided by the Consultant under the Appointment.

NOW IT IS AGREED as follows:

1 WARRANTY AND UNDERTAKING

- 1.1 The Consultant warrants and undertakes to the Beneficiary that it has complied and will continue to comply with all the terms and obligations under or arising out of the Appointment on the Consultant's part to be performed and observed and shall complete the Services in accordance with the Appointment.

1.2 Without prejudice to Clause 1.1 (*Warranty and Undertaking*) of this Agreement, the Consultant further warrants and undertakes to the Beneficiary that:

- 1.2.1 it has exercised and will continue to exercise all the due skill, care and diligence to be expected from a properly qualified and competent consultant experienced in providing design services on projects similar in nature, size and complexity to the Project in:
 - (a) the [design] of the Contract Works;
 - (b) the specification of goods and materials for the Contract Works, and in particular in ensuring that it has not and will not specify for use in relation to the Contract Works any products or materials not in conformity with relevant British or European standards or Codes of Practice or which are at the time of specification generally known within the United Kingdom to an experienced designer of such as the Contract Works to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and
 - (c) the performance of the Services to the Contractor under the Appointment;
- 1.2.2 the final [design] and all materials and goods specified therein will correspond as to description, quality and condition with the requirements of the Construction Contract; and
- 1.2.3 the final [design] will at practical completion or its equivalent under the Construction Contract, as the case may be, comply with all relevant legislation and Good Industry Practice.

2 INSURANCE

- 2.1 The Consultant shall maintain throughout the duration of provision of the Services and for a period of twelve (12) years after the date of practical completion or its equivalent under the Construction Contract, professional indemnity insurance in an amount of not less than £[] million pounds (£) sterling [on an each and every claim basis and for any one (1) occurrence or series of occurrences arising out of any one (1) event][in the annual aggregate with at least one (1) reinstatement] with insurers of good repute and appropriately regulated.
- 2.2 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at rates which are commercially reasonable to consultants in order that the Consultant and the Beneficiary can consider alternative means of best protecting their respective positions in respect of the Project in the absence of such insurance provided that the Beneficiary shall be entitled to require the Consultant to maintain such lesser amount of Professional Indemnity Insurance as is available to the Consultant at rates which are commercially reasonable. For the purposes of this clause, payment of any increased or additional premiums required by insurers by reason of the Consultant's actions, omissions, errors or defaults will be deemed to be within commercially reasonable rates.
- 2.3 As and when it is reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence satisfactory to the Beneficiary (acting reasonably) that its Professional Indemnity Insurance is being maintained.
- 2.4 The Consultant confirms that this Agreement has been disclosed to and has been approved by the Consultant's Professional Indemnity Insurers or Underwriters.

- 2.5 Should the Consultant be in breach of any of its obligations under this Clause 2 (*Insurance*), the Beneficiary may itself insure against any risk with respect to which the breach shall have occurred and may recover such sum or sums from the Consultant as a debt.

3 **COPYRIGHT**

- 3.1 The Consultant hereby grants to the Beneficiary or its appointee and all those authorised by the Beneficiary an irrevocable, transferable, non-exclusive and royalty-free licence (which shall be capable of assignment) to use and reproduce all information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes, budgets, reports, calculations or other documents, work or things including all applicable passwords or access codes whatsoever provided or to be provided by the Consultant in connection with the Services (the "**Documents**") for such purposes as the Beneficiary may at its sole discretion require.
- 3.2 Such licence shall carry the right to grant sub-licences and shall subsist notwithstanding that the Appointment is terminated or the obligations and duties there under have been completed. For the avoidance of doubt, the grant of such licence or sub-licences shall not impose any additional liability on the Consultant.
- 3.3 The Consultant shall on reasonable demand provide to the Beneficiary or its appointee and those authorised by the Beneficiary additional copies of any documents on receipt of reasonable copying costs. The Consultant will not be liable for any use by the Beneficiary or any appointee or sub-licensee of any of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant or for any improper or negligent use by the Beneficiary or any appointee or sub-licensee.
- 3.4 The Consultant agrees to indemnify and keep indemnified the Beneficiary from and against all loss, damage, cost, expense, liability or claim in respect of breach of the copyright or other intellectual property rights of any third party caused by or arising out of the carrying out of the Services or the use of the licence.

4 **ASSIGNMENT**

- 4.1 This Agreement may be assigned in whole or in part by the Beneficiary to any successor to the Beneficiary's interest in the Project or any part thereof without the consent of the Consultant being required and such assignment shall be effective upon written notice thereof being given to the Consultant. No assignment of this Agreement by any other party shall be permitted.
- 4.2 The Consultant agrees that it shall not at any time assert that any permitted assignee in terms of this Agreement is precluded from recovering any loss resulting from any breach of this Agreement by reason that such assignee is not an original party to this Agreement or that no loss or a different loss has been suffered by such assignee.

5 **NO WAIVER OR VARIATION**

- 5.1 No failure, approval, act or forbearance on the part of the Beneficiary in respect of any right of the Beneficiary pursuant to this Agreement shall constitute any waiver of any right of the Beneficiary under or arising out of this Agreement nor relieve the Consultant of any of its duties or obligations under or arising out of this Agreement.
- 5.2 The Consultant will not seek to modify or vary any of the obligations for which it is responsible under the Appointment in any respect if that modification or variation

will be detrimental to the Beneficiary or affects the Beneficiary's rights or obligations under the DBFM Agreement or affects the Consultant's obligations under this Agreement.

6 EQUIVALENT RIGHTS

The obligations of the Consultant under this Agreement shall be no greater in extent or quantity than if the Beneficiary had been named as joint employer with the Contractor under the Appointment. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Contractor under the Appointment (other than counterclaim, set-off or to state a defence of no loss or a different loss has been suffered by the Contractor).

7 NOTICES

7.1 Any notice or other communication given under this Agreement shall be deemed to be duly given if it is delivered by hand or sent by first class recorded post or emailed to the party named therein at the address or email address of such party shown in this Agreement or such other address or email address as such party may by notice or other communication in writing nominate for the purpose of service.

7.2 Any notice served under or in connection with this Agreement is to be in writing and shall be deemed to have been served:

7.2.1 if delivered by hand at the time of delivery; or

7.2.2 if posted upon the earlier of (i) actual receipt, and (ii) [three (3)] Business Days after posting,

provided that, in either case, a notice or other communication received on a non-Business Day or after 5pm in the place of receipt shall be deemed to be received at 9am on the next following Business Day in such place.

7.3 Notices given by email shall be deemed to have been received:

7.3.1 at the time the email enters the Information System of the intended recipient designated by them to receive electronic notices pursuant to this Agreement (as identified by the relevant email address specified in Clauses [7.4 to 7.7] (*Notices*)), if sent on a Business Day between the hours of 9am and 4pm; or

7.3.2 by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and provided that within twenty-four (24) hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient in accordance with the provisions of this Clause 7 (*Notices*) and where such notice is addressed to the Authority, copied to [♦].¹³

7.4 Any notice to be given to the [Authority] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing to the relevant party by the [Authority].

¹³ Insert Welsh Ministers details.

- 7.5 Any notice to be given to [Project Co] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by [Project Co].
- 7.6 Any notice to be given to the [Contractor] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Contractor].
- 7.7 Any notice to be given to the [Consultant] should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party address or email address as notified in writing to the relevant party by the [Consultant].
- 7.8 Any consent or approval under this Agreement is required to be obtained before the act or event to which it applies is carried out or done and is to be treated as effective only if the consent or approval is given in writing.
- 7.9 The definitions of words and phrases used in this Agreement shall be those set out in the Construction Contract and Appointment except where expressly defined in this Agreement.
- 7.10 This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and the parties hereto submit to the exclusive jurisdiction of the Courts of England and Wales.
- 7.11 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.
- 7.12 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that save to the extent expressly provided in this Agreement no provision of this Agreement is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party or any liability whatsoever to any third party.

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed the day and year first above written:

SCHEDULE 10: PTU CRITERIA

PART 1 PTU CRITERIA

- 1 The Phase of the Project Road for which a Permit to Use has been requested:
 - 1.1 in relation to each Phase for which a Permit to Use has been requested, has been completed to such extent as to be suitable and safe for use by all users in accordance with the provisions of Law, Good Industry Practice and the DMRB without traffic management restrictions (other than Permitted Traffic Management); and
 - 1.2 in relation to the final Phase for which a Permit to Use has been requested, has been completed to such extent as to be suitable and safe for use by all users in accordance with the provisions of Law, Good Industry Practice and the DMRB without traffic management restrictions and that all Permitted Traffic Management has been removed.
- 2 No objection has been received to the Project Road being operated as a highway from the Technical Approval Authority or Welsh Government Network Management by the Expected PTU Date.
- 3 There is no unresolved material non-compliance with the Design and Certification Procedure relating to the relevant Phase or Phases.
- 4 All certificates under the Design and Certification Procedure and Part 5 (Structural and Geotechnical Certification Procedure) of Section 3 (Authority's Construction Requirements) of Schedule 6 (Construction Matters) relating to the relevant Phase or Phases have been issued.
- 5 The Road Safety Audit stage 3 report relating to the relevant Phase or Phases (for which the Authority has been given the opportunity to attend the Audit Team site visit) has been issued and any Road Safety Audit Findings have been resolved by Project Co to the satisfaction of the Audit Team.
- 6 All environmental barriers relating to the relevant Phase or Phases have been completed.
- 7 All Key Design Data relating to the relevant Phase has been provided to the Authority (excluding any as-built information required in accordance with Clauses 16.13 and 16.13A).
- 8 There is no unresolved objection under the Review Procedure to the Services Quality Plan and each of its constituent parts in respect of the provision of the Services in relation to the relevant Phase or Phases, namely:
 - 8.1 Method Statements;
 - 8.2 Health and Safety Plan for the Services;
 - 8.3 Asset Management Plan that includes:
 - 8.3.1 Schedule of Programmed Maintenance;
 - 8.3.2 5 Year Maintenance Plan;
 - 8.3.3 Lifecycle Schedule;
 - 8.3.4 Establishment Period Maintenance Environmental Management Plan (EPMEMP); and

- 8.3.5 Geotechnical Asset Management Plan;
- 8.4 Incident Response Plan that includes:
 - 8.4.1 Disaster Plan; and
 - 8.4.2 Traffic Signal Failure Plan;
- 8.5 Adverse Weather Plan that includes:
 - 8.5.1 the Winter Service Delivery Plan;
- 8.6 Not Used;
- 8.7 Network Occupancy Management Plan.
- 9 The Works relating to the relevant Phase, excluding:
 - 9.1 the Establishment Works; and
 - 9.2 any items on the Snagging List,

have been completed in all material respects in accordance with the Authority's Construction Requirements and Project Co's Proposals.
- 10 All Collateral Agreements have been provided in accordance with Clause 61 (Sub-Contracting and Assignment).
- 11 A copy of the current health and safety file has been provided to the Authority's Representative in accordance with paragraph 4 of Section 2 (Safety During Construction) of Schedule 6 (Construction Matters).
- 12 All Consents required to carry out the Project Operations relating to the relevant Phase have been obtained.
- 13 All relevant Taking Over Certificates have been issued.
- 13A All relevant Handing Over Certificates have been issued, save where the Authority has agreed that the vacation, clearance and/or reinstatement of a Temporary Use Area can be treated as a Snagging Item.
- 14 Any non-conformance reports and corrective action requests raised in accordance with paragraph 3 of Part 1 (*Quality Plans (Design and Construction) Requirements*) of Section 5 (*Quality Plans (Design and Construction)*) of Schedule 6 (*Construction Matters*) relating to the relevant Phase have been implemented correctly and any outstanding actions relating to such non-conformance reports and corrective action requests will not prejudice the operation and safe use of the Phase by Users.
- 15 In relation to each Phase, except the final Phase for which a Permit to Use has been requested, local Site Acceptance Tests have been completed and in the case of the final Phase final Site Acceptance Testing and commissioning have been completed in accordance with the schedule of testing prepared by Project Co in accordance with Appendix 1/15 (*Testing to be carried out by Project Co*) of Part 4 (*Specification*) of Section 3 (*Authority's Construction Requirements*) of Schedule 6
- 16 (*Construction Matters*) and there have been no unresolved objections to such testing schedule under the Review Procedure.

PART 2: HANDING OVER CERTIFICATE CRITERIA

- 1 The use of the relevant Temporary Use Area has ceased.
- 2 The relevant Temporary Use Area has been vacated and any required clearance and/or reinstatement has been completed in all material respects in accordance with the Authority's Construction Requirements and Project Co's Proposals.
- 3 The relevant Temporary Use Area has been vacated and any required clearance and/or reinstatement has been completed in all material respects in accordance with the relevant Third Party Requirements.
- 4 There has not been nor continues to be any material non-compliance with the Design and Certification Procedure relating to the relevant Temporary Use Area.
- 5 Unless otherwise specified in the Authority's Construction Requirements or the Third Party Requirements, each existing Structure in Temporary Use Areas shall be assessed in accordance with the DMRB to be in materially no worse condition (fair wear and tear excepted) than the condition of the Structure at the date of the Agreement.
- 6 Any Project Roads within the Temporary Use Area are free from Category 1 Defects.

PART 3: TAKING OVER CERTIFICATE CRITERIA

- 1 The relevant Temporary Highways Area has been vacated and the Works, excluding the Establishment Works, in respect of the relevant Temporary Highways Area have been completed in all material respects in accordance with the Authority's Construction Requirements and Project Co's Proposals.
- 2 The Works, excluding the Establishment Works, in respect of the relevant Temporary Highways Area have been completed in all material respects in accordance with the requirements of the relevant TOC Person.
- 3 The Works in respect of the relevant Temporary Highways Area have been completed to such an extent that the Temporary Highways Area is suitable and safe for use by members of the public in accordance with the provisions of Law, Good Industry Practice and the DMRB without traffic management restrictions.
- 4 There has not been nor continues to be any material non-compliance with the Design and Certification Procedure relating to the relevant Temporary Highways Area. Specifically, but not limited to, all relevant certificates required in respect of the relevant Temporary Highways Area thereunder having been issued, including a Road Safety Audit Certificate (Stage 3).
- 5 Unless otherwise specified in the Authority's Construction Requirements, each existing Structure in the relevant Temporary Highways Area shall be assessed in accordance with the DMRB to be in materially no worse condition (fair wear and tear excepted) than the condition of the Structure at the date of the Agreement.
- 6 The Temporary Highways Area is free from Category 1 Defects.
- 7 There is no unresolved objection under the Review Procedure to the Establishment Period Maintenance Environmental Management Plan (EPMEMP) (insofar as it relates to the relevant Temporary Highways Area(s)).
- 8 Project Co has provided a copy of the "as-built" drawings, "as-built" building specification and all "final issue" construction drawings relating to the relevant Temporary Highways Area to the relevant TOC Person, together with a written statement from Project Co's Representative to the relevant TOC Person certifying that all such items are true and accurate. Where final versions of these drawings and specifications are not available, Project Co may provide drafts to the relevant TOC Person, provided that final versions shall be provided to the relevant TOC Person in accordance with the time periods set out in clause 16.13.
- 9 Project Co has provided an up to date copy of the sections of the current health and safety file and the operation and maintenance manuals relating to the relevant Temporary Highway Areas in accordance with paragraphs 3.2.3 and 3.2.4 of Part 6 (*Reports, Information and Records*) of Section 3 (*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*) to the relevant TOC person.

SCHEDULE 11

NOT USED

SCHEDULE 12

SERVICE REQUIREMENTS

SECTION 1

SERVICE LEVEL SPECIFICATION

[REDACTED]

SECTION 2

METHOD STATEMENTS

[REDACTED]

SECTION 3

SERVICES QUALITY PLAN

[REDACTED]

SECTION 4

INTERFACE PROTOCOL

[REDACTED]

SCHEDULE 13

NOT USED

SCHEDULE 14

Payment Mechanism

[SEE SEPARATE DOCUMENT]

SCHEDULE 15
INSURANCE REQUIREMENTS

SECTION 1

POLICIES TO BE TAKEN OUT BY PROJECT CO AND MAINTAINED DURING THE DESIGN AND CONSTRUCTION PHASE

Common to each policy in Section 1 (*Policies to be taken out by Project Co and maintained during the design and construction phase*) (unless stated otherwise):

Insureds:

- 1 Authority
 - 2 Project Co
 - 3 Contractor
 - 4 Service Provider
 - 5 The sub-contractors of any tier to Project Co, the Contractor or the Service Provider
 - 6 Senior Funders
 - 7 Subordinated Funders
 - 8 Transport for Wales, but only to the extent required by the Transport for Wales Agreements
 - 9 Consultants - for their site activities only
 - 10 Neath Port Talbot County Borough Council acting as South Wales Trunk Road Agent
- each for their respective rights and interests in the Project

1 CONTRACTORS' 'ALL RISKS' INSURANCE (CAR)

1.1 Insured Property

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Contractor or the Construction sub-contractors) and all other property used or for use in connection with works associated with the Project.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Construction Contract plus provision to include Cover Features & Extensions as appropriate.

1.4 Maximum Deductible

£[REDACTED] DE5 each and every occurrence for defective design, materials and workmanship, twenty per cent (20%) co-insurance minimum £[REDACTED] each and every occurrence in respect of additional costs of completion, £[REDACTED] each and every occurrence of storm, flood, water damage, collapse and subsidence and in respect of all other occurrences £[REDACTED] each and every occurrence.

1.5 Territorial Limits

United Kingdom including offsite storage and during inland transit.

1.6 Period of Insurance

From the date of this Agreement until the Actual Completion Date and thereafter in respect of defects liability until expiry of the twelve (12) months defects liability period.

1.7 Cover Features & Extensions

- 1.7.1 Terrorism
- 1.7.2 Munitions of war clause
- 1.7.3 Additional costs of completion clause
- 1.7.4 Professional fees clause
- 1.7.5 Debris removal clause
- 1.7.6 Seventy two (72) hour clause
- 1.7.7 Public authorities clause
- 1.7.8 Free issue materials clause
- 1.7.9 Ten per cent (10%) escalation clause
- 1.7.10 Automatic reinstatement of sum insured clause
- 1.7.11 Loss minimisation
- 1.7.12 Subrogation waiver extended to Authority Parties (other than Contractors and Sub-Contractors)

1.8 Principal Exclusions

- 1.8.1 War and related perils (UK market agreed wording)
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording)

- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
- 1.8.4 Wear, tear and gradual deterioration
- 1.8.5 Consequential financial losses
- 1.8.6 Cyber risks
- 1.8.7 Inventory losses
- 1.8.8 Fraud and employee dishonesty
- 1.8.9 DE5 drop down option

2 **DELAY IN START UP INSURANCE (DSU)**

2.1 **Insureds**

- 2.1.1 Project Co
- 2.1.2 Senior Funders
- 2.1.3 Subordinated Funders

each for their respective rights and interests in the Project.

2.2 **Indemnity**

In respect of:

- 2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Project as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Paragraph 1 (*Contractors' 'All Risks' Insurance (CAR)*) of Section 1 (*Policies to be taken out by Project Co and maintained during the design and construction phase*) of Schedule 15 (*Insurance Requirements*), including physical loss or damage which would be indemnifiable but for the application of any deductible;
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Project Co which without such expenditure would have taken place, during the Minimum Indemnity Period.

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 **Maximum Excess**

[REDACTED]

2.5 **Minimum Indemnity Period**

[REDACTED]

2.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, excluding the defects liability period.

2.7 Cover Features & Extensions

2.7.1 Denial of access

2.7.2 Utilities

2.7.3 Terrorism

2.7.4 Not used

2.7.5 Professional Fees

2.7.6 Subrogation waiver extended to the Authority and Authority Parties (other than Contractors and Sub-Contractors)

2.8 Principal Exclusions

2.8.1 The exclusions under the Contractors' 'All Risks' Insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

3 CONSTRUCTION THIRD PARTY LIABILITY INSURANCE

3.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, disease contracted by any person;

3.1.2 loss or damage to property;

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the Period of Insurance and arising out of or in connection with the Project.

3.2 Limit of Indemnity

Not less than £[REDACTED] in respect of any one (1) occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

3.3 Maximum Deductible

£[REDACTED] for each and every occurrence of property damage. (Personal injury claims will be paid in full).

3.4 Territorial Limits

UK and elsewhere in the world in respect of non-manual visits.

3.5 Jurisdiction

Worldwide excluding USA and Canada.

3.6 Period of Insurance

As per the Contractors' "All Risks" Insurance, including the defects liability period.

3.7 Cover Features & Extensions

- 3.7.1 Munitions of war
- 3.7.2 Cross liability clause
- 3.7.3 Contingent motor
- 3.7.4 Legal defence costs
- 3.7.5 Subrogation waiver extended to Authority Parties (other than Contractors and Sub-Contractors)

3.8 Principal Exclusions

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.
- 3.8.5 Events more properly covered under a professional indemnity policy.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Losses indemnified under the CAR policy or DSU policy.

4 CONTRACTORS' POLLUTION LIABILITY

4.1 Interest

To indemnify the Insured in respect of all sums that the Insured may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (including but not limited to a local authority, Environmental Agency or

any judicial authority) or a third party, including the Authority, and resulting in a claim or claims first made against the Insured and reported to the insurer during the policy period. A pollution incident relates to either pollution in existence at the date of this Agreement disturbed or in some way aggravated, released or made worse by the Insured or pollution caused by the Insured in connection with the execution of the Works and provision of the Services and Restricted Services subsequent to the date of this Agreement.

4.2 Limit of Indemnity

Not less than £[REDACTED] in respect of any one occurrence, the number of occurrences being unlimited in any policy period and not less than £[REDACTED] in the aggregate during the policy period the policy period not to exceed three years unless agreed otherwise by the parties.

4.3 Maximum Deductible Threshold

Not to exceed £[REDACTED] for each and every loss.

4.4 Territorial Limits

The site and off site migration of contamination from the site.

4.5 Period of Insurance

From the date of this Agreement until the Actual Completion Date and thereafter in respect of defects liability until expiry of the twelve (12) months defects liability period.

4.6 Cover Features and Extensions

- 4.6.1 Regulatory or third party claims for on site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.
- 4.6.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.
- 4.6.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions arising from the act or omission of the Insured.
- 4.6.4 Legal costs.
- 4.6.5 Retroactive date, policy inception.
- 4.6.6 Liability arising from the Works, subject to their inclusion within the definition of covered operations under the policy.

4.7 Principal Exclusions

- 4.7.1 War and related perils.
- 4.7.2 Nuclear/radioactive risks.
- 4.7.3 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).

Schedule 15 - Insurance Requirements

- 4.7.4 Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.
- 4.7.5 Criminal fines and penalties.
- 4.7.6 Terrorism.

SECTION 1A

POLICIES TO BE TAKEN OUT BY PROJECT CO FROM THE COMMENCEMENT DATE AND MAINTAINED DURING THE RESTRICTED SERVICES PERIOD

Common to each policy in Section 1A (*Policies to be taken out by Project Co from the Commencement Date and maintained during the Restricted Services Period*) (unless stated otherwise).

Insureds

- 1 Authority
 - 2 Project Co
 - 3 Contractor
 - 4 Contractor's sub-contractors
 - 5 Senior Funders
 - 6 Subordinated Funders
 - 7 Transport for Wales, but only to the extent required by the Transport for Wales Agreements
 - 8 Neath Port Talbot County Borough Council acting as South Wales Trunk Road Agent
- each for their respective rights and interests in the Project

1 PROPERTY DAMAGE INSURANCE

1.1 Insured Property

The project assets which are the property of Project Co or for which Project Co may be responsible including but not limited to the Project Facilities.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded. including machinery breakdown and computer breakdown in respect of appropriate equipment

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Cover Features and Extensions as appropriate.

1.4 Maximum Deductible

£[REDACTED] each and every claim.

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

1.6 Period of Insurance

From the Commencement Date or as otherwise specified in this Agreement until, in respect of each Phase, each relevant Phase Actual Completion Date and renewable on an annual basis unless agreed otherwise by the Parties.

1.7 Cover Features & Extensions

- 1.7.1 Terrorism
- 1.7.2 Automatic reinstatement of sum insured
- 1.7.3 Capital additions clause
- 1.7.4 Seventy-two (72) hour clause
- 1.7.5 Public authorities clause
- 1.7.6 Professional fees
- 1.7.7 Debris removal
- 1.7.8 Pollution and containment to the Insured Property arising from an event which itself is not otherwise excluded
- 1.7.9 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement
- 1.7.10 Subrogation waiver extended to Authority Parties (other than Contractors and Sub-Contractors)

1.8 Principal Exclusions

- 1.8.1 War and related perils (UK market agreed wording)
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording)
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
- 1.8.4 Wear, tear and gradual deterioration
- 1.8.5 Consequential financial losses
- 1.8.6 Cyber risks
- 1.8.7 Losses recovered under CAR policy

2 BUSINESS INTERRUPTION INSURANCE

2.1 Insureds

- 2.1.1 Project Co
- 2.1.2 Senior Funders

2.1.3 Subordinated Funders

each for their respective rights and interests in the Project

2.2 **Indemnity**

In respect of:

- 2.2.1 loss of Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in according with paragraph 1 of Section 1A (*Policies to be taken out by Project Co from the Commencement Date and maintained during the Restricted Services Period*) of this Schedule 15 (*Insurance Requirements*) including physical loss or damage which would damage which would be indemnifiable but for the application of any deductible; and
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Project Co which without such expenditure would have taken place. during the indemnity Period.

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 **Maximum Excess**

[REDACTED]

2.5 **Minimum Indemnity Period**

[REDACTED]

2.6 **Period of Insurance**

From the Commencement Date or as otherwise specified in this Agreement until, in respect of each Phase, each relevant Phase Actual Completion Date and renewable on an annual basis unless agreed otherwise by the Parties.

2.7 **Cover Features & Extensions**

- 2.7.1 Denial of access
- 2.7.2 Terrorism
- 2.7.3 Utilities
- 2.7.4 Accountants Clause
- 2.7.5 Automatic reinstatement of sum insured
- 2.7.6 Subrogation waiver extended to the Authority and Authority Parties (other than Contractors and Sub-Contractors)

2.8 Principal Exclusions

2.8.1 The exclusions under the Property Damage Insurance other than for consequential financial losses

2.8.2 Delayed response by a public body or state authority

3 THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

3.1 Indemnity

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury illness, disease contracted by any person*

3.1.2 loss or damage to property:

3.1.3 interference to property or any easement right of air, light water or way or the enjoyment or use thereof by obstruction trespass nuisance loss of amenities or any like cause

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 Limit of Indemnity

Not less than £[REDACTED] (indexed as required in accordance with clause 57.4.8 in respect of any one occurrence the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 Maximum Deductible

£[REDACTED] for each and every occurrence of property damage. (Personal injury claims will be paid in full.)

3.4 Territorial Limits

UK and elsewhere in the world in respect of non manual visits.

3.5 Jurisdiction

Worldwide excluding USA and Canada

3.6 Period of Insurance

From the Commencement Date or as otherwise specified in this Agreement until, in respect of each Phase, each relevant Phase Actual Completion Date and renewable on an annual basis unless agreed otherwise by the Parties.

3.7 Cover Features & Extensions

3.7.1 Munitions of war.

3.7.2 Cross liability clause

3.7.3 Contingent motor

- 3.7.4 Legal defence costs in addition to the Limit of Indemnity
- 3.7.5 Subrogation waiver extended to Authority Parties (other than Contractors and Sub-Contractors)

3.8 Principal Exclusions

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsory insured by legislation in respect of such vehicles
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.
- 3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property
- 3.8.6 Liability arising from the ownership possession or use of any aircraft or marine vessel
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden unintended and unexpected occurrence
- 3.8.8 Losses under the property damage policy or business interruption policy.

SECTION 2

POLICIES TO BE TAKEN OUT BY PROJECT CO AND MAINTAINED FROM THE RELEVANT PHASE ACTUAL COMPLETION DATE

Common to all policies in Section 2 (*Policies to be taken out by Project Co and maintained from the relevant Phase Actual Completion Date*) (unless stated otherwise):

Insureds

- 1 Authority
- 2 Project Co
- 3 Service Provider
- 4 Service Provider's sub-contractors
- 5 Senior Funders
- 6 Subordinated Funders
- 7 Transport for Wales, but only to the extent required by the Transport for Wales Agreements each for their respective rights and interests in the Project.

1 PROPERTY DAMAGE INSURANCE

1.1 Insured Property

The project assets which are the property of Project Co or for which Project Co may be responsible including but not limited to the Project Facilities.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including machinery breakdown and computer breakdown in respect of appropriate equipment.

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Cover Features and Extensions as appropriate. Should Project Co wish to use an EML/First Loss basis of cover in respect of primary property damage cover (both Construction Phase and Operational Term), a full rationale and basis upon which any such policy formation is adapted shall be provided by Project Co for the Authority's prior approval (acting reasonably).

1.4 Maximum Deductible

£[REDACTED] each and every claim (indexed as required in accordance with Clause 57.4.8).

1.5 Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

1.6 Period of Insurance

From each Phase Actual Completion Date or as otherwise specified in this Agreement for the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the parties.

1.7 Cover Features & Extensions

- 1.7.1 Terrorism
- 1.7.2 Automatic reinstatement of sum insured
- 1.7.3 Capital additions clause
- 1.7.4 Seventy-two (72) hour clause
- 1.7.5 Public authorities clause
- 1.7.6 Professional fees
- 1.7.7 Debris removal
- 1.7.8 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded
- 1.7.9 Repair / reinstatement basis of claims settlement with cash option for non-reinstatement
- 1.7.10 Subrogation waiver extended to Authority Parties (other than Contractors and Sub-Contractors)

1.8 Principal Exclusions

- 1.8.1 War and related perils (UK market agreed wording)
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording)
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
- 1.8.4 Wear, tear and gradual deterioration
- 1.8.5 Consequential financial losses
- 1.8.6 Cyber risks
- 1.8.7 Losses recovered under the CAR policy

2 BUSINESS INTERRUPTION INSURANCE

2.1 Insureds

- 2.1.1 Project Co
- 2.1.2 Senior Funders
- 2.1.3 Subordinated Funders

each for their respective rights and interests in the Project.

2.2 Indemnity

In respect of:

- 2.2.1 loss of Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property Damage Insurance effected in accordance with paragraph 1 of Section 2 (*Policies to be taken out by Project Co and maintained from the Actual Completion Date*) of this Schedule 15 (*Insurance Requirements*) including physical loss or damage which would be indemnifiable but for the application of any deductible;
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of Project Co which without such expenditure would have taken place, during the Indemnity Period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Excess

[REDACTED]

2.5 Minimum Indemnity Period

[REDACTED]

2.6 Period of Insurance

From the first Phase Actual Completion Date for the duration of this Agreement and renewable on an annual basis unless agreed otherwise.

2.7 Cover Features & Extensions

- 2.7.1 Denial of access
- 2.7.2 Terrorism
- 2.7.3 Utilities
- 2.7.4 Accountants Clause
- 2.7.5 Automatic reinstatement of sum insured
- 2.7.6 Subrogation waiver extended to the Authority and Authority Parties (other than Contractors and Sub-Contractors)

2.8 Principal Exclusions

- 2.8.1 The exclusions under the Property Damage Insurance, other than for consequential financial losses
- 2.8.2 Delayed response by a public body or state authority

3 **THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

3.1 Indemnity

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

- 3.1.1 death, or bodily injury, illness, disease contracted by any person;
- 3.1.2 loss or damage to property;
- 3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

3.2 Limit of Indemnity

Not less than £[REDACTED] (indexed as required in accordance with Clause 57.4.8) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 Maximum Deductible

£[REDACTED] for each and every occurrence of property damage (indexed as required in accordance with Clause 57.4.8). (Personal injury claims will be paid in full).

3.4 Territorial Limits

UK and elsewhere in the world in respect of non-manual visits.

3.5 Jurisdiction

Worldwide excluding USA and Canada.

3.6 Period of Insurance

From each Phase Actual Completion Date or as otherwise specified in this Agreement for the duration of this Agreement and renewable on an annual basis unless agreed otherwise.

3.7 Cover Features & Extensions

- 3.7.1 Munitions of war.
- 3.7.2 Cross liability clause
- 3.7.3 Contingent motor
- 3.7.4 Legal defence costs in addition to the Limit of Indemnity
- 3.7.5 Subrogation waiver extended to Authority Parties (other than Contractors and Sub-Contractors)

3.8 Principal Exclusions

- 3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- 3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another insured party.
- 3.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- 3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.8 Losses under the property damage policy or business interruption policy.

SECTION 3

ENDORSEMENTS

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Agreement.

Endorsement 1

Cancellation

- 1 This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.
- 2 The insurer shall by written notice advise the Authority:
 - 2.1 at least thirty (30) days before any such cancellation or termination is to take effect;
 - 2.2 at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
 - 2.3 of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

- 1 Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.
- 2 It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one (1) event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 3 Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "Vitiating Act") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- 4 For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- 5 Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the

Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

- 6 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

6.1 no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;

6.2 where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and

6.3 save as set out in a request from insurers to the Authority in accordance with (2) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Communications

- 1 All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by email. Any such notice will be deemed to be given as follows:

1.1 if in writing, when delivered;

1.2 if by email:-

1.2.1 at the time the email enters the information system of the intended recipient designated by them to receive electronic notices pursuant to paragraph 2 below, if sent on a Business Day between the hours of 9am and 4pm; or

1.2.2 by 11am on the next following Business Day, if the email enters the intended recipient's relevant information system after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and in the case of notices issued pursuant to paragraph 2 of Endorsement 1 of Section 3 (*Endorsements*) of this Schedule 15 (*Insurance Requirements*) provided that within twenty-four (24) hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient and where such notice is addressed to the Authority, copied to the Authority's Representative.

- 2 The postal address and email address of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to Project Co at the relevant time. The initial postal address and email address of the Authority are as follows:

The Authority: [REDACTED]

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

Subject to the provision of Clause 57.22 of the Contract all proceeds of this policy shall be payable without deduction or set-off to the Insurance Proceeds Account.

Endorsement 5

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 6

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

SECTION 4

INSURANCE ARRANGEMENTS

- 1 For the purpose of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*) the following words shall have the following meanings:

"Actual Relevant Insurance Cost" means the aggregate of the annual insurance premiums reasonably incurred by Project Co to maintain the Operational Insurance during the relevant Insurance Review Period;

"Insurance Cost Factors" has the meaning given in paragraph 7.2(iii) of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*);

"Insurance Renewal Report" shall bear the meaning ascribed to it in paragraph 7.2(x) of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*);

"Insurance Review Date" means the Operational Insurance Inception Date, the second anniversary of the Operational Insurance Inception Date and the date falling on each subsequent two year anniversary during the Project Term;

"Insurance Review Period" means a two (2) year period from the Operational Insurance Inception Date and each subsequent two (2) year period commencing on the second anniversary of the Operational Insurance Inception Date except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term;

"Insurance Summary Sheet" has the meaning given in paragraph 7.2(ii) of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*);

"Joint Insurance Cost Report" shall bear the meaning ascribed to it in paragraph 7.2 of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*);

"Market Presentations" shall bear the meaning ascribed in paragraph 7.2(ix) of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*);

"Operational Insurance Inception Date" means the date on which the Operational Insurance is first providing active insurance cover to the Project Co, being a date no earlier than the first Phase Actual Completion Date;

"Portfolio Cost Saving" means any insurance cost saving which arises from Project Co changing the placement of the Operational Insurances from being on a stand-alone project-specific basis. to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

"Project Co Factors" shall bear the meaning ascribed to it in paragraph 7.2(v) of this Section 4 (*Insurance Arrangements*) of this Schedule 15 (*Insurance Requirements*);

"Relevant Insurance Market" means the insurance market which insures the majority of all MIM/PFI/PF2/PPP/NPD projects across all of the MIM/PFI/PF2/PPP/NPD sectors (as determined by the number of MIM/PFI/PF2/PPP/NPD projects) and at the date of this Agreement the Relevant Insurance Market is the United Kingdom; and

"Renewal Date" means the date on which the relevant existing Insurance policy is due to expire.

- 2 Project Co must comply with the provisions of this Section 4 (*Insurance Arrangements*) of Schedule 15 (*Insurance Requirements*) when placing or renewing the Operational Insurances.
- 3 Not less than sixty (60) Business Days prior to the first Phase Completion Date and each subsequent Renewal Date in respect of each of the Operational Insurances, Project Co must inform the Authority Representative of the forthcoming requirement to place or renew Operational Insurance and provide either:
 - 3.1 confirmation that the existing long-term insurance arrangement (entered into with the agreement of the Authority) is being maintained; or
 - 3.2 its proposals for obtaining competitive quotations from at least (three (3)) suitable insurers (including any portfolio arrangements where such arrangements are available to Project Co). Project Co must take advice from reputable insurance brokers experienced in arranging insurances for similar risks as to which insurers are most likely to provide quotations that will represent best value for money for the Authority as payer of the premiums for such insurance. In considering which insurers to approach, Project Co must consider whether any of the Shareholders enjoys any special relationship with any insurer and/or is otherwise able to procure the placing of the relevant insurance in any particular manner consistent with the requirements of this Agreement that may result in lower premiums and shall include such insurers in its proposal under this paragraph 3.
- 4 Within fifteen (15) Business Days of receiving a notice from Project Co pursuant to paragraph 3, the Authority may provide Project Co with details of any other insurers that it wishes Project Co to invite to quote for provision of the relevant Operational Insurance.
- 5 Not less than thirty (30) Business Days prior to the first Phase Completion Date and each subsequent Renewal Date for any of the Operational Insurances, Project Co must forward to the Authority's Representative quotes from the proposed insurers (together with Insurance Summary Sheets, Market Presentations and Insurance Renewal Reports in respect of each quote), to include any insurer nominated by the Authority pursuant to paragraph 4, including a reasoned recommendation as to which quote Project Co views as offering best value for money for the Authority, taking into account all relevant circumstances.
- 6 Within fifteen (15) Business Days of receiving a recommendation from Project Co pursuant to paragraph 5, the Authority must notify Project Co in writing which insurer it is to place the relevant Operational Insurance with, failing which Project Co shall be entitled to place the relevant Operational Insurance with the insurer recommended by Project Co.
- 7 **Insurance Review Procedure**
 - 7.1 This procedure shall be used to determine whether any increase or decrease in Operational Insurance costs is to be reflected within the **"PTIC"** element of the Monthly Service Payment calculation pursuant to paragraph 2.1 of Schedule 14 (*Payment Mechanism*).
 - 7.2 Project Co's insurance broker shall prepare a report on behalf of both Project Co and the Authority (the **"Joint Insurance Cost Report"**). The Joint Insurance Cost Report is to be prepared at Project Co's expense, and should, as a minimum, contain the following information for the relevant Insurance Review Period:
 - (i) A full breakdown of the Actual Relevant Insurance Cost for the current Insurance Review Period, together with the Actual Relevant Insurance Cost for the previous Insurance Review Period;

- (ii) A spreadsheet (the "**Insurance Summary Sheet**") detailing separately:-
 - (A) the sum(s) insured/limit of indemnity (i.e rateable factor) for each of the Operational Insurances;
 - (B) the premium rate for each of the Operational Insurances;
 - (C) the gross premium paid (or to be paid) for each of the Operational Insurances;
 - (D) the deductible(s) for each Operational Insurance;
 - (E) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £100,000; and
 - (F) details of any insurance broker remuneration and/or commissions.
- (iii) Full details of the amount of the premium reasonably considered by Project Co's insurance broker to be attributable to:
 - (A) circumstances generally prevailing in the Relevant Insurance Market together with reasoning for such view; and
 - (B) the claims history of the Authority;

(the "**Insurance Cost Factors**") together with the insurance brokers reasons for such view (specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above).
- (iv) Full details of any Portfolio Cost Saving;
- (v) Full details of any factor which increases the cost of the insurance premium and the associated amount of the premium reasonably considered by Project Co's insurance broker to be attributable to any factor other than the Insurance Cost Factors (the "**Project Co Factors**"), together with reasoning for such view (specifying the impact of each of the factors and quantifying the amount attributable to each factor specified);
- (vi) The calculation of the PTIC in respect of the Operational Insurances, in accordance with paragraph 8 (*Calculation of Insurance Cost Anticipated to be Payable by the Authority*) below, over the course of the relevant Insurance Review Period (stated on a monthly basis);
- (vii) Evidence satisfactory to the Authority (acting reasonably) of any changes to circumstances generally prevailing in the Relevant Insurance Market that are relied on by the Insurance Broker in preparing the Insurance Summary Sheet;
- (viii) Details of movements from a recognised insurance index plus, if available from other appropriate sources, details of changes in insurance cost across the Relevant Insurance Market as a whole;
- (ix) A copy of the market presentation(s) prepared by Project Co's insurance broker and issued to insurers in respect of the relevant Insurance Review Period (the "**Market Presentations**"); and
- (x) A copy of the insurance renewal report prepared by Project Co's insurance broker in respect of the relevant Insurance Review Period (the "**Insurance Renewal Report**").

7.3 Project Co shall procure that the Insurance Broker, no later than the date which is ten (10) Business Days after the Insurance Review Date, delivers to the Authority, at the same time as it delivers to Project Co; at least two (2) copies of the Joint Insurance Cost Report. Following receipt of the Joint Insurance Cost Report, the Authority shall notify Project Co in writing within fifteen (15) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to Project Co within fifteen (15) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the parties fail to agree the contents of the Joint Insurance Cost Report within thirty five (35) Business Days from the date it was delivered to the Authority, the matter shall be resolved pursuant to Clause 60 (*Dispute Resolution*).

7.4 The Authority may make the Joint Insurance Cost Report available to any of its or the Welsh Government's agents or advisers or other body or bodies nominated by the Welsh Government for insurance cost verification, benchmarking or similar purpose.

8 Calculation of Insurance Costs Anticipated to be Payable by the Authority

The calculation of the PTIC to be included in the Joint Insurance Cost Report pursuant to paragraph 7.2(vi) above, shall be a sum equal to:

8.1 the Actual Relevant Insurance Costs;

plus

8.2 where the main source of remuneration of Project Co's insurance broker in respect of services provided to Project Co in connection with the placing of Operational Insurances is by way of a fee, instead of commission, and provided that the fee is reasonable and acceptable to the Authority and no commission is being received by the broker in addition to such fee, the amount of any fee charged, to the extent reasonably and properly attributable to the Operational Insurances;

minus

8.3 the Project Co Factors.

SECTION 5

BROKER'S LETTER OF UNDERTAKING¹⁴

To: The Authority

Dear Sirs

Agreement dated [♦] entered into between [♦] Limited ("Project Co") and

[♦] (the "Authority") (the "Agreement")

- 1 We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
- 2 We act as insurance broker to Project Co in respect of the Insurances and in that capacity we confirm that the Insurances which are required to be procured pursuant to Clause 57 (*Insurance*) and Schedule 15 (*Insurance Requirements*) of the Agreement:
 - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Agreement; and
 - 2.3 that all premiums due to date in respect of the Insurances are paid and the Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
 - 2.4 the endorsements set out in Section 3 (*Endorsements*) of Schedule 15 (*Insurance Requirements*) of the Agreement are as at today's date in full force and effect in respect of the Insurances.
- 3 We further confirm that the attached cover notes confirm this position.
- 4 Pursuant to instructions received from Project Co and in consideration of your approving our appointment [or continuing appointment] as brokers in connection with the Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Insurances:

4.1 Notification Obligations

- 4.1.1 to notify you at least thirty (30) days prior to the expiry of any of the Insurances if we have not received instructions from Project Co to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof; and
- 4.1.2 to notify you at least thirty (30) days prior to ceasing to act as brokers to Project Co unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable.

¹⁴ Paragraph 5 to be used in place of paragraph 4.4.8 if IPRSS is adopted in place of Pass Through Operational Premiums.

4.2 Advisory Obligations

- 4.2.1 to notify you promptly of any default in the payment of any premium for any of the Insurances;
- 4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Insurances, at least thirty (30) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than thirty (30) days before it is to take effect;
- 4.2.3 to notify you of any act or omission, breach or default of which we have knowledge which in our reasonable opinion may either invalidate or render unenforceable in whole or in part any of the Insurances or which may otherwise materially impact on the extent of cover provided under the Insurances; and
- 4.2.4 to advise Project Co of its duties of disclosure to insurers and to specifically advise upon:
 - (a) the facts, circumstances and beliefs that should generally be disclosed to insurers; and
 - (b) the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 Disclosure Obligations

- 4.3.1 to disclose to insurers all information made available to us from any source and any fact, change of circumstances or occurrence made known to us from any source which in our reasonable opinion is material to the risks insured against under the Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and
- 4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of Project Co or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Insurances in discharge of our obligation set out at Clause 4.3.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to Project Co and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 Administrative Obligations

- 4.4.1 to hold copies of all documents relating to or evidencing the Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Insurances, payment of premiums and presentation and receipt of claims;
- 4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in Clause 4.4.1 of this letter, and to

the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

- 4.4.3 to pay into the Insurance Proceeds Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Insurances specified in Clauses [♦], 57.1 to 57.3 (*Project Co Insurances*) of the Agreement;
- 4.4.4 to administer the payment of premiums due pursuant to the Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Insurances;
- 4.4.5 to administer the payment of claims from insurers in respect of the Insurances (the "**Insurance Claims**") including:
 - (a) negotiating settlement of Insurance Claims presented in respect of the Insurances;
 - (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Insurances; and
 - (c) insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.6 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Insurances and which, if effected, in our opinion as Insurance Brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.7 to advise the Authority in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Insurances;
- 4.4.8 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Insurances (when the same is issued) endorsements substantially in the form set out in Section 3 (*Endorsements*) to Schedule 15 (*Insurance Requirements*) of the Agreement; and
- 4.4.9 to:
 - (a) prepare prior to the commencement of the Operational Insurances and prior to each Insurance Review Date, at the expense of the Project Co, a Joint Insurance Cost Report on behalf of both the Project Co and the Authority in accordance with the insurance review procedure as set forth in Section 4 (*Insurance Arrangements*) of Schedule 15 (*Insurance Requirements*) to the Project Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented based on the information available to us; and
 - (b) provide prior to each Renewal Date such other information required to satisfy the requirement of Section 4 (*Insurance Arrangements*) of Schedule 15 (*Insurance Requirements*) to the Project Agreement,

in each case, supported by appropriate evidence, of the generally prevailing market for the relevant Operational Insurance and of any other circumstances relevant to the application of Section 4 of Schedule 15 (*Insurance Requirements*) and paragraph 2 of Schedule 14 (*Payment Mechanism*) to the Project Agreement.

- 5 We shall supply further letters substantially in this form on renewal of each of the Insurances and shall supply copies of such letters to those parties identified to us by the Authority for such purposes.
- 6 This letter shall be governed by and construed in accordance with the laws of England and Wales.

Yours faithfully

For and on behalf of [Project Co's broker]

SCHEDULE 16
CHANGE PROTOCOL

SECTION 1

DEFINITIONS

In this Schedule 16 (*Change Protocol*) and elsewhere in this Agreement (save where Schedule 1 (*Definitions and Interpretation*) provides to the contrary) the following words shall have the following meanings:

"Adjustment"	means an adjustment to the Annual Service Payment made in accordance with Section 6 (<i>Changing the Financial Model</i>) of this Schedule 16 (<i>Change Protocol</i>);
"Adjustment Date"	means the date on which the adjustment to the Annual Service Payments takes effect in accordance with the provisions of this Agreement, or such other date as is agreed between the parties;
"Affordable"	means within the revenue resource parameters determined by the Authority and notified in writing by it to Project Co as available for a proposed High Value Change;
"Approval Criteria"	has the meaning given in paragraph 7 (<i>Approval Criteria</i>) of Section 4 (<i>High Value Changes</i>) of this Schedule 16 (<i>Change Protocol</i>);
"Approved Project"	has the meaning given in paragraph 8.2.1 of Section 4 (<i>High Value Changes</i>) of this Schedule 16 (<i>Change Protocol</i>);
"Assumption Adjustment"	means an adjustment to any of the assumptions contained in the Financial Model;
"Authority Change"	means, as the case may be, a Low Value Change or a High Value Change;
"Authority Change Notice"	means a notice issued in accordance with this Schedule 16 (<i>Change Protocol</i>) requiring an Authority Change;
"Calculation Date"	means the relevant date for the purposes of calculating the Incurred Change Management Fee in accordance with Section 4 (<i>High Value Changes</i>) of this Schedule 16 (<i>Change Protocol</i>);
"Capital Cost"	means in relation to any High Value Change the cost of carrying out the design, construction and commissioning of any construction works required to implement that High Value Change;

"Catalogue of Small Works and Services" and "Catalogue"	means the list of prices and time periods for types of Low Value Changes set out in Appendix 1 Part 1 (<i>Catalogue</i>) to this Schedule 16 (<i>Change Protocol</i>), as amended from time to time in accordance with paragraph 8 (<i>Update of Catalogue and Small Works and Services Rates</i>) of Section 2 (<i>Low Value Changes</i>) of this Schedule 16 (<i>Change Protocol</i>);
"Catalogue Price"	means the total cost (excluding VAT) of carrying out a Low Value Change as set out in the Catalogue;
"Catalogue Review Date"	means each third anniversary of the Commencement Date;
"Change"	means a change in the Works, the Project Facilities the Restricted Services and/or Services or additional works and/or services or a change in the Authority's Policies that may be made under Clause 38 (<i>Change Protocol</i>) or this Schedule 16 (<i>Change Protocol</i>);
"Change in Costs"	means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of Project Co and/or the Contractor and/or any Service Provider (without double counting), including, as relevant, the following: (a) the reasonable costs of complying with the requirements of Clauses 26.9 (<i>Authority's remedial rights</i>), 34 (<i>Delay Events and Compensation Events</i>), 37 (<i>Changes in Law</i>) and/or Sections 2 (<i>Low Value Changes</i>) to 4 (<i>High Value Changes</i>) of this Schedule 16 (<i>Change Protocol</i>), including the reasonable costs of preparation of design and estimates; (b) the costs of continued employment of, or making redundant, staff who are no longer required; (c) the costs of employing additional staff; (d) reasonable professional fees; (e) the costs to Project Co of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of Project Co's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Annual Service Payment; (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to Project Co (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any

extension of the period of implementation of the insurance reinstatement;

- (g) operating costs, or lifecycle maintenance or replacement costs;
- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Relevant Change in Law, Capital Expenditure for which the Authority is responsible);
- (i) the costs required to ensure continued compliance with the Funding Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (k) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis;

"Change in Revenue"

means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of Project Co and/or any Service Provider or from other income committed from third parties (without double counting);

"Change Management Fee"

means the fee calculated in accordance with paragraph 10 (*Change Management Fee*) of Section 4 (*High Value Changes*);

"Cost"

where used in the definitions of High Value Change and Low Value Change means the immediate cost that will be incurred by Project Co to implement the relevant Change, disregarding any Whole Life Costs;

"CPI"

means the CPI (All Items) index as published by the Office for National Statistics from time to time, or, failing such publication or in the event of a fundamental change to the CPI (All Items) index, such other index as the parties may agree, or such adjustments to the CPI (All Items) index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"Derogated Low Value Change"

means:

- (a) not used
- (b) any Low Value Change that:
 - (i) consists of Minor Works;
 - (ii) does not involve any interference with the

Schedule 16 - Change Protocol

Structures in the Project Facilities;

(iii) will not conflict with any Programmed Maintenance or Lifecycle Replacement; and

(iv) will not prejudice any of the Operational Insurances;

"Derogated Low Value Change Notice"

means a notice given by the Authority in accordance with paragraph 1.2 of Section 2 (*Low Value Changes*) of this Schedule 16 (*Change Protocol*);

"Estimated Change in Project Costs"

means, in respect of any Relevant Event, the aggregate of any Change in Costs and/or (without double counting) Change in Revenue (as relevant);

"High Value Change"

means:

(a) a Change requested by the Authority that, in the reasonable opinion of the Authority, is likely either to Cost in excess of fifty thousand pounds (£50,000) (index linked) or to require an adjustment to the Annual Service Payment that on a full year basis is zero point five per cent (0.5%) or more of the Annual Service Payment in the relevant Contract Year provided that the parties may agree that such a Change should instead be processed as a Low Value Change; or

(b) any other Change that the parties agree is to be treated as a High Value Change;

"High Value Change Proposal"

means a proposal satisfying the requirements of paragraph 3.4 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"High Value Change Requirements"

has the meaning given in paragraph 2.1.3 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"High Value Change Stage 2 Submission"

has the meaning given in paragraph 4.1.1 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"Incurred Change Management Fee"

means the amounts actually incurred or payable by or on behalf of Project Co up to the Calculation Date in respect of matters identified by Project Co pursuant to paragraphs 3.4.3 and/or 4.3.7 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*) as falling within the Change Management Fee (and not already reimbursed by the Authority);

"Input Adjustment"

means any adjustment to the Financial Model other than Assumption Adjustment and Logic Adjustments;

"Key Ratios"

means the following ratios:

(a) the Loan Life Cover Ratio (as defined in the

Common Terms Agreement);

- (b) the Projected Debt Service Cover Ratio (as defined in the Common Terms Agreement);
- (c) the Historic Debt Service Cover Ratio (as defined in the Common Terms Agreement);
- (d) Equity IRR, being no greater than the Threshold Equity IRR;
- (e) Subordinated Debt Rate;

"Logic Adjustment"

means an adjustment to the logic or formulae contained in the Financial Model;

"Low Value Change"

means a Change which is either:

- (a) of a type listed in the Catalogue of Small Works and Services; or
- (b) is not so listed, but has an individual Cost not exceeding fifty thousand pounds (£50,000) (index linked), or as otherwise agreed from time to time, except for any request that would (if implemented) increase the likelihood of Project Co failing to meet the Authority's Construction Requirements and/or the Service Level Specification or materially and adversely affect Project Co's ability to perform its obligations under this Agreement;

"Post-Adjustment Financial Model"

means the Financial Model in effect immediately following the making of the relevant adjustments;

"Pre-Adjustment Financial Model"

means the Financial Model in effect immediately prior to the making of the relevant adjustments;

"Project Co Change"

means a Change that is initiated by Project Co by submitting a Project Co Notice of Change to the Authority pursuant to Section 5 (*Project Co Changes*) of this Schedule 16 (*Change Protocol*);

"Project Co Notice of Change"

has the meaning given in paragraph 1 of Section 5 (*Project Co Changes*) of this Schedule 16 (*Change Protocol*);

"Project IRR"

means the real pre-tax pre-financing project internal rate of return shown in the Financial Model cell Worksheet "Ratios Returns" Cell G272;

"Relevant Event"

means an event or circumstance in which this Agreement expressly provides for an adjustment to the Annual Service Payments to be made;

"Small Works and Services Rates"

means the rates to be applied in respect of any request from the Authority for a Low Value Change set out in Appendix 1 Part 2 (*Small Works and Services Rates*) to this Schedule 16 (*Change Protocol*), as amended from time to time in accordance with paragraph 8 of Section 2

(Low Value Changes) of this Schedule 16 (*Change Protocol*);

"Stage 1 Approval"

has the meaning given in paragraph 3.7 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"Stage 1 Approved Project"

has the meaning given in paragraph 3.7 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"Stage 2 Approval"

has the meaning given in paragraph 8.2.1 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"Stage 2 Approved Project"

has the meaning given in paragraph 8.2.1 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"Subordinated Debt Rate"

means [REDACTED];

"Target Cost"

has the meaning given in paragraph 2.1.2 of Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*);

"Third Party Costs"

means in relation to a High Value Change, the costs incurred by Project Co with third parties in responding to an Authority Change Notice for a High Value Change, including, but not limited to, the Sub-Contractors, consultants and advisers but under the exclusion of any costs incurred by the Sub-contractors in relation to project managing the development, procurement and implementation of the High Value Change;

"Whole Life Cost"

means the estimated and (to the extent that such information is available) the actual cost of operating and maintaining that High Value Change over its intended design life (consistent with Project Co's Proposals).

SECTION 2

LOW VALUE CHANGES

1 Low Value Change Notice

1.1 Subject to paragraph 1.2 of this Section 2 (*Low Value Changes*), where a Low Value Change is required by the Authority, it must submit an Authority Change Notice to Project Co.

1.2 The Authority may carry out Derogated Low Value Changes during the Operational Term. If the Authority wishes to carry out a Derogated Low Value Change it shall send Project Co a notice at least five (5) Business Days prior to the date on which it proposes to start to implement the Change setting out the nature of the proposed Change in sufficient detail to enable Project Co to satisfy itself that the proposed Change constitutes a Derogated Low Value Change. Project Co may notify the Authority within three (3) Business Days of receipt of a Derogated Low Value Change Notice that it does not agree that the proposed Change constitutes a Derogated Low Value Change and, unless the parties otherwise agree, the Authority must not take any steps to carry out the proposed Change unless it has referred the dispute to the Dispute Resolution Procedure and it has been determined that the proposed Change is a Derogated Low Value Change.

1.3 If it carries out a Derogated Low Value Change, the Authority must use Good Industry Practice to the standards that would have applied to Project Co if it had carried it out as a Low Value Change.

2 Authority Change Notice

An Authority Change Notice for a Low Value Change must:

2.1 state that it relates to a Low Value Change;

2.2 contain a description of the works and/or the change to the Works, Restricted Services and/or the Services that the Authority requires including, if relevant, the applicable type of Low Value Change listed in the Catalogue; and

2.3 if there is no applicable type of change listed in the Catalogue, specify the time period within which the Authority requires the Change to be implemented.

3 Project Co Response and Authority Confirmation

Within five (5) Business Days of receipt of an Authority Change Notice for a Low Value Change, Project Co must notify the Authority of:

3.1 the cost of implementing the required Low Value Change; and

3.2 the time period for implementing the Low Value Change,

in each case in accordance with paragraph 4 of this Section 2 (*Low Value Changes*).

4 Cost and Timing

4.1 If the Low Value Change is of a type listed in the Catalogue, the cost of carrying out that Low Value Change shall not exceed the relevant Catalogue Price and the time period for implementing the Low Value Change shall not exceed the relevant time specified in the Catalogue.

4.2 If the Low Value Change is not of a type that is listed in the Catalogue, the cost of carrying out that Low Value Change shall be calculated on the basis that:

- 4.2.1 wherever practicable the Low Value Change will be carried out by an existing on-site and suitably qualified employee of Project Co or a Project Co Party and in that case Project Co may not charge for labour. Where there is no such suitably qualified on-site employee reasonably available to carry out the Low Value Change, the cost of the labour element will be calculated in accordance with the Small Works and Services Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and
- 4.2.2 the materials element will be calculated in accordance with the Small Works and Services Rates or, where such rates are not applicable, in accordance with the cost of materials to Project Co or to the Project Co Party carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied in relation thereto.

4.3 Other than the costs referred to in paragraphs 4.1 and 4.2 of this Section 2 (*Low Value Changes*) Project Co may not charge the Authority for processing, implementing or managing a Low Value Change.

4.4 The annual aggregate value of Low Value Changes requested by the Authority cannot exceed two hundred and fifty thousand pounds (£250,000), unless otherwise agreed by Project Co.

5 **Authority objection**

The Authority may object in writing within five (5) Business Days of receipt of Project Co's notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*), to any part of that notice and in that event the parties shall act reasonably to endeavour to agree as soon as practicable how the Low Value Change is to be implemented, which may include the Authority withdrawing the Authority Change Notice.

6 **Implementation**

6.1 Project Co must implement a required Low Value Change so as to minimise any inconvenience to the Authority and, subject to paragraph 10.2 of this Section 2 (*Low Value Changes*), within the timescale specified in the notice given by Project Co pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) (or agreed by the parties pursuant to paragraph 5 of this Section 2 (*Low Value Changes*)).

6.2 Project Co shall notify the Authority when it considers that the Low Value Change has been completed.

6.3 If Project Co:

- 6.3.1 fails to give a notice to the Authority in accordance with paragraph 3 of this Section 2 (*Low Value Changes*) within fifteen (15) Business Days of the date of the Authority Change Notice; or
- 6.3.2 gives a notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) to which the Authority has objected pursuant to paragraph 5 of this Section 2 (*Low Value Changes*) on any ground other than the cost of the Low Value Change, the parties have not reached agreement as to how the Low Value Change is to be implemented and the objection has not been referred to the Dispute Resolution Procedure; or

- 6.3.3 gives a notice pursuant to paragraph 3 of this Section 2 (*Low Value Changes*) to which the Authority does not object pursuant to paragraph 5 but then fails to fully implement the Low Value Change within ten (10) Business Days after the timescale specified in that notice or agreed in accordance with paragraph 5 of this Section 2 (*Low Value Changes*),

then, subject to paragraph 10.3 of this Section 2 (*Low Value Changes*), the Authority may notify Project Co that the Authority Change Notice is withdrawn and, following such notification, may procure the implementation of the Low Value Change without further recourse to Project Co, but the Authority must ensure that the Low Value Change is carried out in accordance with Good Industry Practice and to the standards that would have applied to Project Co if it had implemented the Low Value Change.

7 Payment

Unless the Authority notifies Project Co within five (5) Business Days of receipt of a notice from Project Co pursuant to paragraph 6.2 above that the Low Value Change has not been implemented to its reasonable satisfaction:

- 7.1 Project Co shall, where the Low Value Change is implemented prior to the Operational Term, issue an invoice in respect of the costs of the Low Value Change, which the Authority must pay within twenty (20) Business Days of receipt; or
- 7.2 Project Co shall, where the Low Value Change is implemented during the Operational Term, include the costs of the Low Value Change in the next Monthly Invoice submitted pursuant to Clause 39.2 (*Invoicing and payment arrangements*) of this Agreement following completion or implementation of the relevant Low Value Change and the amounts payable for the Low Value Changes shall be invoiced and paid in accordance with the procedure described in Clause 39 (*Payment*) of this Agreement.

8 Update of Catalogue and Small Works and Services Rates

- 8.1 From the Commencement Date the Catalogue shall be that set out in Part 1 (*Catalogue*) of Appendix 1 to this Schedule 16 (*Change Protocol*) and the Small Works and Services Rates shall be those set out in Part 2 (*Small Works and Services Rates*) of Appendix 1 to this Schedule 16 (*Change Protocol*).
- 8.2 Subject to paragraph 8.3 of this Section 2 (*Low Value Changes*), the unit prices and the Small Works and Services Rates set out in the Catalogue and the Small Works and Services Rates shall be indexed on each anniversary of the Commencement Date for the change in CPI since the Commencement Date or, after the first Catalogue Review Date, since the most recent Catalogue Review Date.
- 8.3 On the date which is twenty (20) Business Days before each Catalogue Review Date, Project Co must provide the Authority with:
- 8.3.1 a revised and updated Catalogue which:
- (a) includes in the Catalogue unit prices for any types of Low Value Changes which have occurred and which the parties consider are reasonably likely to reoccur during the life of the Project and any other types of Low Value Changes as the parties may agree; and
 - (b) includes time periods for the carrying out of each listed type of Low Value Change; and

8.3.2 updated Small Works and Services Rates.

The unit prices and Small Works and Services Rates will be for the ensuing three (3) year period following the Catalogue Review Date. The unit prices must represent good value for money having regard to:

- (a) prices prevailing for similar items in the market at the time; and
- (b) paragraph 4.2 of this Section 2 (*Low Value Changes*).

The Small Works and Services Rates must provide value for money with reference to rates prevailing for similar services or works (as applicable) in the market at the time.

8.4 Within ten (10) Business Days of the submission by Project Co of the revised and updated Catalogue and Small Works and Services Rates pursuant to paragraph 8.3 of this Section 2 (*Low Value Changes*), the Authority shall confirm in writing whether or not it agrees that the revised and the updated Catalogue shall constitute the Catalogue and the updated Small Works and Services Rates shall constitute the Small Works and Services Rates for the purposes of this Agreement from the relevant Catalogue Review Date;

8.5 If the Authority does not confirm to Project Co that it agrees with the revised and updated Catalogue and/or Small Works and Services Rates provided by Project Co pursuant to paragraph 8.3 of this Section 2 (*Low Value Changes*), the parties shall meet and endeavour, in good faith, to agree any amendments to the Catalogue and/or Small Works and Services Rates. Any dispute in relation to this paragraph 8 may be referred by either party to the Dispute Resolution Procedure. The revised and updated Catalogue and revised and updated Small Works and Services Rates with such amendments as are agreed by the parties or determined under the Dispute Resolution Procedure shall constitute the Catalogue and the Small Works and Services Rates for the purposes of this Agreement from the relevant Catalogue Review Date.

9 Documentation and Monitoring

9.1 No due diligence (whether funder, legal, technical, insurance or financial) shall be required in relation to Low Value Changes unless otherwise agreed between the parties.

9.2 The Works, Services, Project Facilities and/or Authorities Policies (as appropriate) shall be deemed to be amended pursuant to Clause 76, (*Amendments*) to include any required Low Value Change implemented by Project Co pursuant to paragraph 6.1 of this Section 2 (*Low Value Changes*). Subject to paragraph 9.3 of this Section 2 (*Low Value Changes*), no other changes shall be made to this Agreement or any Project Document as a result of a Low Value Change, unless otherwise agreed between the parties.

9.3 Where it is agreed that an adjustment of the Annual Service Payment is required in respect of a Low Value Change, the Financial Model and Annual Service Payment shall be adjusted to give effect to such Low Value Changes once each Contract Year on a date to be agreed between the parties and all relevant Low Value Changes that have occurred since the preceding such adjustment shall be aggregated together into a single cumulative adjustment in accordance with Section 6 (*Changing the Financial Model*) of this Schedule 16 (*Change Protocol*).

9.4 Project Co shall keep a record of all Low Value Changes processed, completed and outstanding and shall provide the Authority with a copy of that record whenever reasonably required by the Authority.

10 **Disputes**

- 10.1 Any dispute concerning any matter referred to in this Section 2 (*Low Value Changes*) may be referred by either party to the Dispute Resolution Procedure.
- 10.2 Project Co shall not be obliged to implement the Low Value Change until any dispute has been determined except that where such dispute concerns only the cost of a Low Value Change, unless the Authority otherwise directs, Project Co must continue to carry out or implement the Low Value Change within the prescribed timescale notwithstanding the dispute.
- 10.3 The Authority is not entitled to withdraw an Authority Change Notice and procure implementation of a Low Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Project Co has not confirmed to the Authority in writing within five (5) Business Days of the date of the determination that it will implement and carry out the Low Value Change in accordance with the determination.

SECTION 3

NOT USED

SECTION 4

HIGH VALUE CHANGES

1 High Value Changes

1.1 If the Authority requires a High Value Change it must serve an Authority Change Notice on Project Co in accordance with paragraph 2 of this Section 4 (*High Value Changes*).

1.2 Project Co shall be entitled to refuse a High Value Change that:

- 1.2.1 requires the Works, Restricted Services and/or the Services to be performed in a way that infringes any law or is inconsistent with Good Industry Practice;
- 1.2.2 would cause any Consent, New Order, Roads Order or Compulsory Purchase Order to be revoked (or would require a new consent to be obtained to implement the relevant change in the Works, Restricted Services and/or the Services which, after using reasonable efforts, Project Co has been unable to obtain);
- 1.2.3 would materially and adversely affect Project Co's ability to deliver the Works, Restricted Services and/or the Services (except those Works, Restricted Services and/or Services which have been specified as requiring to be amended in the Authority Change Notice) in a manner not compensated pursuant to this Section 4 (*High Value Changes*);
- 1.2.4 would materially and adversely affect the health and safety of any person;
- 1.2.5 would, if implemented, materially and adversely change the nature of the Project (including its risk profile);
- 1.2.6 is the subject of a Authority Change Notice that cannot reasonably be complied with;
- 1.2.7 the Authority does not have the legal power or capacity to require implementation of; or
- 1.2.8 would if implemented adversely affect the enforceability or priority of the security held by or on behalf of the existing Senior Funders.

2 High Value Change Notice

2.1 An Authority Change Notice for a High Value Change must:

- 2.1.1 state that it refers to a High Value Change;
- 2.1.2 set out the maximum available capital and/or revenue the Authority is able to commit to that High Value Change (the "**Target Cost**");
- 2.1.3 identify any requirements of the Authority that must be satisfied as part of the High Value Change Proposal (the "**High Value Change Requirements**"); and
- 2.1.4 identify how the Authority will assess whether the High Value Change Stage 2 Submission offers it value for money.

2.2 The parties may agree written protocols with express reference to this Section 4 (*High Value Changes*) which explain or clarify any aspects of the High Value Change approval procedure set out in this Section 4 (*High Value Changes*) and such protocols shall be read as if incorporated into this Section 4 (*High Value Changes*) (including accelerated procedures with reduced requirements for High Value Changes of relatively low values).

2.3 The parties must:

2.3.1 within five (5) Business Days of receipt by Project Co of any Authority Change Notice for a High Value Change, discuss and review the nature of the High Value Change, including a discussion as to which of the items set out in paragraph 3.4 of this Section 4 (*High Value Changes*) are appropriate to be included within the High Value Change Proposal; and

2.3.2 within five (5) Business Days of a High Value Change Proposal becoming a Stage 1 Approved Project, discuss and review the nature of the Stage 1 Approved Project, including a discussion as to which of the items set out in paragraph 3.4 of this Section 4 (*High Value Changes*) are appropriate to be included within the High Value Change Stage 2 Submission.

3 High Value Change Proposal

3.1 Project Co must notify the Authority in writing as soon as practicable and in any event within fifteen (15) Business Days after having received the Authority Change Notice for a High Value Change if it considers that any of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply. If no such notice is served, Project Co must (within thirty (30) Business Days after having received the Authority Change Notice) either:

3.1.1 submit a High Value Change Proposal to the Authority; or

3.1.2 notify the Authority as to when the High Value Change Proposal will be provided to it (provided that Project Co shall use all reasonable endeavours to obtain all the information that it requires, expeditiously).

3.2 If Project Co notifies the Authority that it considers that one or more of the grounds set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply, then unless the parties otherwise agree, the Authority shall be deemed to have withdrawn the Authority Change Notice if it has not referred the matter to the Dispute Resolution Procedure within twenty (20) Business Days of receipt of Project Co's notice. If the matter is referred to the Dispute Resolution Procedure the time for Project Co to provide the High Value Change Proposal shall be counted from the date of determination of that dispute if the dispute is determined in Project Co's favour.

3.3 If the Authority considers that Project Co's proposed time for providing the High Value Change Proposal is not reasonable, the parties shall endeavour to agree the time, failing which the matter may be referred to the Dispute Resolution Procedure.

3.4 Unless Project Co has submitted a High Value Change Proposal in accordance with paragraph 3.1.1 of this Section 4 (*High Value Changes*), Project Co must deliver to the Authority the High Value Change Proposal as soon as reasonably practicable and in any event within the time period agreed or determined pursuant to paragraph 3.3 of this Section 4 (*High Value Changes*). Unless the parties agree otherwise, a High Value Change Proposal will contain at least the following information in sufficient detail to enable the Authority to make an informed decision under paragraph 3.6 of this Section 4 (*High Value Changes*):

- 3.4.1 a description of the High Value Change, with evidence of how the High Value Change meets the High Value Change Requirements;
- 3.4.2 an outline of the proposed building solution and design including an appropriate analysis/risk appraisal of, in each case to the extent relevant (if at all), the preferred investment solution contemplated in terms of new build, refurbishment, whole life costings;
- 3.4.3 the Change Management Fee for the High Value Change, which shall be a capped fee calculated in accordance with paragraph 10 of this Section 4 (*High Value Changes*);
- 3.4.4 details of the third party activity likely to be required by Project Co in developing a High Value Change Stage 2 Submission together with a budget (or budgets) for relative Third Party Costs;
- 3.4.5 an estimated programme for submission of the High Value Change Stage 2 Submission and for the implementation of the High Value Change;
- 3.4.6 any requirement for relief from compliance with obligations, including the obligations of Project Co to achieve the Phase Actual Completion Date by the relevant Phase Completion Date and meet the requirements set out in the Authority's Construction Requirements and/or the Service Level Specification during the implementation of the High Value Change;
- 3.4.7 any impact on the provision of the Works, Restricted Services and/or the Services;
- 3.4.8 any amendment required to this Agreement and/or any Project Document as a result of the High Value Change;
- 3.4.9 any Estimated Change in Project Costs that results from the High Value Change;
- 3.4.10 an outline of how Project Co proposes to finance any Capital Expenditure required for the High Value Change;
- 3.4.11 Project Co's suggested payment schedule for any Capital Expenditure to be incurred in implementing the Change that is to be borne by the Authority, based on milestones where relevant;
- 3.4.12 any new Consents and/or any New Orders and/or any amendments to existing Consents, Roads Orders, Compulsory Purchase Orders and/or any New Orders which are required;
- 3.4.13 costs and details of any other approvals required or due diligence permitted pursuant to paragraph 14 of this Section 4 (*High Value Changes*);
- 3.4.14 the proposed method of certification of any construction or operational aspects of the Works or the Services required by the proposed High Value Change if not covered by the procedures specified in Clause 16 (*Permits to Use*); and
- 3.4.15 a value for money assessment explaining why Project Co's proposals represent value for money taking into account both the proposed Capital Cost and Whole Life Cost.

3.5 Liaison between Project Co and the Authority

In developing a High Value Change Proposal Project Co must liaise with the Authority. The Authority must provide Project Co with such information about its requirements as Project Co reasonably requires and must assist Project Co in the review of any draft designs in relation to the High Value Change Proposal. Any and all information and other input or feedback provided by the Authority to Project Co, unless expressly stated otherwise by the Authority, will be without warranty and will be provided without prejudice to the Authority's rights under this Section 4 (*High Value Changes*).

3.6 Consideration of a High Value Change Proposal by the Authority

The Authority will consider in good faith each High Value Change Proposal put forward by Project Co and the Authority will not unreasonably withhold or delay its consent to a High Value Change Proposal. If, acting reasonably, the Authority finds that any material aspects of the High Value Change Proposal are unsatisfactory to it, it shall notify Project Co of the same and offer reasonable assistance to Project Co to enable it to revise and resubmit the High Value Change Proposal as soon as reasonably practicable.

3.7 Authority response to a High Value Change Proposal

If the Authority approves a High Value Change Proposal (including any revised High Value Change Proposal resubmitted pursuant to paragraph 3.6 of this Section 4 (*High Value Changes*)), then it shall be a "**Stage 1 Approved Project**" or be referred to as having received "**Stage 1 Approval**", as the context requires.

3.8 Project Co not entitled to dispute non-approval

Subject to clause 37 (*Change in Law*), Project Co shall not be entitled to refer any dispute concerning the Authority's failure to approve a High Value Change Proposal to the Dispute Resolution Procedure.

4 Stage 2 Submission

4.1 Development of a High Value Change Stage 2 Submission

4.1.1 Within ten (10) Business Days of a High Value Change Proposal having become a Stage 1 Approved Project, the parties shall seek to agree the time period within which Project Co must develop the Stage 1 Approved Project into a detailed submission (the "**High Value Change Stage 2 Submission**"). If the parties are unable to agree a reasonable time period for such submission any dispute may be referred to the Dispute Resolution Procedure.

4.1.2 Following agreement or determination of what is an appropriate time period for submission by Project Co of the High Value Change Stage 2 Submission pursuant to paragraph 4.1.1 of this Section 4 (*High Value Changes*), Project Co shall proceed regularly and diligently to produce and submit the same to the Authority within the agreed or determined time period.

4.2 Liaison between Project Co, the Authority

In developing a High Value Change Stage 2 Submission Project Co must continue to liaise with the Authority. The Authority must provide Project Co with such information as to its requirements as is reasonably necessary to enable Project Co to submit a full and complete High Value Change Stage 2 Submission and any such other information as Project Co may reasonably require and must

assist Project Co in the review of any draft designs in relation to the Stage 1 Approved Project and in the development of other aspects of the High Value Change Stage 2 Submission (but not where this would involve the Authority incurring additional material expense). Any and all information and other input or feedback provided by the Authority to Project Co will be without warranty and will be provided without prejudice to the Authority's rights under this Section 4 (*High Value Changes*).

4.3 Content requirements in relation to a High Value Change Stage 2 Submission

Save where the parties agree otherwise, in relation to the relevant Stage 1 Approved Project, Project Co shall procure that a High Value Change Stage 2 Submission includes (but not be limited to):

- 4.3.1 draft(s) of the relevant Project Document(s) identifying (if relevant) any material changes or amendments proposed in respect of the relevant Stage 1 Approved Project, together with the reasons for any such changes or amendments proposed and including full details of which provisions of the relevant Project Documents will apply to the High Value Change so that it is implemented in equivalent manner and to an equivalent standard as required in respect of the Works, Restricted Services and/or Services as appropriate;
- 4.3.2 detailed design solutions;
- 4.3.3 appropriate plans and drawings;
- 4.3.4 relevant detailed planning permissions and any other relevant planning approvals, New Orders and Consents (or such lesser confirmation or information in relation to planning as may be agreed with the Authority);
- 4.3.5 a proposed revised Financial Model including the detailed price estimates for the Stage 1 Approved Project;
- 4.3.6 an explanation (together with appropriate supporting evidence) as to why the High Value Change Stage 2 Submission meets the Approval Criteria (as defined in paragraph 7 of this Section 4 (*High Value Changes*));
- 4.3.7 confirmation (or details of any requested variations to (with supporting justification)) of the Change Management Fee referred in paragraph 3.4.3 of this Section 4 (*High Value Changes*);
- 4.3.8 the proposed method of certification of any construction aspects of the High Value Change, if not covered by the procedures specified in Clause 16 (*Permits to Use*);
- 4.3.9 a value for money assessment explaining why Project Co's proposals represent value for money taking into account both the proposed Capital Cost and Whole Life Cost;
- 4.3.10 a timetable and method statement setting out how the relevant High Value Change will be delivered, which shall include (but not be limited to) in so far as relevant:
 - (a) proposals for the effective management of the building programme;
 - (b) project specific information;

- (c) an assessment as to the savings to be generated by the High Value Change, particularly on staff costs and lifecycle replacement and maintenance and operation of Services;
- (d) details of the Sub-Contractors together with evidence and explanation of the value testing undertaken by Project Co in relation to the High Value Change;
- (e) a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;

4.3.11 any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to Changes involving the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects.

4.4 Co-operation of the Authority

The Authority will co-operate with Project Co in relation to any High Value Change Stage 2 Submission being developed by Project Co, including (without limitation) promptly providing:

- 4.4.1 written confirmation of the Target Cost and/or High Value Change Requirements and any change to such Target Cost and/or High Value Change Requirements; and
- 4.4.2 any information reasonably required by Project Co to enable it to satisfy the requirements of paragraph 4.3 of this Section 4 (*High Value Changes*).

5 Time periods for approval

5.1 Each High Value Change Proposal and each High Value Change Stage 2 Submission shall be valid for a period of three (3) months from the date of its submission by Project Co.

5.2 If by the end of the three (3) month period referred to in paragraph 5.1 of this Section 4 (*High Value Changes*) the Authority has not:

- 5.2.1 in relation to a High Value Change Proposal, approved or rejected that High Value Change Proposal in accordance with the procedures set out in this Section 4 (*High Value Changes*):
 - (a) Project Co shall be entitled to withdraw the High Value Change Proposal; and
 - (b) Project Co shall not be entitled to any costs relating to the High Value Change Proposal unless the Authority has either not responded to the High Value Change Proposal and/or is in

material breach of its obligations in paragraph 3 and/or paragraph 4.4 of this Section 4 (*High Value Changes*) in which case paragraph 8.5 of this Section 4 (*High Value Changes*) shall apply;

- 5.2.2 in relation to a High Value Change Stage 2 Submission, approved or rejected that High Value Change Stage 2 Submission in accordance with the procedures set out in this Section 4 (*High Value Changes*) (or has not given any notification of the Authority's response to the High Value Change Stage 2 Submission or has given written notice to Project Co withdrawing or cancelling the High Value Change to which the High Value Change Stage 2 Submission relates) then the High Value Change Stage 2 Submission shall be deemed to have been improperly rejected by the Authority and paragraph 8.5 shall apply.

6 Changes to the High Value Change Requirements or Approval Criteria

6.1 If the High Value Change Requirements or Approval Criteria are subject to any material variation in relation to a High Value Change by the Authority after the High Value Change Proposal has been submitted then:

- 6.1.1 Project Co and the Authority shall negotiate in good faith as to the implications on the High Value Change Proposal or High Value Change Stage 2 Submission (as the case may be) and shall seek to agree changes thereto to accommodate the variation (including any change to the Target Cost and/or to the Change Management Fee);
- 6.1.2 if agreement has not been reached pursuant to paragraph 6.1.1 of this Section 4 (*High Value Changes*) within twenty (20) Business Days (or such longer period as the parties may agree) then:
 - (a) Project Co shall be entitled by notice in writing to the Authority to withdraw the High Value Change Proposal or the High Value Change Stage 2 Submission (as the case may be) and to be paid the Incurred Change Management Fee with the Calculation Date being the date of the variation notified by the Authority; and
 - (b) the Authority shall not be entitled to procure the High Value Change without issuing a new Authority Change Notice for the High Value Change and complying with the procedure in this Section 4 (*High Value Changes*) in relation to that High Value Change.
- 6.1.3 The Authority may, at any time, give notice in writing to Project Co that it proposes to cancel a High Value Change without completing the process set out in this Section 4 (*High Value Changes*) in which case the Authority must pay Project Co the Incurred Change Management Fee in respect of the cancelled High Value Change with the Calculation Date being the date of such notice.

7 Approval Criteria

7.1 For the purposes of this Section 4 (*High Value Changes*), Approval Criteria means the criteria against which any Stage 1 Approved Project is to be judged by the Authority in determining whether it achieves Stage 2 Approval. The criteria are:

- 7.1.1 whether the costs of the Stage 1 Approved Project are within the Target Cost notified to Project Co by the Authority;

- 7.1.2 whether it has been demonstrated that the Stage 1 Approved Project provides value for money assessed in accordance with the measures identified by the Authority in accordance with paragraph 2.1.4 of this Section 4 (*High Value Changes*);
- 7.1.3 whether the Authority, acting reasonably, is satisfied that the High Value Change Stage 2 Submission meets the High Value Change Requirements;
- 7.1.4 whether any material changes or amendments to the relevant Project Document(s) as detailed pursuant to paragraph 4.3.1 of this Section 4 (*High Value Changes*) are acceptable to the Authority, acting reasonably; and
- 7.1.5 whether the High Value Change Stage 2 Submission contains all the information required pursuant to paragraph 4.3 of this Section 4 (*High Value Changes*) (or as otherwise agreed by the parties).

8 **Submission of the High Value Change Stage 2 Submission to the Authority and consideration of that submission by the Authority**

- 8.1 The Authority will consider in good faith High Value Change Stage 2 Submissions submitted by Project Co and the Authority will not unreasonably withhold or delay its consent to a High Value Change Stage 2 Submission. The Authority is entitled to call for such reasonable information and assistance as it considers appropriate to enable it to decide whether the High Value Change Stage 2 Submission meets the Approval Criteria. Project Co must reply promptly to all such requests for further information and assistance.
- 8.2 As soon as reasonably practicable after the submission to it of a High Value Change Stage 2 Submission (including any revised High Value Change Stage 2 Submission re-submitted by Project Co) the Authority must give written notice of whether it:
 - 8.2.1 approves the relevant Stage 1 Approved Project (in which case the Stage 1 Approved Project will be referred to as having received "**Stage 2 Approval**" or as being a "**Stage 2 Approved Project**" or an "**Approved Project**" as the context requires); or
 - 8.2.2 rejects the Stage 1 Approved Project:
 - (a) on the ground that the High Value Change Stage 2 Submission in relation to the relevant Stage 1 Approved Project has failed to meet one or more of the Approval Criteria (except as referred to in paragraph 8.2.2(b)(i) or paragraph 8.2.2(b)(ii)), in which case (subject to resubmission under paragraph 8.2.3) paragraph 8.3 shall apply;
 - (b)
 - (i) because, as a result of any change to the Target Cost referred to in paragraph 2.1.2, the Stage 1 Approved Project is not in fact Affordable despite the High Value Change Stage 2 Submission being within the Target Cost notified by the Authority pursuant to paragraph 2.1.2 of this Section 4 (*High Value Changes*); or
 - (ii) because Project Co has failed to meet one or more of the Approval Criteria and the sole reason for that failure is that any new Consents and/or any New Orders and/or any amendments to existing Consents, Roads Orders, Compulsory Purchase Orders and/or any New Orders identified by Project Co (in compliance

with paragraph 3.4.12 of this Section 4 (*High Value Changes*)) has not been obtained; or

- (iii) otherwise on grounds other than those set out in paragraphs 8.2.2(a), 8.2.2(b)(i)(i) and 8.2.2(b)(ii) of this Section 4 (*High Value Changes*),

in which case paragraph 8.5 shall apply.

8.2.3 If the Authority rejects the High Value Change Stage 2 Submission on the grounds set out in paragraph 8.2.2(a) the Authority and Project Co will work together to address the reasons for such failure and attempt in good faith to produce a revised High Value Change Stage 2 Submission for Project Co to re-submit to the Authority.

8.2.4 If:

- (a) a resubmitted High Value Change Stage 2 Submission is rejected by the Authority on the ground set out in paragraph 8.2.2(a) (subject to paragraphs 16.3 to 16.4 (if applicable) of this Section 4 (*High Value Changes*)); or
- (b) no resubmission of the High Value Change Stage 2 Submission is made within thirty (30) Business Days of the date of the notice of rejection (or such longer period as the parties may agree),

then the relevant Stage 1 Approved Project shall be treated as having been properly rejected, the provisions of paragraph 8.3 of this Section 4 (*High Value Changes*) shall apply and neither the Authority nor Project Co will have any further obligations in relation to the relevant High Value Change referred to in the High Value Change Stage 2 Submission.

If a High Value Change Stage 2 Submission is properly rejected by the Authority

8.3 Where this paragraph 8.3 applies (as set out in paragraph 8.2.2(a), paragraph 8.2.4 and paragraph 16.4.2 of this Section 4 (*High Value Changes*)) the Authority shall not be required to reimburse or compensate Project Co in respect of any costs relating to the High Value Change including the Change Management Fee.

8.4 If:

- 8.4.1 Project Co fails to provide a response to an Authority Change Notice in accordance with paragraph 3.1 of this Section 4 (*High Value Changes*); or
- 8.4.2 (where applicable) Project Co fails to provide a High Value Change Proposal in accordance with paragraph 3.4 of this Section 4 (*High Value Changes*); or
- 8.4.3 Project Co fails to submit a High Value Change Stage 2 Submission in accordance with paragraph 4.1.2 of Section 4 (*High Value Changes*); or
- 8.4.4 the Authority has validly rejected a High Value Change Stage 2 Submission in accordance with paragraph 8.2 and the matter has not been referred to the Dispute Resolution Procedure or any such dispute has been determined as described in paragraph 16.4.2 of this Section 4 (*High Value Changes*),

then, subject to paragraph 17 of this Section 4 (*High Value Changes*), the Authority may notify Project Co that the Authority Change Notice is withdrawn and, following such notification, may procure the implementation of the High Value Change without further recourse to Project Co, but the Authority must ensure that the High Value Change is carried out in accordance with Good Industry Practice

and to the standards that would have applied to Project Co if it had implemented the High Value Change.

If a High Value Change Stage 2 Submission is improperly rejected by the Authority

8.5 Where this paragraph 8.5 applies (as set out in paragraph 5.2.1(b), paragraph 5.2.2 paragraph 8.2.2(b) and paragraph 16.4.1)), the Incurred Change Management Fee and Third Party Costs incurred by Project Co to prepare the High Value Change Proposal and Stage 2 Submission, which shall be in accordance with the activities and budget referred to in paragraph 3.4.4 of this Section 4 (*High Value Changes*), in relation to the relevant High Value Change will be paid by the Authority within ten (10) Business Days of the date on which Project Co receives written notice of the rejection or the date of the deemed rejection (as the case may be) with the date of the rejection or the deemed rejection (as the case may be) being the Calculation Date for the purposes of calculating the amount of the Incurred Change Management Fee (unless a different Calculation Date is expressly stated in this Section 4 (*High Value Changes*) in relation to the circumstances giving rise to the entitlement of Project Co to be paid the Incurred Change Management Fee).

9 Information and notifications by the Authority to Project Co and cooperation of the Authority

9.1 The Authority must notify Project Co as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any High Value Change including any:

- 9.1.1 planning issues likely to cause a material delay in the anticipated programme for the High Value Change or material cost increases; and
- 9.1.2 changes to funding which the Authority receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is Affordable.

9.2 The Authority shall provide reasonable assistance to Project Co in relation to the procurement by Project Co of all relevant Consents.

10 Change Management Fee

The Change Management Fee is to reimburse Project Co for the time spent by its employees and the employees of the Contractor and/or the Service Provider in project managing the development, procurement and implementation of the High Value Change and shall:

- 10.1 be based on actual time spent (validated by time sheets);
- 10.2 be calculated at the daily rates as set out in Appendix 2 Part 3 (*Consultant, Sub Contractor or Supplier Fees*) to this Schedule 16 (*Change Protocol*), but capped at the sum set out in the High Value Change Proposal;
- 10.3 not include the time of any person who is not employed by Project Co, the Contractor and/or the Service Provider, as the case may be;
- 10.4 not include any mark-up or profit or additional overheads;
- 10.5 be paid in three (3) stages as follows:
 - 10.5.1 on Stage 1 Approval;
 - 10.5.2 on Stage 2 Approval; and

10.5.3 when any works involved in the High Value Change have been completed,

and at each stage Project Co shall charge the Authority (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

11 Implementation of the High Value Change

Project Co must implement any High Value Change approved by the Authority so as to minimise any inconvenience to the Authority and in accordance with the Approved Project. Where an extension of time has been agreed as part of the Stage 2 Approval the relevant Phase Completion Dates shall be extended as agreed in the Approved Project.

12 Method of Payment of Authority Contribution

12.1 This paragraph 12 shall apply where Capital Expenditure for an Approved Project is to be funded in whole or part by the Authority.

12.2 Project Co shall invoice the Authority for Capital Expenditure incurred by Project Co to implement a High Value Change that is to be borne by the Authority according to the payment schedule set out in the High Value Change Stage 2 Submission as referred to in paragraph 3.4.11 of this Section 4 (*High Value Changes*).

12.3 The Authority shall make a payment to Project Co within fifteen (15) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with paragraph 12.2 of this Section 4 (*High Value Changes*), accompanied by the relevant evidence (where applicable) that the relevant part of the High Value Change has been carried out.

13 Adjustment to Annual Service Payment

Any adjustment to the Annual Service Payment which is necessary as a result of the implementation of a High Value Change shall be calculated in accordance with Section 6 (*Changing the Financial Model*) of this Schedule 16 (*Change Protocol*).

14 Due Diligence

14.1 Where the Authority is funding the High Value Change, Project Co shall procure that the Senior Funders shall not withhold or delay any consents which are required pursuant to the Senior Funding Agreements to such High Value Change other than on the basis that the Senior Funders, acting pursuant to the terms of the Senior Funding Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply.

14.2 Where the Authority is not funding the High Value Change, Project Co shall procure that the Senior Funders do not unreasonably withhold or delay any consents which are required pursuant to the Senior Funding Agreements to such High Value Change other than on the basis that the Senior Funders, acting pursuant to the terms of the Senior Funding Agreements, reasonably believe that one or more of the circumstances set out in paragraphs 1.2.1 to 1.2.8 of this Section 4 (*High Value Changes*) apply.

14.3 The parties agree that the Senior Funders may carry out legal, financial, insurance and technical due diligence on any proposal for a High Value Change. The parties shall agree a budget for the due diligence provided that the costs may not exceed the lower of (i) three per cent (3%) of the overall value of the High Value Change in question or (ii) fifty thousand pounds (£50,000) unless, in

either case, the parties (acting reasonably) agree otherwise. Any costs incurred by Project Co as a result of the Senior Funders due diligence will be reimbursed by the Authority following the conclusion of the process in this Section 4 (*High Value Changes*) within ten (10) Business Days of Project Co submitting an invoice for and evidence of such costs, subject to the invoices being in accordance with the agreed budget.

- 14.4 It is acknowledged that High Value Changes (particularly where they involve a change to the Works or the Project Facilities) may require authorisation from the insurers under the Insurances required to be taken out and maintained pursuant to Clause 57. Project Co shall notify the relevant insurance broker immediately upon any material High Value Change being agreed (materiality being judged in relation to the size and nature of the scope of the High Value Change).
- 14.5 The parties agree that paragraph 14.2 of this Section 4 (*High Value Changes*) of this Schedule 16 (*Change Protocol*) does not oblige the Senior Funders to provide any additional funding for the relevant High Value Change, which shall be in their absolute discretion.

15 Project Documentation

- 15.1 The only changes to the Project Documents or Ancillary Documents to be made as a result of a High Value Change shall be those identified in the Approved Project (subject to any amendments to it agreed by the parties).
- 15.2 Project Co shall within twenty (20) days of completion of the Change, deliver updated electronic copies of the "as-built" drawings, "as-built" specification and the operating and maintenance manuals to the Authority and update the BIM information within the Common Data Environment including Information Model, Specified Model and Federated Model pursuant to the BIM Protocol as necessary to reflect the High Value Change. Project Co shall provide hard copies of any such documents where requested by the Authority (acting reasonably).

16 Disputes

- 16.1 Except as otherwise expressly provided, any dispute concerning any matter referred to in this Section 4 (*High Value Changes*) may be referred by either party to the Dispute Resolution Procedure.
- 16.2 The Authority shall not be entitled to approve a High Value Change Proposal or a High Value Change Stage 2 Submission that is the subject of a dispute until the dispute has been determined.
- 16.3 If the Authority rejects a High Value Change Stage 2 Submission pursuant to the provisions of paragraph 8.2.2(a) of this Section 4 (*High Value Changes*), Project Co shall be entitled to refer the matter for consideration under the Dispute Resolution Procedure within ten (10) Business Days after receiving written notice of the Authority's decision.
- 16.4 If, following a referral to the Dispute Resolution Procedure, it is agreed or determined:
 - 16.4.1 that the High Value Change rejected by the Authority pursuant to paragraph 8.2.2(a) of this Section 4 (*High Value Changes*) met the Approval Criteria the Authority shall either:
 - (a) declare that the relevant High Value Change has received Stage 2 Approval and that High Value Change shall proceed; or

- (b) declare that its rejection of the relevant High Value Change be treated as an improper rejection and that the provisions of paragraph 8.5 of this Section 4 (*High Value Changes*) shall apply.

16.4.2 the High Value Change did not meet the Approval Criteria, save in one of the respects referred to in paragraphs 8.2.2(b)(i) or 8.2.2(b)(ii) the provisions of paragraph 8.3 of this Section 4 (*High Value Changes*) shall apply.

17

The Authority is not entitled to withdraw an Authority Change Notice and procure implementation of a High Value Change in respect of which there is a dispute that has been referred to the Dispute Resolution Procedure, unless that dispute has been determined in its favour and Project Co has not confirmed to the Authority in writing within five (5) Business Days of the date of the determination that it will comply with its obligations under this Section 4 (*High Value Changes*) in accordance with the determination.

SECTION 5

PROJECT CO CHANGES

1

If Project Co wishes to introduce a Project Co Change, it shall serve a notice containing the information required pursuant to paragraph 2 of this Section 5 (*Project Co Changes*) (a "**Project Co Notice of Change**") on the Authority.

2

A Project Co Notice of Change shall:

2.1 set out the proposed Project Co Change in sufficient detail to enable the Authority to evaluate it in full;

2.2 specify Project Co's reasons for proposing the Project Co Change;

2.3 indicate any implications of the Project Co Change;

2.4 indicate what savings, if any, will be generated by the Project Co Change, including:

2.4.1 whether a reduction of the Annual Service Payment is proposed; or

2.4.2 whether such savings will be paid to the Authority in a lump sum,

in each case giving details in accordance with paragraph 8 of this Section 5 (*Project Co Changes*);

2.5 indicate whether there are any critical dates by which a decision by the Authority is required; and

2.6 request the Authority to consult with Project Co with a view to deciding whether to agree to the Project Co Change and, if so, what consequential changes the Authority requires as a result.

3

The Authority shall evaluate the Project Co Notice of Change in good faith, taking into account all relevant issues, including whether:

3.1 a revision of the Annual Service Payment will occur;

3.2 the Project Co Change may affect the quality of the Services, Restricted Services and/or the Works or the likelihood of successful completion of the Works and/or delivery of the Services, and/or Restricted Services (or any of them);

3.3 the Project Co Change will interfere with the relationship of the Authority with third parties;

3.4 the financial strength of Project Co is sufficient to perform the Works, Restricted Services and/or Services after implementation of the Project Co Change;

3.5 the value and/or life expectancy of any of the Project Facilities will be reduced; or

3.6 the Project Co Change materially affects the risks or costs to which the Authority is exposed.

4

As soon as practicable after receiving the Project Co Notice of Change, the parties shall meet and discuss the matters referred to in it, including in the case of a Relevant Change in Law those matters referred to in Clause 37.4 (*Relevant Changes in Law*) of this Agreement. During discussions the Authority may propose modifications to, or accept or reject, the Project Co Notice of Change.

5

If the Authority accepts the Project Co Notice of Change (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement the Authority shall issue a notice confirming the Project Co Change which shall set out the agreed the Project Co Change and:

5.1 shall enter into any documents to amend this Agreement or any relevant Ancillary Document which are necessary to give effect to the Project Co Change;

5.2 subject to paragraph 7 of this Section 5 (*Project Co Changes*), the Annual Service Payment shall be revised in accordance with Section 6 (*Changing the Financial Model*) of this Schedule 16 (*Change Protocol*); and

5.3 the Project Co Change shall be implemented within the period specified by the Authority in its notice of acceptance.

6

If the Authority rejects the Project Co Notice of Change, it shall not be obliged to give its reasons for such a rejection and Project Co shall not be entitled to reimbursement by the Authority of any of its costs involved in the preparation of the Project Co Notice of Change.

7

Unless the Authority's written acceptance expressly agrees to an increase in the Annual Service Payment or that Project Co should be entitled to relief from any of its obligations, there shall be no increase in the Annual Service Payment or relief granted from any obligations as a result of a Project Co Change.

8

If a Project Co Change causes, or will cause, Project Co's costs or those of a sub-contractor to decrease, there shall be a decrease in the Annual Service Payment such that any cost savings (following deduction of costs reasonably incurred by Project Co in implementing such Project Co Change) will be shared on the basis of fifty per cent (50%) of the saving being retained by Project Co and fifty per cent (50%) of the saving being paid to the Authority as a lump sum within ten (10) Business Days of agreement or determination or by way of revision of the Annual Service Payment pursuant to Section 6 (*Changing the Financial Model*) of this Schedule 16 (*Change Protocol*).

SECTION 6

CHANGING THE FINANCIAL MODEL

1 Procedure

If a Relevant Event occurs, the Financial Model shall be adjusted in accordance with this Section 6 (*Changing the Financial Model*) of this Schedule 16 (*Change Protocol*).

2 Adjusting the Logic or Formulae

If it is necessary to make a Logic Adjustment to permit an Input Adjustment or Assumption Adjustment to be made, Project Co shall make such Logic Adjustment only:

2.1 to the extent necessary;

2.2 in accordance with generally accepted accounting principles in the United Kingdom;
and

2.3 so as to leave Project Co in no better and no worse a position.

3 In order to demonstrate that the conditions in paragraph 2 are met, Project Co shall prepare:

3.1 a run of the Financial Model before making any Assumption Adjustment or Input Adjustment and immediately prior to making the Logic Adjustment; and

3.2 a run of the Financial Model immediately following the Logic Adjustment which shows that Project Co is in no worse and no better a position following the making of the Logic Adjustment.

4 Adjusting the Assumptions

Subject to paragraph 5, Project Co may make an Assumption Adjustment so that the Assumptions in the Financial Model reflect:

4.1 reasonable economic assumptions prevailing at the Adjustment Date; and

4.2 reasonably foreseeable changes in the prospective technical performance of the Project arising as a result of the Relevant Event.

5 In making Assumption Adjustments, Project Co may make such adjustments only insofar as they relate to the Relevant Event, and such adjustments shall not have effect in relation to any period prior to the Adjustment Date, nor in relation to any aspect of the Project other than the Relevant Event in the period following the Adjustment Date.

Adjusting the Inputs

6 Project Co may make Input Adjustments to the extent required to reflect the Estimated Change in Project Costs arising out of the Relevant Event.

7 Adjusting the Annual Service Payments

In order to calculate the adjustment to be made to the Annual Service Payments, Project Co shall run the Financial Model after making the Logic Adjustments, the Assumption Adjustments and the Input Adjustments relating to the Relevant Event and permitted by this Section 6 (*Changing the Financial Model*) of this Schedule 16 (*Change Protocol*) so that, following the Relevant Event, it is in no better and no worse a position than it would have been if no Relevant Event had occurred.

- 8 The Annual Service Payments shall be adjusted by such amount as leaves Project Co, following the Relevant Event, in no better and no worse a position than it would have been if no Relevant Event had occurred.

9 **No better and no worse**

Any reference in this Agreement to "no better and no worse" or to leaving Project Co in "no better and no worse a position" shall be construed by reference to Project Co's:

9.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Funding Agreements, the Construction Contract and Service Contracts; and

9.2 ability to perform its obligations and exercise its rights under this Agreement, the Funding Agreements, the Construction Contract and Service Contracts,

so as to ensure that:

9.3 Project Co is left in a position in relation to the Key Ratios which is no better and no worse in the Post-Adjustment Financial Model than it is in the Pre-Adjustment Financial Model; and

9.4 following the making of the Adjustments, the ability of Project Co to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

APPENDIX 1

Part 1

Not Used

APPENDIX 1**Part 2****Small Works and Services Rates**

In this Part 2 of Appendix 1 measurement of quantities shall be in accordance with Volume 4 (Bills of Quantities for Highway Works) of the Manual of Contract Documents for Highway Works (MCHW).

TABLE 1 - LABOUR

Description	Units	Rate (£/unit)	Quantity (units)	Cost (£)
Project Director	hrs	[REDACTED]		
Operations Manager	hrs	[REDACTED]		
Asset Manager	hrs	[REDACTED]		
Pavement Engineer	hrs	[REDACTED]		
Structures Engineer	hrs	[REDACTED]		
Geotechnics Engineer	hrs	[REDACTED]		
Landscape Architect	hrs	[REDACTED]		
Ecology Specialist	hrs	[REDACTED]		
Technology and Lighting / Electrical Engineer	hrs	[REDACTED]		
Other Specialist Support	hrs	[REDACTED]		
Engineer	hrs	[REDACTED]		
Senior Technician	hrs	[REDACTED]		
Technician	hrs	[REDACTED]		
Quantity Surveyor	hrs	[REDACTED]		

Description	Units	Rate (£/unit)	Quantity (units)	Cost (£)
Roads Inspector	hrs	[REDACTED]		
Structures Inspector	hrs	[REDACTED]		
Abnormal Load Manager	hrs	[REDACTED]		
Traffic Manager / Safety Officer	hrs	[REDACTED]		
PR	hrs	[REDACTED]		
IRIS Operator	hrs	[REDACTED]		
Network Engineer	hrs	[REDACTED]		
Emergency Officer	hrs	[REDACTED]		
Network Technician	hrs	[REDACTED]		
QHSE Manager	hrs	[REDACTED]		
Admin support	hrs	[REDACTED]		
Call centre operative	hrs	[REDACTED]		
Ganger / Foreman	hrs	[REDACTED]		
Plant Operator	hrs	[REDACTED]		
SkilledOperative	hrs	[REDACTED]		
Operative	hrs	[REDACTED]		
Seasonal Driver	hrs	[REDACTED]		
TOTAL				

TABLE 2 - CYCLIC MAINTENANCE

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Carriageways & Footways</u>				
Carriageway pavement - Patching	m ²	[REDACTED]		
Carriageway pavement - Retexturing	m ²	[REDACTED]		
Carriageway pavement - Surface dressing	m ²	[REDACTED]		
Footway pavement - Patching	m ²	[REDACTED]		
Footway pavement - Slurry Sealing	m ²	[REDACTED]		
<u>Drainage</u>				
Gulley cleaning - cyclic	no	[REDACTED]		
Catchpit cleaning - cyclic	no	[REDACTED]		
Oil interceptors	no	[REDACTED]		
Containment tanks	no	[REDACTED]		
Jetting / Flood clearing allowance	m	[REDACTED]		
Cleaning of Ditches	m	[REDACTED]		
Covers, Grates	no	[REDACTED]		
Pipes and Grips	m	[REDACTED]		
Repair Chambers	no	[REDACTED]		
Repair Ditches	m	[REDACTED]		
Filter Drains	m	[REDACTED]		
Fin Drains	m	[REDACTED]		
Culverts	m	[REDACTED]		
Balancing Ponds	no	[REDACTED]		
<u>Fences</u>				
Safety Fencing - cyclic height/tensioning/stability	m	[REDACTED]		
Safety Fencing - defects/damage excl. recoverable	m	[REDACTED]		
VCB - Median & Verge, excl. recoverable	m	[REDACTED]		
Pedestrian barrier - defects / damage	m	[REDACTED]		
Post & Wire Fencing	m	[REDACTED]		
<u>Sweeping & Cleaning</u>				
APTR sweeping	m ²	[REDACTED]		
Additional sweeping - safety & urgent detritus etc	m ²	[REDACTED]		
Graffiti removal	m ²	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Signs & Markings</u>				
Road Markings - minor repairs and after patching	no	[REDACTED]		
Road Studs - minor renewals	no	[REDACTED]		
Road markings lane line - individual remarking	no	[REDACTED]		
Road marking rib line - individual renewals	h	[REDACTED]		
Road Studs - individual renewals	no	[REDACTED]		
Traffic Signs - cyclic cleaning	no	[REDACTED]		
Fixed Traffic Signs - minor repairs	no	[REDACTED]		
<u>Inspections & Surveys</u>				
Condition surveys	km	[REDACTED]		
<u>Landscape Maintenance</u>				
Visibility Cuts	m ²	[REDACTED]		
Safety cuts	m ²	[REDACTED]		
Verge and other grassed areas	m ²	[REDACTED]		
Amenity grass mowing	m ²	[REDACTED]		
Weeds	m ²	[REDACTED]		
Pest control	m ²	[REDACTED]		
Hedges	m	[REDACTED]		
Trees	no	[REDACTED]		
Wetlands Maintenance	m ²	[REDACTED]		
Special Ecological	m ²	[REDACTED]		
Landscape areas	m ²	[REDACTED]		
New planted areas - first 5 years	m ²	[REDACTED]		
New planted areas - subsequent years	m ²	[REDACTED]		
Existing planted areas	m ²	[REDACTED]		
<u>Routine Lighting Maintenance</u>				
Lighting - Clean & inspect	no	[REDACTED]		
Lighting - Reactive maintenance	no	[REDACTED]		
Lighting - Bulk change	no	[REDACTED]		
Fixed illuminated signs - Clean & inspect	no	[REDACTED]		
Fixed illuminated signs - Reactive maintenance	no	[REDACTED]		
Fixed illuminated signs - Bulk change	no	[REDACTED]		
<u>ITS, Comms - Non-specialist</u>				

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Chambers & ducting - power / data distribution	no	[REDACTED]		
Foundations/mountings, supports & hardstandings etc	no	[REDACTED]		
CCTV	no	[REDACTED]		
Traffic monitoring facilities	no	[REDACTED]		
<u>Winter Maintenance</u>				
Precautionary Salting 10g/sqm	m ²	[REDACTED]		
Precautionary Salting 20g/sqm	m ²	[REDACTED]		
Precautionary Salting 40g/sqm	m ²	[REDACTED]		
Snow Ploughing	m ²	[REDACTED]		
<u>Structures</u>				
Structures - cyclic maintenance	no	[REDACTED]		
Gantries - cyclic maintenance	no	[REDACTED]		
Minor structures - cyclic maintenance	no	[REDACTED]		
Walls, Culverts etc - cyclic maintenance	no	[REDACTED]		
<u>Traffic Management for Maintenance</u>				
TM for Lane 1 closure	m	[REDACTED]		
TM for Lane 2 closure	m	[REDACTED]		
Rolling lane closure for lane 1	hr	[REDACTED]		
Rolling lane closure for lane 2	hr	[REDACTED]		
TM for Cat 1 responses	hr	[REDACTED]		
TOTAL				

Schedule 16 - Change Protocol

Description	Unit	Rate (£/unit)					Quantity (units)					Cost (sub-totals) (£)					Cost (£)
Maintain Lane 1 Closure on 3 Lane single carriageway section.	hr	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]											
Maintain Lane 1 Closure on 3 Lane single carriageway section.	day	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]											
Establish and Remove Lane 2 Closure on 3 Lane single carriageway section.	item	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]											
Move to one side and Re Establish 2 Closure on 3 Lane single carriageway section.	item	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]											
Maintain Lane 2 Closure on 3 Lane single carriageway section.	hr	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]											
Maintain Lane 2 Closure on 3 Lane single carriageway section.	day	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]											
<u>Traffic Management and Safety - Slip Roads</u>		Length of Traffic Management & Safety (km)						Length of Traffic Management & Safety (km)			Length of Traffic Management & Safety (km)						
		0 to 0.1	0.1 to 0.25	0.25 to 0.5				0 to 0.1	0.1 to 0.25	0.25 to 0.5							
Establish and Remove Lane 1 Closure on Dual Carriageway Slip Road.	item	[REDACTED]	[REDACTED]	[REDACTED]													

Schedule 16 - Change Protocol

[illegible]

Description	Unit	Rate (£/unit)			Quantity (units)			Cost (sub-totals) (£)			Cost (£)
Maintain two way signal lights on single carriageway.	day	[REDACTED]									
Manually control two way signal lights on single carriageway.	hr	[REDACTED]									
<u>Temporary Barriers</u>											
		Length of Barrier (m)			Length of Barrier (m)			Length of Barrier (m)			
					0						
					t						
					o						
					5	50	100				
					0	to	to				
						100	250				
		0 to 50	50 to 100	100 to 250				0 to 50	50 to 100	100 to 250	
Install and remove temporary varioguard safety barriers.	m	[REDACTED]	[REDACTED]	[REDACTED]							
Maintain temporary varioguard safety barriers	m/day	[REDACTED]	[REDACTED]	[REDACTED]							
<u>Temporary Road Studs</u>											
		Nos of Road Studs			Nos of Road Studs			Nos of Road Studs			
					0						
					-	50 -	250				
					5		250 +				
					0			0 - 50	50 - 250	250 +	
Temporary road studs to Chapter 8 of The Road Signs Manual, paragraph O4.12.16 bi-directional with white reflectors	nos	[REDACTED]	[REDACTED]	[REDACTED]							

Schedule 16 - Change Protocol

[illegible]

Schedule 16 - Change Protocol

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (sub-totals) (£)	Cost (£)
TOTAL					

TABLE 4 - SITE CLEARANCE

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Site Clearance</u>				
General site clearance of area of low density growth.	ha	[REDACTED]		
Demolition of existing chamber cover and frame Type 1 depth to invert exceeding 1m but not exceeding 2m	No.	[REDACTED]		
Demolition of existing chamber and cover and frame Type 3a depth to invert exceeding 2m but not exceeding 3m	No.	[REDACTED]		
<u>Take Up or Down and Set Aside for Re-use or Remove to Store or Tip off Site</u>				
Take down and remove to offsite tip existing transition piece from open box beam safety barrier to single sided corrugated beam safety barrier.	No.	[REDACTED]		
Take down and set aside for re-use terminal section on single sided corrugated beam safety barrier.	No.	[REDACTED]		
Take up or down and remove to tip off site blockwork and stonework.	m ³	[REDACTED]		
Take up or down and remove to tip off site paved areas and the like.	m ²	[REDACTED]		
Take up or down and remove to tip off site kerbs, channels and edgings.	m	[REDACTED]		
Take up or down and remove to tip off site linear troughed drainage channel system	m	[REDACTED]		
Take up and set aside for re-use slabs at existing cabinets	m ²	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Take up or down and remove to tip off site untensioned single and double sided open box beam safety fencing on steel posts. Take up or down and set aside for re-use tensioned single and double sided corrugated beam safety fencing on steel posts. Take up or down and remove to tip off site tensioned single and double sided corrugated beam safety fencing on steel posts.	m m m	[REDACTED] [REDACTED] [REDACTED]		
Take up or down and set aside for re-use terminal section on tensioned single sided corrugated beam. Take up or down and set aside for re-use terminal section on open box beam. Take up or down and remove to tip off site traffic sign including posts sign face not exceeding 0.5 square metre in area. Take up or down and remove to tip off site traffic sign including posts sign face exceeding 0.5 square metre but not exceeding 1 square metre in area. Take up or down and remove to tip off site traffic sign including posts sign face exceeding 1 square metre but not exceeding 2 square metres in area. Take up or down and remove to tip off site traffic sign including posts sign face exceeding 2 square metre but not exceeding 5 square metres in area. Take up or down and remove to tip off site traffic sign including posts sign face exceeding 5 square metre but not exceeding 10 square metres in area. Take up or down and remove to tip off site traffic sign including posts sign face exceeding 10 square metres but not exceeding 15 square metres in area.	m m No. No. No. No. No. No.	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Take up or down and remove to tip off site externally illuminated traffic sign including posts sign face not exceeding 0.5 square metres in area.	No.	[REDACTED]		
Take up or down and remove to tip off site externally illuminated traffic sign including posts sign face exceeding 0.5 square metre but not exceeding 1.0 square metres in area.	No.	[REDACTED]		
Take up or down and remove to tip off site externally illuminated traffic sign including posts sign face exceeding 1.0 square metre but not exceeding 2.0 square metres in area.	No.	[REDACTED]		
Take up or down and remove to tip off site externally illuminated traffic sign including posts sign face exceeding 2 square metre but not exceeding 5 square metres in area.	No.	[REDACTED]		
Take up or down and remove to tip off site externally illuminated traffic sign including posts sign face exceeding 5 square metre but not exceeding 10 square metres in area.	No.	[REDACTED]		
Take up or down and remove to tip off site surface mounted road stud.	No.	[REDACTED]		
Take up or down and remove to tip off site inset road stud.	No.	[REDACTED]		
Take up or down and remove to store or tip off site pedestrian guardrail.	m	[REDACTED]		
Take up or down and set aside for re-use or remove to tip off site 450mm double triangular grating and frame.	No.	[REDACTED]		
TOTAL				

TABLE 5 – FENCING

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Fencing, Gates and Stiles</u>				
Temporary fencing Type 1.	m	[REDACTED]		
Three rail fencing 1200mm high with timber posts.	m	[REDACTED]		
Three rail fencing 1200mm high with timber posts with three strands of galvanised barbed wire.	m	[REDACTED]		
Three rail fencing 1200mm high with timber posts with three strands of galvanised barbed wire and galvanised sheep netting.	m	[REDACTED]		
Four rail fencing 1400mm high with timber posts.	m	[REDACTED]		
Four rail fencing 1400mm high with timber posts with three strands of galvanised barbed wire.	m	[REDACTED]		
Four rail fencing 1400mm high with timber posts with three strands of galvanised barbed wire and galvanised sheep netting.	m	[REDACTED]		
Concrete foundations to timber posts for four rail fencing.	No.	[REDACTED]		
Timber single field gate 1270mm high 3600mm wide.	No.	[REDACTED]		
Painted steel tubular frame double field gate 1175mm high 5000mm wide.	No.	[REDACTED]		
Painted steel tubular frame double field gate 1175mm high 5000mm wide with galvanised sheep netting.	No.	[REDACTED]		
Timber noise barrier 2m high, on back of black painted UB posts at 3m centres.	m	[REDACTED]		

Concrete foundations to timber noise barrier 450mm dia x 1.3m deep.	No.	[REDACTED]		
<u>Excavation in Hard Material</u>				
Extra over for excavation in hard material in fencing works.	m3	[REDACTED]		
TOTAL				

TABLE 6 – ROAD RESTRAINT SYSTEMS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Safety Barriers</u>				
Safety barrier nominal containment level N2, working with class W6 designed to be impacted on one side only straight or curved exceeding 120m radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W5 designed to be impacted on one side only curved exceeding 50 metres radius but not exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W5 designed to be impacted on one side only straight or curved exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W5 designed to be impacted on both sides curved exceeding 50 metres radius but not exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W4 designed to be impacted on one side only curved not exceeding 50 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W4 designed to be impacted on one side only curved exceeding 50 metres but not exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W4 designed to be impacted on one side only straight or curved exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W4 designed to be impacted on both sides curved not exceeding 50 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W4 designed to be impacted on both sides curved exceeding 50 metres radius but not exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W4 designed to be impacted on both sides straight or curved exceeding 120 metres radius.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Safety barrier nominal containment level N2, working with class W3 designed to be impacted on one side only straight or curved exceeding 120m radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W1 designed to be impacted on one side only curved not exceeding 50 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W1 designed to be impacted on one side only curved exceeding 50 metres but not exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W1 designed to be impacted on one side only straight or curved exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W2 designed to be impacted on one side only curved not exceeding 50 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W2 designed to be impacted on one side only curved exceeding 50 metres but not exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier nominal containment level N2, working width Class W2 designed to be impacted on one side only straight or curved exceeding 120 metres radius.	m	[REDACTED]		
Safety barrier containment performance class H2 working width class W3 (troughed wide concrete step barrier) designed to be impacted on both sides straight or curved exceeding 120 meters radius.	m	[REDACTED]		
Safety barrier containment performance class H2 working width class W3 (troughed wide concrete step barrier) designed to be impacted on both sides straight or curved exceeding 120 meters radius nominal height 920mm.	m	[REDACTED]		
Extra over previous item for variations in height +/- 25mm.	m	[REDACTED]		
Safety barrier containment performance class H2 working width class W3 (wide concrete step barrier) designed to be impacted on both sides straight or curved exceeding 120 meters radius.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Safety barrier containment performance class H2 working width class W3 (wide concrete step barrier) designed to be impacted on both sides curved exceeding 50 metres radius but not 120 meters radius.	m	[REDACTED]		
Safety barrier containment performance class H2 working width class W2 (concrete step barrier) designed to be impacted on both sides straight or curved exceeding 120 meters radius.	m	[REDACTED]		
Safety barrier containment performance class H2 working width class W2 (concrete step barrier) designed to be impacted on both sides curved exceeding 50 metres radius but not 120 meters radius.	m	[REDACTED]		
<u>Terminals</u>				
Terminal section Lateral Displacement Zone D1.1 Performance Class P4 designed to be impacted on one side only.	No.	[REDACTED]		
Terminal section Lateral Displacement Zone D1.2 Performance Class P4 designed to be impacted on one side only.	No.	[REDACTED]		
Terminal section Lateral Displacement Zone D1.1 Performance Class P4 designed to be impacted on both sides.	No.	[REDACTED]		
<u>Connections to Existing System</u>				
Connection to existing system containment level N2 working width Class W4 to untensioned single sided open box beam.	No.	[REDACTED]		
Connection to existing system containment level N2 working width Class W4 to untensioned double sided open box beam.	No.	[REDACTED]		
Connection to existing system containment level N2 working width Class W4 to tensioned single sided corrugated beam.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Connection to existing system containment level N2 working width Class W4 to tensioned double sided corrugated beam.	No.	[REDACTED]		
Connection to existing system containment level N2 working width Class W4 to steel 3/4 rail parapet.	No.	[REDACTED]		
Connection to existing system containment level N2 working width Class W4 to BACO 3/4 rail parapet, rails capable of taking tension force.	No.	[REDACTED]		
Connection to existing system containment level N2 working width Class W4 to AHDE 3/4 rail parapet, rails capable of taking tension force.	No.	[REDACTED]		
<u>Crash Cushions</u>				
Crash cushions Performance Level 110 velocity class 110km/h, lateral displacement zone D1 re-directive.	No.	[REDACTED]		
Crash cushions Performance Level 110 velocity class 110km/h, lateral displacement zone D1 non-redirective.	No.	[REDACTED]		
Crash cushions Performance Level 110 velocity class 110km/h, lateral displacement zone D3 re-directive.	No.	[REDACTED]		
Crash cushions Performance Level 110 velocity class 110km/h, lateral displacement zone D3 non-redirective.	No.	[REDACTED]		
<u>Pedestrian Parapets and Pedestrian Guardrails</u>				
Pedestrian guardrail Class 3, 1.00 metre high with additional visibility straight or curved exceeding 50m radius.	m	[REDACTED]		
Pedestrian guardrail Class 3, 1.00 metre high with additional visibility not exceeding 50m radius.	m	[REDACTED]		
Pedestrian guardrail type V2 as standard detail not exceeding 50m radius.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Remove from Store and Re-erect Safety Barriers</u>				
Remove from store and re-erect untensioned single and double sided open box beam curved not exceeding 50 metres radius.	m	[REDACTED]		
Remove from store and re-erect untensioned single and double sided open box beam curved exceeding 50 metres radius but not exceeding 120 metres radius.	m	[REDACTED]		
Remove from store and re-erect untensioned single and double sided open box beam straight or curved exceeding 120 metres radius.	m	[REDACTED]		
Remove from store and re-erect tensioned single and double sided corrugated beam curved exceeding 50 metres radius but not exceeding 120 metres radius.	m	[REDACTED]		
Remove from store and re-erect tensioned single and double sided corrugated beam straight or curved exceeding 120 metres radius.	m	[REDACTED]		
Remove from store and re-erect driven post for single and double sided open box beam.	No.	[REDACTED]		
Remove from store and re-erect driven post for single and double sided corrugated beam.	No.	[REDACTED]		
Remove from store and re-erect post for setting in concrete or socket for single and double sided open box beam.	No.	[REDACTED]		
Remove from store and re-erect post for setting in concrete or socket for single and double sided corrugated beam.	No.	[REDACTED]		
Remove from store and re-erect fixed height surface mounted post fixed to structure or foundation for single and double sided open box beam.	No.	[REDACTED]		
Remove from store and re-erect fixed height surface mounted post fixed to structure or foundation for single and double sided corrugated beam.	No.	[REDACTED]		
Remove from store and re-erect terminal section for untensioned single and double sided open box beam.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Remove from store and re-erect terminal section for tensioned single and double sided open box beam.	No.	[REDACTED]		
Remove from store and re-erect single sided open box beam connection to bridge parapet.	No.	[REDACTED]		
Remove from store and re-erect connection piece for single sided open box beam to single sided corrugated beam.	No.	[REDACTED]		
Remove from store and re-erect connection piece for double sided open box beam to double sided corrugated beam.	No.	[REDACTED]		
Concrete foundation for post removed from store and re-erected for open box beam and corrugated beam.	No.	[REDACTED]		
Concrete foundation spanning filter drain 450mm to 750mm wide for post removed from store and re-erected for open box beam.	No.	[REDACTED]		
Concrete foundation spanning filter drain 450mm to 750mm wide for post removed from store and re-erected for corrugated beam.	No.	[REDACTED]		
Socketed foundation for post removed from store and re-erected for open box beam and corrugated beam.	No.	[REDACTED]		
<u>Site Testing on Post Foundations</u>				
Load testing on driven post foundation.	No.	[REDACTED]		
Load testing on driven post with concrete foundation.	No.	[REDACTED]		
Load testing on driven post with concrete foundation and sockets.	No.	[REDACTED]		
TOTAL				

TABLE 7 - DRAINAGE AND SERVICE DUCTS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Gully Connections</u>				
150mm internal diameter drain or sewer specified permitted design group 5 in trench, depth to invert not exceeding 2 metres, average depth to invert 1.625 metres with Type Z concrete bed and surround.	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.625 metres per 25mm of variation in excess of 150mm.	m	[REDACTED]		
<u>Drains and Service Ducts (excluding Filter Drains, Narrow Filter Drains and Fin Drains)</u>				
150mm internal diameter drain specified design group 5 in trench, depth to invert not exceeding 2 metres, average depth to invert 1.000 metres.	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.000 metres per 25mm of variation in excess of 150mm.	m	[REDACTED]		
225mm internal diameter drain specified design group 5 in trench, depth to invert not exceeding 2 metres, average depth to invert 1.000 metres.	m	[REDACTED]		
225mm internal diameter drain specified design group 5 in trench, depth to invert not exceeding 2 metres, average depth to invert 1.50 metres.	m	[REDACTED]		
225mm internal diameter drain specified design group 5 in trench depth to invert exceeding 2 metres but not exceeding 4 metres average depth to invert 2.500 metres	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 2.500 metres per 25mm of variation in excess of 150mm.	m	[REDACTED]		
300mm internal diameter drain specified design group 5 in trench, depth to invert not exceeding 2 metres, average depth to invert 1.50 metres.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.50 metres per 25mm of variation in excess of 150mm.	m	[REDACTED]		
450mm internal diameter drain specified design group 5 in trench, depth to invert not exceeding 2 metres, average depth to invert 1.50 metres.	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.50 metres per 25mm of variation in excess of 150mm.	m	[REDACTED]		
100mm internal diameter service duct on bed Type T in trench depth to invert not exceeding 2 metres, average depth to invert 0.500 metres	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 0.500m per 25mm of variation in excess of 150mm.	m	[REDACTED]		
<u>Filter Drains</u>				
150mm diameter filter drain specified design group 3 depth to invert not exceeding 2 metres average depth to invert 1.50 metres.	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.50m per 25mm of variation in excess of 150mm.	m	[REDACTED]		
225mm diameter filter drain in trench specified design group 3 depth to invert not exceeding 2 metres average depth to invert 1.50 metres.	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.50m per 25mm of variation in excess of 150mm.	m	[REDACTED]		
300mm diameter filter drain specified design group 3 depth to invert not exceeding 2 metres average depth to invert 1.50 metres.	m	[REDACTED]		
Adjustment on last item for variation greater than 150mm above or below the average depth of 1.50m per 25mm of variation in excess of 150mm.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Connections</u>				
Connection of 150mm diameter pipe to existing 150 diameter drain or existing piped culvert depth to invert not exceeding 2 metres.	No.	[REDACTED]		
Connection of 150mm diameter pipe to existing 225 diameter drain or existing piped culvert depth to invert not exceeding 2 metres.	No.	[REDACTED]		
Connection of 150mm diameter pipe to existing 300 diameter drain or existing piped culvert depth to invert not exceeding 2 metres.	No.	[REDACTED]		
Connection of 150mm diameter pipe to existing 150 diameter drain or existing piped culvert depth to invert exceeding 2 metres, but not exceeding 4 metres.	No.	[REDACTED]		
Connection of 150mm diameter pipe to existing 225 diameter drain or existing piped culvert depth to invert exceeding 2 metres, but not exceeding 4 metres.	No.	[REDACTED]		
Connection of 150mm diameter pipe to existing chamber depth to invert not exceeding 2 metres.	No.	[REDACTED]		
Connection of 225mm diameter pipe to existing chamber depth to invert exceeding 2 metres but not exceeding 4 metres.	No.	[REDACTED]		
<u>Chambers and Gullies</u>				
Chamber specified design group Type 1b with Class D400 cover and frame depth to invert exceeding 1 metre but not exceeding 2 metres.	No.	[REDACTED]		
Chamber specified design group Type 2a with Class D400 cover and frame depth to invert exceeding 1 metre but not exceeding 2 metres.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Chamber specified design group Type 7 with Class D400 cover and frame depth to uppermost surface of base slab exceeding 1 metre, but not exceeding 2 metres.	No.	[REDACTED]		
Precast concrete trapped gully with D400 cover and frame.	No.	[REDACTED]		
<u>Soft Spots and Other Voids</u>				
Excavation of soft spots and other voids in bottom of trenches, chambers and gullies.	m ³	[REDACTED]		
Filling of soft spots and other voids in bottom of trenches, chambers and gullies with pipe bedding material.	m ³	[REDACTED]		
<u>Excavation in Hard Material</u>				
Extra over excavation for excavation in Hard Material in drainage.	m3	[REDACTED]		
TOTAL				

TABLE 8 - EARTHWORKS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Excavation</u>				
Excavation of acceptable material Class 5A.	m ³	[REDACTED]		
Excavation of acceptable material excluding Class 5A in cutting and other excavation.	m ³	[REDACTED]		
Excavation of acceptable material excluding Class 5A in new watercourses.	m ³	[REDACTED]		
Excavation of unacceptable material Class U1A in cutting and other excavation.	m ³	[REDACTED]		
Excavation of unacceptable material Class U1A in watercourses.	m ³	[REDACTED]		
<u>Excavation in Hard Material</u>				
Extra over excavation for excavation in Hard Material in cutting and other excavation.	m ³	[REDACTED]		
<u>Deposition of Fill</u>				
Deposition of acceptable material in embankments and other areas of fill.	m ³	[REDACTED]		
<u>Disposal of Material</u>				
Disposal of unacceptable material Class U1A.	m ³	[REDACTED]		
Disposal of unacceptable material Class U1B.	m ³	[REDACTED]		
Disposal of unacceptable material Class U2 (Japanese Knotweed).	m ³	[REDACTED]		
Disposal of acceptable material excluding Class 5A.	m ³	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Disposal of acceptable material Class 5A.	m ³	[REDACTED]		
<u>Imported Fill</u>				
Imported acceptable material in embankments and other areas of fill.	m ³	[REDACTED]		
Imported acceptable material Class 6F1 in embankments and other areas of fill.	m ³	[REDACTED]		
Imported topsoil Class 5B.	m ³	[REDACTED]		
<u>Compaction of Fill</u>				
Compaction of acceptable material in embankments and other areas of fill.	m ³	[REDACTED]		
<u>Soft Spots and Other Voids</u>				
-				
Excavation of soft spots and other voids below cuttings or under embankments or slopes.	m ³	[REDACTED]		
Excavation of soft spots and other voids in side slopes.	m ³	[REDACTED]		
Filling of soft spots and other voids below cuttings or under embankments or slopes with acceptable material.	m ³	[REDACTED]		
Filling of soft spots and other voids below cuttings or under embankments in side slopes with acceptable material.	m ³	[REDACTED]		
Filling of soft spots and other voids with concrete Class ST2	m ³	[REDACTED]		
<u>Disused Sewers, Drains, Cables, Ducts, Pipelines and the like occurring at Formation or Sub-formation Level; Disused Basements, Cellars and the like and Gullies</u>				

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Removal of disused sewer or drain 150mm internal diameter with one metre or less of cover to formation level.	m	[REDACTED]		
Removal of disused sewer or drain 225mm internal diameter with one metre or less of cover to formation level.	m	[REDACTED]		
Backfilling of disused gullies 450mm internal diameter with in-situ concrete mix ST1.	No.	[REDACTED]		
<u>Topsoiling and Storage of Topsoil</u>				
Topsoiling 150mm thick to surfaces sloping more than 10° to the horizontal.	m ²	[REDACTED]		
Topsoiling 150mm thick to surfaces sloping at 10° or less to the horizontal.	m ²	[REDACTED]		
<u>Completion of Formation and Sub-formation</u>				
Completion of sub-formation	m ²	[REDACTED]		
Completion of formation	m ²	[REDACTED]		
Grass seeding to surfaces sloping at 10 deg or less to the horizontal	m ²	[REDACTED]		
<u>Trial Pits</u>				
Trial pit 0 to 1 metres in depth.	m ³	[REDACTED]		
Trial pit 1 to 3 metres in depth.	m ³	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
TOTAL				

TABLE 9 - PAVEMENTS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Sub-base</u>				
Type 1 unbound mixture sub-base in carriageway, hardshoulder and hardstrip.	m ³	[REDACTED]		
<u>Pavement</u>				
Thin surface course Design Mix SC1 with 10mm aggregate 30mm thick in carriageway, hardshoulder and hardstrip.	m ²	[REDACTED]		
Thin surface course Design Mix SC1 with 14mm aggregate 35mm thick in carriageway, hardshoulder and hardstrip.	m ²	[REDACTED]		
Thin surface course Design Mix SC1 with 14mm aggregate 40mm thick in carriageway, hardshoulder and hardstrip.	m ²	[REDACTED]		
Extra over 30mm thick thin surface course for min PSV 68 course aggregate	m ²	[REDACTED]		
Extra over 35mm thick thin surface course for min PSV 68 course aggregate	m ²	[REDACTED]		
Extra over 40mm thick thin surface course for min PSV 68 course aggregate	m ²	[REDACTED]		
<u>Surface Treatment</u>				
High friction resin-based surface treatment (all colours)	m ²	[REDACTED]		
<u>Tack Coat</u>				
Tack coat K1 -40 bitumen emulsion conforming to BS434-1 spread at the rate of 0.2 Kg/m ²	m ²	[REDACTED]		
<u>Cold Milling (Planing)</u>				
Milling Pavement 0-50mm thick.	m ²	[REDACTED]		
Milling Pavement 50-100mm thick.	m ²	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Saw Cutting</u>				
Saw Cutting not exceeding 350mm depth in existing bituminous pavement construction (for new kerb lines)	m	[REDACTED]		
TOTAL				

TABLE 10 - KERBS, FOOTWAYS AND PAVED AREAS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Kerbs, Channels, Edging and Combined Drainage & Kerb Blocks and Linear Drainage Channel Systems</u>				
Precast concrete kerbs Type K1 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K1 laid to curves not exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K5 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K5 laid to curves not exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K6 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K6 laid to curves not exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K8 laid straight or curved exceeding 12 metres radius	m	[REDACTED]		
Precast concrete kerbs Type K8 laid to curves not exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K9 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type K9 laid to curves not exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete edging Type E1 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete edging Type E1 laid to curves not exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete Edging Type EF laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs Type Q1 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Precast concrete kerbs Type Q2 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs, Kassel type BK1 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
Precast concrete kerbs, Kassel type BKT1 laid straight or curved exceeding 12 metres radius.	m	[REDACTED]		
<u>Footways and Paved Areas</u>				
Footway comprising Type 1 unbound mixture sub base 150mm thick dense macadam binder course with 20mm aggregate 40mm thick and dense macadam surface course with 6mm aggregate 20mm thick.	m ²	[REDACTED]		
Footway comprising dense macadam binder course with 20mm aggregate 40mm thick and dense macadam surface course with 6mm aggregate 20mm thick.	m ²	[REDACTED]		
Paved area comprising 80mm thick concrete block paving on Type 1 unbound mixture sub base 100mm thick and 50mm compacted sand bedding.	m ²	[REDACTED]		
Paved area comprising 125mm thick grass / concrete panel on Type 1 unbound mixture sub-base 200mm thick and 25mm compacted sand bedding.	m ²	[REDACTED]		
Footway comprising textured paving slabs for pedestrian crossing, to National Assembly Drawing No. WO/WM 1062 Type E.	m ²	[REDACTED]		
Paved area comprising buff coloured blister type tactile paving on granular Type 1 unbound mixture sub base 100mm thick and 25mm compacted sand bedding.	m ²	[REDACTED]		
Paved area comprising corduroy type tactile paving on granular Type 1 unbound mixture sub base 100mm thick and 25mm compacted sand bedding.	m ²	[REDACTED]		
<u>Remove from Store and Relay Paving Flags, Slabs and Blocks</u>				
Remove from store and relay concrete flag paving on 50mm sand bed in footways	m ²	[REDACTED]		
<u>Surface Treatment</u>				

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Red polymer modified screed at approaches to highway	m²	[REDACTED]		
High friction resin-based surface treatment (all colours)	m2	[REDACTED]		
TOTAL				

TABLE 11 - TRAFFIC SIGNS AND ROAD MARKINGS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Traffic Signs - Lit</u>				
Permanent enhanced retro reflective traffic sign as lit sign unit sign face not exceeding 0.25 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as lit sign unit sign face exceeding 0.25 square metre but not exceeding 0.5 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as lit sign unit sign face exceeding 0.5 square metre but not exceeding 0.75 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as lit sign unit sign face exceeding 0.75 square metre but not exceeding 1.00 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as lit sign unit sign face exceeding 1 square metre but not exceeding 10 square metre in area on two tubular steel post.	No.	[REDACTED]		
Remove from store and re-erect traffic sign as lit sign unit sign face not exceeding 0.50 square metre in area on one tubular steel post.	No.	[REDACTED]		
<u>Traffic signs - Non-Lit</u>				
Permanent enhanced retro reflective traffic sign as non-lit sign unit sign face not exceeding 0.25 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as non-lit sign unit sign face exceeding 0.25 square metre but not exceeding 0.5 square metre in area on one tubular steel post.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Permanent enhanced retro reflective traffic sign as non-lit sign unit sign face exceeding 0.5 square metre but not exceeding 0.75 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as non-lit sign unit sign face exceeding 0.75 square metre but not exceeding 1 square metre in area on one tubular steel post.	No.	[REDACTED]		
Permanent enhanced retro reflective traffic sign as non-lit sign unit sign face exceeding 1 square metre but not exceeding 10 square metre in area on two tubular steel post.	No.	[REDACTED]		
<u>Supply Passive Posts</u>				
Steel post to supply and installation of passive safe post to EN12707 - post 140mm outside diameter up to 6000mm high.	No.	[REDACTED]		
Steel post to supply and installation of passive safe post to EN12707 - post 219mm outside diameter up to 8000mm high.	No.	[REDACTED]		
Steel post to supply and installation of B163passive safe post to EN12707 - post 219mm outside diameter up to 12000mm high.	No.	[REDACTED]		
Additional concrete in post foundation	m3	[REDACTED]		
<u>Road Markings</u>				
Continuous line in white thermoplastic screed 100mm wide.	m	[REDACTED]		
Continuous line in white thermoplastic screed 150mm wide.	m	[REDACTED]		
Continuous line in white thermoplastic screed 150mm wide with raised rib as Diag. No. 1049.1.	m	[REDACTED]		
Solid area in white thermoplastic screed.	m2	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Intermittent line in white thermoplastic screed 100mm wide with 4000mm line and 2000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 150mm wide with 4000mm line and 2000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 100mm wide with 6000mm line and 3000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 150mm wide with 6000mm line and 3000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 100mm wide with 1000mm line and 5000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 100mm wide with 2000mm line and 7000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 150mm wide with 2000mm line and 7000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 150mm wide with 1000mm line and 1000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 200mm wide with 1000mm line and 1000mm gap.	m	[REDACTED]		
Intermittent line in white thermoplastic screed 200mm wide with 600mm line and 300mm gap.	m	[REDACTED]		
Intermittent line in yellow thermoplastic screed 100mm wide with 1000mm line and 1000mm gap.	m	[REDACTED]		
Raised rib lines in white thermoplastic screed with applied solid glass beds 150mm wide with ribs at 500mm centres.	m	[REDACTED]		
Ancillary line white thermoplastic screed 150mm wide in hatched areas.	m	[REDACTED]		
Ancillary line white thermoplastic screed 150mm wide in chevrons.	m	[REDACTED]		
Ancillary line white thermoplastic screed 1000mm wide in chevrons.	m	[REDACTED]		
Ancillary line yellow thermoplastic screed 150mm wide in boxed areas.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Ancillary line white thermoplastic screed 100mmm wide in zigzags.	m	[REDACTED]		
Arrow in white thermoplastic screed 6000mm long straight.	No	[REDACTED]		
Arrow in white thermoplastic screed 6000mm long turning.	No	[REDACTED]		
Arrow in white thermoplastic screed 6000mm long double headed.	No	[REDACTED]		
Arrow in white thermoplastic screed 4000mm long straight.	No	[REDACTED]		
Arrow in white thermoplastic screed 6000mm long curved to Diag No 1014.	No	[REDACTED]		
Arrow in white thermoplastic screed 8000mm long to Diag 1039.	No	[REDACTED]		
Triangle in white thermoplastic screed 1875mm high.	No	[REDACTED]		
Letters in white thermoplastic screed 1600mm high.	No	[REDACTED]		
Letters in white thermoplastic screed 2800mm high.	No	[REDACTED]		
Letters in yellow thermoplastic screed 1600mm high.	No	[REDACTED]		
Symbols in white thermoplastic screed 1215mm high to Diag No 1057.	No	[REDACTED]		
<u>Removal of Road Markings by Cold Milling</u>				
Removal of continuous line in white thermoplastic screed 150mm wide by cold milling.	m	[REDACTED]		
Removal of intermittent line in white thermoplastic screed 150mm wide with 6000mm line and 3000mm gap by cold milling.	m	[REDACTED]		
Removal of raised rib lines in white thermoplastic screed with applied solid glass beds 200mm wide with ribs at 500mm centres by cold milling.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Removal of raised rib lines in white thermoplastic screed with applied solid glass beds 150mm wide with ribs at 500mm centres by cold milling.	m	[REDACTED]		
Removal of ancillary line white thermoplastic screed 150mm wide in chevrons by cold milling.	m	[REDACTED]		
Removal of arrow in white thermoplastic screed 16000mm long to Diag 1039 by cold milling.	No.	[REDACTED]		
Removal of letters in white thermoplastic screed 2800mm high by cold milling.	No.	[REDACTED]		
<u>ARemoval of Road Markings by Hydro Demolition</u>				
<u>Surface Mounted Road Studs</u>				
A Surface mounted road stud rectangular one way with red reflectors.	No.	[REDACTED]		
Surface mounted road stud rectangular one way with green reflectors.	No.	[REDACTED]		
Surface mounted road stud rectangular bi-directional with white reflector	No.	[REDACTED]		
Surface mounted road stud rectangular bi-directional with red/amber reflectors.	No.	[REDACTED]		
<u>Marker Posts</u>				
Glass reinforced plastic marker post Type 1.	No.	[REDACTED]		
Glass reinforced plastic marker post Type 6.	No.	[REDACTED]		
Glass reinforced plastic marker post Type 8b.	No.	[REDACTED]		
<u>Permanent Bollards</u>				

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Permanent Bollard non-illuminated passively safe to BS12767 with Diag No 610 270mm diameter.	No.	[REDACTED]		
Permanent Bollard illuminated passively safe to BS12767 with Diag No 610 270mm diameter.	No.	[REDACTED]		
Permanent Bollard illuminated face to Diag No 610 270mm diameter.	No.	[REDACTED]		
TOTALS				

TABLE 12 - ROAD LIGHTING

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
All Aluminium columns are to be Marine Grade Aluminium Columns Aluminium and have a design life of at least 50 years. Part of the shaft to be reinforced with a pre-stressed inner sleeve and to be weld free. The column root is to be protected with a Thermo Plastic coating.				
Aluminium road lighting column of 8m nominal height with planted base to BS EN 40 and with Post Top Lantern.	No.	[REDACTED]		
Aluminium road lighting column of 8m nominal height with flanged base to BS EN 40 and with Post Top Lantern.	No.	[REDACTED]		
Aluminium road lighting column of 10m nominal height with planted base to BS EN 40 and with Post Top Lantern.	No.	[REDACTED]		
Aluminium road lighting column of 10m nominal height with flanged base to BS EN 40 and with Post Top Lantern.	No.	[REDACTED]		
Aluminium road lighting column of 12m nominal height with planted base to BS EN 40 and with Post Top Lantern.	No.	[REDACTED]		
Aluminium road lighting column of 12m nominal height with flanged base to BS EN 40 and with Post Top Lantern.	No.	[REDACTED]		
Aluminium road lighting column of 8m nominal height with planted base to BS EN 40 and with an integral bracket arm having a projection of up to 1m	No.	[REDACTED]		
Aluminium road lighting column of 8m nominal height with flanged base to BS EN 40 and with an integral bracket arm having a projection of up to 1m	No.	[REDACTED]		
Aluminium road lighting column of 10m nominal height with planted base to BS EN 40 and with an integral bracket arm having a projection of up to 1m	No.	[REDACTED]		
Aluminium road lighting column of 10m nominal height with flanged base to BS EN 40 and with an integral bracket arm having a projection of up to 1m	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Aluminium road lighting column of 12m nominal height with planted base to BS EN 40 and with an integral bracket arm having a projection of up to 1m	No.	[REDACTED]		
Aluminium road lighting column of 12m nominal height with flanged base to BS EN 40 and with an integral bracket arm having a projection of up to 1m	No.	[REDACTED]		
Passive Safe Aluminium road lighting column of 8m nominal height with planted base to BS EN 12767:2007 and with an integral bracket arm having a projection of up to 1m.	No.	[REDACTED]		
Passive Safe Aluminium road lighting column of 10m nominal height with planted base to BS EN 12767:2007 and with an integral bracket arm having a projection of up to 1m.	No.	[REDACTED]		
Passive Safe Aluminium road lighting column of 12m nominal height with planted base to BS EN 12767:2007 and with an integral bracket arm having a projection of up to 1m.	No.	[REDACTED]		
Single aluminium bracket arm to fit aluminium column having a projection of up to 1m.	No.	[REDACTED]		
Double aluminium bracket arm to fit aluminium column having a span of up to 2m.	No.	[REDACTED]		
TOTAL				

TABLE 13 - ELECTRICAL WORK FOR ROAD LIGHTING & TRAFFIC SIGNS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Locating Buried Road Lighting & Traffic Signs Cable</u>				
Locating buried road lighting and traffic signs cable in carriageways, footways, bridge decks and paved areas.	m	[REDACTED]		
Locating buried road lighting and traffic signs cable in verges and central reserves.	m	[REDACTED]		
<u>Trench for Cable or Duct</u>				
Trench for duct exceeding 450mm but not exceeding 600mm wide depth not exceeding 1.0 metres in verges and central reserves.	m	[REDACTED]		
Trench for duct exceeding 450mm but not exceeding 600mm wide depth not exceeding 1.0 metres in carriageways, footways, bridge decks and paved areas.	m	[REDACTED]		
Trench for cable not exceeding 450mm wide depth not exceeding 1.0 metres in verges and central reserves.	m	[REDACTED]		
Trench for cable not exceeding 450mm wide depth not exceeding 1.0 metres in carriageways, footways, bridge decks and paved areas.	m	[REDACTED]		
<u>Cable and Duct</u>				
1 No. 100mm internal diameter UPVC duct in trench depth not exceeding 1.0 metres.	m	[REDACTED]		
2 No. 100mm internal diameter UPVC duct in trench depth not exceeding 1.0 metres.	m	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
4 No. 100mm internal diameter UPVC duct in trench depth not exceeding 1.0 metres in carriageway and footway	m	[REDACTED]		
6 No. 100mm internal diameter UPVC duct in trench depth not exceeding 1.0 metres in carriageway and footway	m	[REDACTED]		
9 No. 100mm internal diameter UPVC duct in trench depth not exceeding 1.0 metres in carriageway and footway	m	[REDACTED]		
2.5mm ² 3 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
6mm ² 3 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
10mm ² 3 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
16mm ² 3 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
25mm ² 3 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
25mm ² 4 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
35mm ² 4 core XLPE/PVC/SWA/PVC cable with copper conductors in duct.	m	[REDACTED]		
<u>Cable Joints and Terminations</u>				
Single termination to 2.5mm ² 2 core XLPE/PVC/SWA/PVC copper cable into Double Pole Block in road lighting column (PECU circuit).	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Single cut out termination up to 6mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Looped cut out termination to 6mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Single cut out termination up to 10mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Looped cut out termination to 10mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Single cut out termination to 16mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Looped cut out termination to 16mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Single cut out termination to 25mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Looped cut out termination to 25mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column. (Double pole lockable isolator).	No.	[REDACTED]		
Single cut out termination to 25mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column with an integral fused facility for up to 10mm ² 3 core XLPE/PVC/SWA/PVC copper cable-outgoing circuit for sign light. (Double pole lockable isolator).	No.	[REDACTED]		
Looped cut out termination to 25mm ² 3 core XLPE/PVC/SWA/PVC copper cable in road lighting column with an integral fused facility for up to 10mm ² 3 core XLPE/PVC/SWA/PVC copper cable-outgoing circuit for sign light. (Double pole lockable isolator).	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Single way cut out termination to 6mm ² 3 core XLPE/SWA/PVC cable in feeder pillar.	No.	[REDACTED]		
Single way cut out termination to 10mm ² 3 core XLPE/SWA/PVC cable in feeder pillar.	No.	[REDACTED]		
Single way cut out termination to 16mm ² 3 core XLPE/SWA/PVC cable in feeder pillar.	No.	[REDACTED]		
Single way cut out termination to 25mm ² 3 core XLPE/SWA/PVC cable in feeder pillar.	No.	[REDACTED]		
Three-way twin fused cut out termination to 6mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Three-way twin fused cut out termination to 10mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Three-way twin fused cut out termination to 16mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Two way cut out termination to 6mm ² 3 core XLPE/SWA/PVC cable in lit sign unit.	No.	[REDACTED]		
Two way cut out termination to 6mm ² 3 core XLPE/SWA/PVC cable in road lighting column.	No.	[REDACTED]		
Two way cut out termination to 10mm ² 3 core XLPE/SWA/PVC cable in lit sign unit.	No.	[REDACTED]		
Two way cut out termination to 10mm ² 3 core XLPE/SWA/PVC cable in road lighting column.	No.	[REDACTED]		
Two way cut out termination to 16mm ² 3 core XLPE/SWA/PVC cable in road lighting column.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Two way cut out termination to 25mm ² 3 core XLPE/SWA/PVC cable in road lighting column.	No.	[REDACTED]		
Two-way twin fused cut out termination to 6mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Two-way twin fused cut out termination to 10mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Two-way twin fused cut out termination to 16mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Two-way twin fused cut out termination to 25mm ² 3 core XLPE/SWA/PVC cable in road lighting column with fused spur to illuminated traffic sign circuit.	No.	[REDACTED]		
Connection of new cable to existing lighting column, complete with any necessary connection/cut-out.	No.	[REDACTED]		
<u>Passively Safe Cut-outs</u>				
Underground electronic electrical disconnection system (Plug and socket) to BS EN 12767 with impact sensor equipment	No.	[REDACTED]		
Pillar electronic electrical disconnection system (Plug and socket) to BS EN 12767 with impact sensor equipment	No.	[REDACTED]		
<u>Feeder Pillars</u>				
Feeder Pillar with back board dimension 500mm x 800mm to be galvanised steel 3mm thick with single door and tri head lock	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Feeder Pillar with back board dimension 750mm x 1050mm to be galvanised steel 3mm thick with single door and tri head lock	No.	[REDACTED]		
Feeder Pillar with back board dimension 1050mm x 1200mm to be galvanised steel 5mm thick with double door and tri head lock	No.	[REDACTED]		
Feeder Pillar with back board dimension 150mm x 550mm to be galvanised steel 3mm thick with lift off door and tri head lock	No.	[REDACTED]		
<u>Earth Electrodes</u>				
Earth electrodes 20mm diameter x 1200mm long in concrete inspection pit with 16mm ² PVC insulated copper cable connection to adjacent road lighting column.	No.	[REDACTED]		
<u>Chambers</u>				
Draw pit 450 x 450mm depth not exceeding 1m with B125 cover and frame	No.	[REDACTED]		
Draw pit 600 x 450mm depth not exceeding 1m width B125 cover and frame	No.	[REDACTED]		
Carriageway chamber for loop detector, including carriageway duct, long radius duct bend and reinstatement of carriageway.	No.	[REDACTED]		
Plastic chamber 600mm x 600mm with class D400 ductile iron cover and frame depth to uppermost surface of base slab not exceeding 1 metre.	No.	[REDACTED]		
Plastic chamber 450mm x 450mm with class C250 ductile iron cover and framedepth to uppermost surface of base of slab not exceeding 750mm.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
Twin walled access chamber 600 x 600 capable of withstanding 60 tonne loading with pre-installed shelves to be supplied with restraining eyebolts.	No.	[REDACTED]		
<u>Retention Sockets</u>				
Retention Socket with duckfoot bend	No.	[REDACTED]		
Retention Socket with Tee Bend	No.	[REDACTED]		
TOTAL				

TABLE 14 - MOTORWAY COMMUNICATIONS

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Trench for Communications Cable or Duct</u>				
Trench for communications duct exceeding 350mm but not exceeding 450mm wide, depth not exceeding 1.5m in carriageways, footways and paved areas.	m	[REDACTED]		
Trench for communications duct exceeding 350mm but not exceeding 450mm wide, depth not exceeding 1.5m in verges and central reserves.	m	[REDACTED]		
<u>Communications Cable & Communications Duct</u>				
-				
1 No. 100mm diameter communications ducts specified design Type A in trench depth not exceeding 1.5 metres.	m	[REDACTED]		
2 No. 100mm diameter communications ducts specified design Type A in trench depth not exceeding 1.5 metres.	m	[REDACTED]		
4 No. 100mm diameter communications ducts specified design Type A in trench depth not exceeding 1.5 metres.	m	[REDACTED]		
6 No. 100mm diameter communications ducts specified design Type A in trench depth not exceeding 1.5 metres.	m	[REDACTED]		
1 No. 50mm diameter communications ducts specified design Type A in trench depth not exceeding 1.5 metres.	m	[REDACTED]		
2 No. 50mm diameter communications ducts specified design Type A in trench depth not exceeding 1.5 metres.	m	[REDACTED]		
<u>Chamber</u>				
Chamber specified design group Type DP4 with grade A heavy duty cover and frame to BS 497, depth exceeding 1 metre but not exceeding 2 metres.	No.	[REDACTED]		

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
TOTAL				

TABLE 15 - BRICKWORK, BLOCKWORK AND STONEMWORK

Description	Unit	Rate (£/unit)	Quantity (units)	Cost (£)
<u>Brickwork</u>				
Brickwork in Class A engineering bricks perforated in cement mortar designation (ii) in walls one brick thick.	m ²	[REDACTED]		
Brickwork in Class A engineering bricks perforated in cement mortar designation (ii) in walls one brick thick, curved on plan.	m ²	[REDACTED]		
<u>Blockwork and Stonework</u>				
Stonework random rubble uncoursed weighing 2.0 tonne/m ³ of wall in cement-lime mortar designation (iii) in walls.	m ³	[REDACTED]		
Stonework random rubble uncoursed weighing 2.0 tonne/m ³ of wall in cement-lime mortar designation (iii) in walls curved on plan.	m ³	[REDACTED]		
Stonework random rubble uncoursed weighing 2.0 tonne/m ³ of wall in cement-lime mortar designation (iii) in walls with a battered face.	m ³	[REDACTED]		
TOTAL				

TABLE 16 - SUMMARY (TOTAL COST OF THE LOW VALUE CHANGE)

Table number	Table name	Total amount (£) from table
1	LABOUR	
2	CYCLIC MAINTENANCE	
3	PRELIMINARIES	
4	SITE CLEARANCE	
5	FENCING	
6	ROAD RESTRAINT SYSTEMS	
7	DRAINAGE AND SERVICE DUCTS	
8	EARTHWORKS	
9	PAVEMENTS - GENERAL	
10	KERBS, FOOTWAYS AND PAVED AREAS	
11	TRAFFIC SIGNS AND ROAD MARKINGS	
12	ROAD LIGHTING	
13	ELECTRICAL WORK FOR ROAD LIGHTING & TRAFFIC SIGNS	
14	MOTORWAY COMMUNICATIONS	
15	BRICKWORK AND STONEMASONRY	
TOTAL		

APPENDIX 2

Part 1

NOT USED

APPENDIX 2

Part 2

NOT USED

APPENDIX 2**Part 3****Consultant, Sub-Contractor or Supplier Fees**

In this Part 3 of Appendix 2 measurement of quantities shall be in accordance with Volume 4 (Bills of Quantities for Highway Works) of the Manual of Contract Documents for Highway Works (MCHW)

Description	Units	Rate (£/unit)	Quantity (units)	Cost (£)
Project Director	days	[REDACTED]		
Operations Manager	days	[REDACTED]		
Asset Manager	days	[REDACTED]		
Pavement Engineer	days	[REDACTED]		
Structures Engineer	days	[REDACTED]		
Geotechnics Engineer	days	[REDACTED]		
Landscape Architect	days	[REDACTED]		
Ecology Specialist	days	[REDACTED]		
Technology and Lighting / Electrical Engineer	days	[REDACTED]		
Other Specialist Support	days	[REDACTED]		
Engineer	days	[REDACTED]		
Senior Technician	days	[REDACTED]		
Technician	days	[REDACTED]		
Quantity Surveyor	days	[REDACTED]		
Roads Inspector	days	[REDACTED]		
Structures Inspector	days	[REDACTED]		
Abnormal Load Manager	days	[REDACTED]		
Traffic Manager / Safety Officer	days	[REDACTED]		
PR	days	[REDACTED]		
IRIS Operator	days	[REDACTED]		
Network Engineer	days	[REDACTED]		
Emergency Officer	days	[REDACTED]		
Network Technician	days	[REDACTED]		
QHSE Manager	days	[REDACTED]		

Description	Units	Rate (£/unit)	Quantity (units)	Cost (£)
Admin support	days	[REDACTED]		
Call centre operative	days	[REDACTED]		
Ganger / Foreman	days	[REDACTED]		
Plant Operator	days	[REDACTED]		
SkilledOperative	days	[REDACTED]		
Operative	days	[REDACTED]		
Seasonal Driver	days	[REDACTED]		
TOTAL				

APPENDIX 2

Part 4

NOT USED

SCHEDULE 17

COMPENSATION ON TERMINATION

SECTION 1

COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT AND VOLUNTARY TERMINATION

1 Compensation on Termination for the Authority Default and Voluntary Termination

1.1 If Project Co terminates this Agreement pursuant to Clause 43 (*Authority Events of Default*) or the Authority terminates this Agreement pursuant to Clause 46 (*Authority Voluntary Termination*) the Authority shall pay to Project Co the "**Authority Default Termination Sum**" as set out in paragraph 1.2.

1.2 Subject to paragraphs 1.4 to 1.6 below the Authority Default Termination Sum shall be an amount equal to the aggregate of:

1.2.1 the Base Senior Debt Termination Amount;

1.2.2 Redundancy Payments and Sub-Contractor Losses; and

1.2.3 the aggregate amount for which the share capital of Project Co and the amounts outstanding under the Subordinated Funding Agreements could have been sold on an open market basis based on the Relevant Assumptions,

LESS, to the extent it is a positive amount, the aggregate of without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below:

1.2.4 the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 57.23 (*Application of Proceeds*) of this Agreement in reinstatement, restoration or replacement or, in the case of any third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined provided that in such case Project Co shall as a condition to the payment by the Authority of the Authority Default Termination Sum assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims (provided that such condition shall not apply to the payment by the Authority of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount element of the Authority Default Termination Sum);

1.2.5 Not Used; and

1.2.6 amounts which the Authority is entitled to set off pursuant to Clause 50.11 (*Rights of Set-Off*) of this Agreement.

1.3 Without prejudice to Clause 51 (*Consequences of Termination*), on payment of the Authority Default Termination Sum, the Authority shall have the option to require Project Co to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1 and 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 paragraph 1.2.2 LESS without double counting in relation to the calculation of the Revised Senior Debt Termination Amount, the amounts referred to in paragraphs 1.2.4 and 1.2.6 above; provided always that (a) the amount referred to in paragraph 1.2.2 shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of the Authority that the amount will not be applied (in whole or in part) in payment of any Distribution and (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses 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 Project Co to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence failed to comply with its obligations under clause 9.4.4(a) of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt Termination Amount, 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 shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Project Co has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co 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 Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*), 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.
- 1.7 The Authority Default Termination Sum shall be payable in accordance with Section 4 (*General*) of this Schedule 17 (*Compensation on Termination*).

SECTION 2

COMPENSATION FOR PROJECT CO DEFAULT

1

If the Authority terminates this Agreement pursuant to Clause 44 (*Project Co Events of Default*) or Clause 47 (*Termination for Persistent Breach by Project Co*), the Authority shall pay to Project Co such sum as is calculated according to this Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*).

2

RETENDERING ELECTION

2.1 The Authority shall be entitled to retender the provision of the Project Operations in accordance with paragraph 3 (*Retendering Procedure*) and the provisions of paragraph 3 (*Retendering Procedure*) shall apply if:

2.1.1 the Authority notifies Project Co on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

2.1.2 there is a Liquid Market; and either

(a) the Senior Funders have not exercised their rights to step-in under clause 5 (*Representative*) of the Funders' Direct Agreement; or

(b) Project Co or the Senior Funders have not procured the transfer of Project Co's rights and liabilities under this Agreement 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 Project Operations and paragraph 4 (*No Retendering Procedure*) shall apply.

3

RETENDERING PROCEDURE

3.1 The objective of the Tender Process shall be to enter into a New Agreement with a Compliant Tenderer.

3.2 The Authority shall (subject to any legal requirements preventing it from doing so) use all reasonable endeavours to complete the Tender Process as soon as practicable.

3.3 The Authority shall as soon as reasonably practicable notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms.

3.4 Project Co authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 65 (*Confidentiality*) that is reasonably required as part of the Tender Process.

3.5 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 Project Co:

3.5.1 the Post Termination Service Amount for each completed month, on or before the date falling ten (10) Business Days after the end of that month; and

- 3.5.2 the Post Termination Service Amount for the period from the end of the last completed month until the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.
- 3.6 Project Co may, at its own cost, appoint a person to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Senior Funders on the Authority's compliance with the Tender Process.
- 3.7 The Tender Process Monitor shall enter into a confidentiality 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 all the tender documentation and bids and make representations to the Authority as to compliance with the Tender Process. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by Project Co in the event that Project Co refers a dispute as to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure. The Tender Process Monitor will not disclose confidential information to Project Co or the Senior Funders or any other person (and shall provide an undertaking to the Authority to such effect as a condition of his appointment) but shall be entitled to advise Project Co and the Senior Funders on whether it considers that the Authority has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Compliant Tender Price.
- 3.8 If any Post Termination Service Amount is less than zero then it may be carried forward and may be set off against any future positive Post Termination Service Amounts.
- 3.9 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under Physical Damage Policies and the amount (if any) standing to the credit of the Insurance Proceeds Account on the date that the New Agreement is entered into.
- 3.10 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) review and assess the Compliant Tenders and shall notify Project Co of:
- 3.10.1 the Highest Compliant Tender Price;
- 3.10.2 the Tender Costs; and
- 3.10.3 the Adjusted Highest Compliant Tender Price.
- 3.11 If Project Co refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 60 (*Dispute Resolution*), the Authority shall irrespective of such dispute be entitled to enter into a New Agreement.
- 3.12 The Adjusted Highest Compliant Tender Price, shall be paid in accordance with Section 4 (*General*) of this Schedule 17 (*Compensation on Termination*).
- 3.13 Subject to paragraphs 1.7 and 1.9 of Section 4 (*General*) of this Schedule 17 (*Compensation on Termination*), if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to Project Co on or before the date falling two (2) years after the Termination Date then the following provisions of this paragraph 3 shall not apply to that termination and the provisions of paragraph 4 (*No Retendering Procedure*) shall apply instead.

- 3.14 Subject to paragraph 2.1 of this Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*), the Authority may elect at any time prior to the receipt of a Compliant Tender, to follow the No Retendering Procedure under paragraph 4 (*No Retendering Procedure*) by notifying Project Co that this election has been made.
- 3.15 In the event that the Adjusted Highest Compliant Tender Price exceeds the Maximum Termination Amount, the Adjusted Highest Compliant Tender Price shall be deemed to be an amount equal to the Maximum Termination Amount.

4 NO RETENDERING PROCEDURE

- 4.1 Subject to paragraph 4.2, if the provisions of this paragraph 4 (*No Retendering Procedure*) apply Project Co shall not be entitled to receive any Post Termination Service Amount.
- 4.2 If the Authority elects to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering Procedure*) after it has elected to follow the procedure under paragraph 3 (*Retendering Procedure*), then the Authority shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 3 (*Retendering Procedure*).
- 4.3 In agreeing or determining the Estimated Fair Value of the Agreement the parties shall be obliged to follow the principles set out below:
- 4.3.1 all forecast amounts of revenues and costs should be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;
- 4.3.2 the total of all payments of the full Monthly Service Payments and all payments in respect of the Side Roads Works Price forecast to be made from the Termination Date to the Expiry Date shall be calculated and discounted at the Discount Rate;
- 4.3.3 the total of all costs reasonably forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Discount Rate and deducted from the payment calculated pursuant to paragraph 4.3.2 above, such costs to include (without double counting):
- (a) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - (b) the costs of providing the Services reasonably forecast to be incurred by the Authority from the Termination Date to the Expiry Date in providing the Project Operations to the standard required; and
 - (c) any rectification costs required to deliver the Project Operations to the standard required (including any costs reasonably forecast to be incurred by the Authority to complete the Works) and additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs for the purposes of this paragraph) the aggregate of:
 - (i) any insurance proceeds received (or held in the Insurance Proceeds Account) or which will be received pursuant to policies maintained in accordance with Clause 57 (*Insurance*); and

- (ii) amounts payable by the Authority in respect of Capital Expenditure under this Agreement which have not been paid,

in each case such costs to be forecast at a level that will deliver the Side Roads Works and Services to the standards required by this Agreement.

4.4 If the parties cannot agree on the Adjusted Estimated Fair Value of the Agreement on or before the date falling twenty (20) Business Days after the date on which the Authority elected or was required pursuant to paragraph 2 (*Retendering Election*) or paragraph 3 (*Retendering Procedure*) to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering Procedure*), then the Adjusted Estimated Fair Value of the Agreement shall be determined in accordance with Clause 60 (*Dispute Resolution*).

4.5 The Adjusted Estimated Fair Value of the Agreement shall be paid in accordance with Section 4 (*General*) of this Schedule 17 (*Compensation on Termination*).

4.6 In the event that the Adjusted Estimated Fair Value of the Agreement exceeds the Maximum Termination Amount, the Adjusted Estimated Fair Value of the Agreement shall be deemed to be an amount equal to the Maximum Termination Amount.

SECTION 3

COMPENSATION ON TERMINATION FOR FORCE MAJEURE

1 CONSEQUENCES OF TERMINATION FOR FORCE MAJEURE

1.1 If Project Co or the Authority terminates this Agreement pursuant to Clause 45 (*Force Majeure*) or Clause 57.14.2 (*Uninsurable Risks*) the Authority shall pay to Project Co the "**Force Majeure Termination Sum**" as set out in paragraph 1.2.

1.2 Subject to paragraphs 1.4 to 1.6 below the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

1.2.1 the Base Senior Debt Termination Amount;

1.2.2 Redundancy Payments and Sub-Contractor Losses (but excluding therefrom any claims for loss of profit);

1.2.3 an amount equal to all amounts paid to Project Co by way of subscription for shares in the capital of Project Co less dividends and other distributions paid to the shareholders of Project Co provided that where such figure is a negative number it shall instead be zero;

1.2.4 an amount equal to the Subordinated Debt less an amount equal to the aggregate of payments of interest paid on the Subordinated Debt provided that where such figure is a negative number it shall be instead fixed at zero; and

LESS, to the extent it is a positive amount, the aggregate of (without double counting) in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below:

1.2.5 the value of any right of Project Co to receive insurance proceeds (save where such insurance proceeds are held in the Insurance Proceeds Account and are to be applied in accordance with Clause 57.23 (*Application of Proceeds*) of this Agreement in reinstatement, restoration or replacement, or in the case of third party legal liability or employer's liability, in satisfaction of the claim, demand, proceeding or liability) or sums due and payable from third parties but excluding any claims under any Sub-Contracts or claims against other third parties which have not been determined provided that in such case Project Co shall as a condition to payment by the Authority of the Force Majeure Termination Sum assign any such rights and claims under the Sub-Contracts or claims against other third parties to the Authority and give the Authority reasonable assistance in prosecuting such claims (provided that such condition shall not apply to the payment by the Authority of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount element of the Force Majeure Termination Sum);

1.2.6 Not Used; and

1.2.7 amounts which the Authority is entitled to set off pursuant to Clause 50.11 (*Rights of Set-Off*) of this Agreement.

1.3 Without prejudice to Clause 51 (*Consequences of Termination*), on payment of the Force Majeure Termination Sum, the Authority shall have the option to require Project Co to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

- 1.4 If the aggregate of the amounts referred to in paragraphs 1.2.1 and 1.2.4 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 paragraph 1.2.2 LESS without double counting in relation to the calculation of the Revised Senior Debt Termination Amount the amounts referred to at paragraphs 1.2.5 and 1.2.7 above; provided always that (a) the amount referred to in paragraph 1.2.2 above shall only be paid to the extent that Project Co has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid (in whole or in part) in payment of any Distribution and (b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Losses 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 Project Co to terminate such Sub-Contract.
- 1.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and Project Co has wilfully, or through gross negligence failed to comply with its obligations under clause 9.4.4(a) of the Funders' Direct Agreement then in addition to the deduction of the Distribution made pursuant to paragraph (v) of the definition of Revised Senior Debt Termination Amount, 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 shall never be less than the Revised Senior Debt Termination Amount.
- 1.6 If Project Co has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders' Direct Agreement and there has been an overstatement of the cash balances by Project Co 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 Section 3 (*Compensation on Termination for Force Majeure*), 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.
- 1.7 The Force Majeure Termination Sum shall be paid in accordance with Section 4 (*General*) of this Schedule 17 (*Compensation on Termination*).

SECTION 4**GENERAL****1 PAYMENT AND INTEREST**

1.1 Subject to paragraphs 1.2 and 1.6 below, the Authority shall pay to Project Co 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 sixty (60) days after the Notice Date provided that, if the Authority fails to pay the Termination Sum in full by such date, interest shall accrue at the Default Interest Rate on any unpaid amount from (but not including) such date until the date such amount is paid.

1.2 The Authority may, other than where payment is to be made pursuant to Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*) of this Schedule 17 (*Compensation on Termination*), elect to pay the Adjusted Estimated Fair Value of the Agreement or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

1.2.1 in instalments as follows:

(a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (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 Agreement (as relevant) representing the Outstanding Principal, on the dates (the "**Instalment Dates**") and in the amounts that Project Co would have been required to pay principal to the Senior Funders under the terms of the [REDACTED] 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 Agreement (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 Agreement (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that Project Co would have been required to pay to the Senior Funders on each Instalment Date under the terms of the [REDACTED] had the Termination Date not occurred; or

1.2.2 as the parties may otherwise agree.

- 1.3 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.
- 1.4 If the Authority has elected to pay in accordance with paragraph 1.2 above, it may (on twenty-eight (28) days' prior written notice to Project Co) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Agreement 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. If the Authority fails to make a payment to Project Co in accordance with paragraphs 1.1 or 1.2 or 1.3 above, Project Co may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Agreement or 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.
- 1.5 To the extent that the Adjusted Estimated Fair Value of the Agreement is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Agreement shall be due and payable by Project Co to the Authority on the Compensation Date.
- 1.6 From the Termination Date until the earlier of:
- 1.6.1 the payment by the Authority of any sum due as a lump sum pursuant to paragraph 1.1 ; and
 - 1.6.2 the last Instalment Date,
- (the **Relevant Period**) the Authority shall indemnify Project Co and Hold Co (without double counting) within ten (10) Business Days of written demand (such demand to be accompanied by reasonable supporting evidence) against any costs, claims, proceedings, actions, expenses, damages or liabilities incurred by Project Co and Hold Co:
- 1.6.3 for the preparation, audit (if required) and filing of all tax and information returns that are required to be filed by it in any jurisdiction in the period after the Termination Date (to the extent such returns were not overdue as at the Termination Date);
 - 1.6.4 in respect of fees, costs or expenses (if any) payable by it to the Intercreditor Agent, the Security Trustee, any receiver acting as trustee or receiver under the Senior Financing Agreements, the Account Bank, any bond custodian and/or any rating agencies in each case as contemplated by the Senior Financing Agreements;
 - 1.6.5 in connection with the corporate management, operation and administration of Project Co and Hold Co; and
 - 1.6.6 in respect of any legal or other adviser fees incurred in connection with any of the above,
- any such costs and expenses to be reasonably and properly incurred (and, in the case of 1.6.6 to pertain to requirements which have first fallen due within the Relevant Period) and, where applicable, any such services provided to Project Co and Hold Co to be procured in a cost effective manner.

Following Retendering

- 1.7 Subject to paragraphs 1.8 and 1.9 following a retendering exercise under Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*) the Authority shall pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the later of:
- 1.7.1 the date of the New Agreement; and
 - 1.7.2 if Project Co has referred a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution pursuant to paragraph 3.11 of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*), the date on which the dispute is finally determined in accordance with Clause 60 (*Dispute Resolution*),
- provided that, to avoid doubt, if the dispute referred by Project Co to dispute resolution (pursuant to paragraph 1.6.2 above) concerns only a proportion of the Adjusted Highest Compliant Tender Price then the Authority shall pay the undisputed proportion of such sum no later than twenty (20) Business Days after the date referred to in paragraph 1.6.1 above (the "**Undisputed Payment Date**") and the Authority shall pay interest to Project Co on any amount of the Adjusted Highest Compliant Tender Price which has been withheld, from the Undisputed Payment Date until the date on which payment is due under paragraph 1.6.2 above at the Senior Debt Rate.
- 1.8 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 Project Co of this decision and (if the Adjusted Highest Compliant Tender Price is a positive number) pay to Project Co an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.
- 1.9 If the Authority fails to pay the Adjusted Highest Compliant Tender Price (or any proportion thereof) by the date on which payment is due in accordance with paragraph 1.6 or paragraph 1.7 above, the Authority shall pay to Project Co interest on such unpaid amount, which shall accrue on such amount at the Default Interest Rate from (but not including) the date on which payment is due in accordance with paragraph 1.6 or paragraph 1.7 above until such amount is paid.
- 1.10 If the Adjusted Highest Compliant Tender Price is zero or a negative number then, on entering into the New Agreement with the New Project Co, the Authority shall have no obligation to make any payment to Project Co and (if a negative number) an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by Project Co to the Authority on the date of the New Agreement or (where paragraph 1.7 applies) within twenty (20) Business Days of notification from the Authority pursuant to that paragraph.

2 FULL AND FINAL SETTLEMENT

- 2.1 Any and all sums irrevocably paid by the Authority to Project Co under this Schedule 17 (*Compensation on Termination*) will be in full and final settlement of each party's rights and claims against the other for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise but without prejudice to:

- 2.1.1 any antecedent liability of Project Co to the Authority which the Authority has been unable to set off pursuant to Clause 50.11 (*Rights of Set-Off*) of this Agreement;
- 2.1.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum, Adjusted Highest Compliant Tender Price, or Adjusted Estimated Fair Value of the Agreement, or the Force Majeure Termination Sum as the case may be; and
- 2.1.3 any liabilities arising in respect of any breach by either party of their obligations under Clause 51.6 (*Continuing Obligations*) of this Agreement which arises or continues after the Termination Date.

3 COSTS

The costs and/or expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 17 (*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.

4 UNDISPUTED AMOUNTS

If the calculation of any termination amount is disputed then any undisputed element of that amount shall be paid in accordance with this Section 4 (*General*) of this Schedule 17 (*Compensation on Termination*) and the disputed element shall be dealt with in accordance with Schedule 20 (*Dispute Resolution Procedure*).

5 OUTSTANDING SENIOR DEBT AMOUNT

- 5.1 The Authority shall be entitled to rely on the certificate of the Intercreditor Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount (as the case may be) outstanding at any relevant time.
- 5.2 The receipt by the Intercreditor Agent of the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount or elements thereof (as appropriate) (as the case may be) (and where appropriate any accrued interest, breakage costs and/or Make-Whole Payment as certified in accordance with paragraph 5.1 above) shall discharge the Authority's obligations to pay such sums to Project Co.

**SECTION 5
DEFINITIONS**

"Adjusted Estimated Fair Value of the Agreement" means, subject to paragraph 4.6 of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*), the Estimated Fair Value of the Agreement adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce the Estimated Fair Value of the Agreement (whether or not such amounts have been set-off by the Authority pursuant to paragraph 3.8 of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*));

and the aggregate of the following amounts shall be deducted from the Estimated Fair Value of the Agreement:

- (b) the Post Termination Service Amounts actually paid by the Authority to Project Co prior to the Compensation Date;
- (c) the Tender Costs; and
- (d) amounts that the Authority is entitled to set off or deduct;

and the aggregate of the following amounts shall be added to the Estimated Fair Value of the Agreement:

- (e) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value of the Agreement is calculated; and
- (f) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in (e);

to the extent that:

- (i) (e) and (f) have not been directly taken into account in calculating the Estimated Fair Value of the Agreement; and
- (ii) the Authority has received such

amounts in accordance with this Agreement or such amounts are standing to the credit of the Insurance Proceeds Account;

"Adjusted Highest Compliant Tender Price"

means, subject to paragraph 3.15 of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*), the Highest Compliant Tender Price adjusted as follows:

- (a) where in respect of any month or part of a month from the Termination Date to the Compensation Date the Post Termination Service Amount is a negative number, the aggregate of all such negative Post Termination Service Amounts shall be set against and shall reduce such highest tender price (whether or not such amounts have been set-off by the Authority pursuant to paragraph 3.8 of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*));

and the aggregate of the following amounts shall be deducted from the Highest Compliant Tender Price:

- (b) the Post Termination Service Amounts actually paid by the Authority to Project Co prior to the Compensation Date;
- (c) the Tender Costs; and
- (d) amounts that the Authority is entitled to set off or deduct under this Agreement,

and the aggregate of the following amounts shall be added to such highest tender price:

- (e) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Compliant Tender is received; and
- (f) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in (c);

to the extent that:

- (i) (e) and (f) have not been directly taken into account in that Compliant Tender; and
- (ii) the Authority has received such amounts in accordance with this Agreement;

"APB Distribution"

means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

"Authority Default Termination Sum"

has the meaning given in paragraph 1.1 of Section 1 (*Compensation on Termination for Authority Default and Voluntary Termination*) of Schedule 17 (*Compensation on Termination*);

"Base Senior Debt Termination Amount"

means, subject to Clause 4.3 (*Changes to Funding Agreements and Refinancing*):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from Project Co Hold Co to the Senior Funders in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including, for the avoidance of doubt, any Make-Whole Payment), payable by Project Co or Hold Co to the Senior Funders as a result of a prepayment in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to Project Co or Hold Co and the Senior Funders mitigating all such costs to the extent reasonably possible (unless and to the extent that the amount, or the formula for determining the amount, of such costs is fixed in advance under the terms of the relevant Senior Funding Agreements);

less, to the extent it is a positive amount the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (ii) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co or Hold Co as a result of prepayment of amounts outstanding in respect of Permitted Borrowings (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of

Schedule 17 - Compensation Termination

interest rate hedging arrangements only, as a result of termination of this Agreement;

(iii) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Authority to Project Co as a result of enforcing any other rights they may have; and

(iv) all credit balances on any bank accounts (but excluding the Insurance Proceeds Account, [REDACTED]) held by or on behalf of Project Co or Hold Co on the Termination Date;

"Compensation Date"

means either:

(a) if paragraph 3 (*Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*) applies, the earlier of:

(i) the date that the New Agreement is entered into; and

(ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to Project Co; or

(b) if paragraph 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*) applies, the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined;

"Compliant Tender"

means a tender that meets all of the Qualification Criteria;

"Compliant Tenderer"

means a Suitable Substitute Contractor who submits a Compliant Tender;

"Contingent Funding Liabilities"

means the contingent liabilities of:

(a) the Shareholders; and/or

(b) the Subordinated Funders; and/or

(c) any other parties providing equity or Subordinated Debt, to subscribe for equity or Subordinated Debt (if any) under any of the Funding Agreements at the relevant time to Project Co, Hold Co, and/or the Senior Funders together with, without double-counting, any security (by way of letter of credit, guarantee, or

otherwise) for those liabilities.

"Deemed New Agreement"

means an agreement on the same terms and conditions as this Agreement, as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to a Phase Actual Completion Date, then the relevant Longstop Date(s) shall be extended by a period to allow a New Project Co (had one been appointed) to achieve the relevant Phase Actual Completion Date(s) prior to the relevant Longstop Date(s);
- (b) any accrued Deductions and/or Warning Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled; and
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;

"Discount Rate"

means a discount rate expressed as $[(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1]$

where:

"real base case project IRR" is the real pre-tax Project IRR as set out in the Financial Model at Financial Close;

"i" is the agreed assumed forecast rate of increase in RPIX set out in the Financial Model as at Financial Close, for the remaining term of the Agreement;

"Gilt A" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model at Financial Close; and

"Gilt B" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Financial Model as on the Termination Date;

"Distribution"

has the meaning given in Schedule 23 (*Refinancing*);

"Estimated Fair Value of the Agreement"

means the amount determined in accordance with paragraph 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*) that a third party would pay to the Authority as the market

	value of the Deemed New Agreement;
"Fair Value"	means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidated sale;
"Highest Compliant Tender Price"	means the price offered by the Compliant Tenderer (if any) with the highest tender price, and, if no Compliant Tenders are received, means zero;
"Hold Co"	means Future Valleys Hold Co Limited (registered under number 12855952) whose registered office is Fulcrum, 105 Piccadilly, Mayfair, London, W1J 7NJ;
"Liquid Market"	means that there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for design, build, finance and maintain contracts or similar contracts for the provision of services (in each case the same as or similar to this Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Funders specifically for the purposes of the Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;
"Long Stop Date"	means the date falling eighteen (18) months after the relevant Phase Completion Date;
"Make-Whole Payment"	means to the extent payable by Project Co: (a) following a termination of this Agreement under Clause 43 (Authority Events of Default), the Regular Make-Whole Amount; (b) following a termination of this Agreement under Clause 46 (Authority Voluntary Termination), the Modified Make-Whole Amount; and (c) in relation to termination of this Agreement in any other circumstances, shall be zero;
"Regular Make-Whole Amounts"	has the meaning given in the Common Terms Agreement;
"Modified Make-Whole Amounts"	means the amount payable by Project Co pursuant to Clause 5.9.1 (B)(2) of the Common Terms Agreement;
"Market Value Availability Deduction Amount"	means for any month or part of a month, an amount equal to the Deductions included within the Monthly Service Payment under paragraph 2 of Schedule 14 (<i>Payment Mechanism</i>) in the month immediately preceding the Termination Date, less an amount equal to any Availability Failure Deductions that

were made for a Carriageway Section which was subject to an Availability Failure at the Termination Date where such Availability Failure has subsequently been rectified whether as a result of the Authority incurring Rectification Costs or otherwise;

"Maximum Service Payment"

means one twelfth of the Annual Service Payment payable at any time before any deductions under paragraph 2.1 of Schedule 14 (*Payment Mechanism*) but allowing for indexation under the indexation provisions;

"Maximum Termination Amount"

means either an amount equal to the aggregate of:

- (a) the Base Senior Debt Termination Amount; and
- (b) the principal amount of the Subordinated Debt outstanding; and
- (c) Redundancy Payments and Sub-Contractor Losses;

OR, if the aggregate of the amounts referred to in (a) and (b) above is less than the Revised Senior Debt Termination Amount then an amount equal to the aggregate of:

- (d) the Revised Senior Debt Termination Amount; and
- (e) Redundancy Payments;

"New Agreement"

means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to a Phase Actual Completion Date, then the relevant Longstop Date(s) shall be extended by a period to allow a New Project Co to achieve the relevant Phase Actual Completion Date(s) prior to the relevant Longstop Date(s);
- (b) any accrued Deductions and/or Warning Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;
- (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
- (d) any other amendments which do not adversely affect the Project Co;

"New Project Co"

means the person who has entered or who will

enter into the New Agreement with the Authority;

"Notice Date"

means the later of the Termination Date and (if paragraph 4 (*No Retendering Procedure*) of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*) applies) the date that the Adjusted Estimated Fair Value of the Agreement has been agreed or determined;

"Outstanding Principal"

means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the [REDACTED];

"Post Termination Service Amount"

means for the purposes of paragraph 3 (*Retendering Process*) of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment (pro rata for part of a month) which would have been payable under this Agreement had this Agreement not been terminated, less an amount equal to the aggregate of (without double counting):

- (a) (where relevant) the amount by which the Post Termination Service Amounts for the previous month was less than zero;
- (b) the Market Value Availability Deduction Amount for that month; and
- (c) the Rectification Costs incurred by the Authority in that month;

"Qualification Criteria"

means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with procurement regulations) shall be:

- (a) the New Agreement terms;
- (b) tenderers should have the financial ability to pay the capital sum tendered for the New Agreement and the financial ability to deliver the Works, the Services and/or Restricted Services (as appropriate) for the price tendered;
- (c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New Agreement;
- (d) the tenderer is experienced in providing the

Services or similar services;

- (e) the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services; and
- (f) any other tender criteria agreed by the Authority and the Project Co;

"Rectification Costs"

means, for the purposes of any Termination Date that occurs after a Phase Actual Completion Date, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in ensuring that the Services are available;

"Redundancy Payments"

means redundancy payments and other termination payments which are required under Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of terminating this Agreement (provided that Project Co shall use all reasonable endeavours to mitigate its loss) and provided that in calculating such amount no account should be taken of any liabilities and obligations of Project Co arising out of:

- (a) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment agreements or arrangements were not entered into in connection with the Project; and/or
- (b) contracts of employment or other agreements or arrangements entered into by Project Co to the extent that such contracts of employment agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

"Relevant Assumptions"

means the assumptions that the sale of Project Co is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of Project Co and the Project is taken into account;

"Revised Senior Debt Termination Amount"

means, subject to Clause 4.3 (*Changes to Funding Agreements and Refinancing*):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from

Project Co or Hold Co to the Senior Funders in respect of Permitted Borrowing; and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including, for the avoidance of doubt, any Make-Whole Payment), payable by Project Co or Hold Co to the Senior Funders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement subject to Project Co or Hold Co and the Senior Funders mitigating all such costs to the extent reasonably possible (unless and to the extent that the amount, or the formula for determining the amount, of such costs is fixed in advance under the terms of the relevant Senior Funding Agreements);

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Insurance Proceeds Account, [REDACTED]) held by or on behalf of Project Co or Hold Co on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Funders to Project Co or Hold Co as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement;
- (iv) all other amounts received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the Authority to Project Co as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

"Senior Debt"

means the financing provided by the Senior Funders under the Senior Funding Agreements;

"Senior Funding Agreements"

has the meaning given in Schedule 1 (*Definitions and Interpretation*);

"Sub-Contractor Losses"

means:

- (a) the amount reasonably and properly payable by Project Co to the Contractor under the terms of the Construction Contract as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount; and
- (b) in the case of the Service Provider referred to in limb (a) of the definition of Service Provider, the amount reasonably and properly payable by Project Co to the Service Provider under its respective contracts with Project Co (as the case may be) as a direct result of the termination of this Agreement provided that such amount shall be reduced to the extent that Project Co fails to use all reasonable endeavours to mitigate such amount;

provided that in both cases no account should be taken of any liabilities and obligation of Project Co to the Sub-Contractors arising out of:

- (i) agreements or arrangements entered into by Project Co and/or the Sub-Contractors to the extent that such agreements or arrangements were not entered into in connection with those parties obligations in relation to the Project; and/or
- (ii) agreements or arrangements entered into by Project Co and/or the Sub-Contractors to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

"Suitable Substitute Contractor"

has the meaning given in the Funders' Direct Agreement;

"Subordinated Debt"

means any loan stock, loan notes or subordinated debt of the Project Co or Hold Co, issued to Hold Co or to the Shareholders to finance or refinance the Project together with any accrued and unpaid interest thereon in accordance with the terms and conditions of the Subordinated Funding Agreements as at the date of this Agreement and as amended as permitted under Clause 4 (*Project*

Documents);

"Tender Costs"

means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Agreement;

"Tender Process"

means the process by which the Authority requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new service provider, in accordance with paragraph 3 (*Retendering Process*) of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*);

"Tender Process Monitor"

means the person appointed under paragraph 3.6 of Section 2 (*Compensation for Project Co Default*) of this Schedule 17 (*Compensation on Termination*);

"Termination Sum"

means any compensation payable by the Authority to Project Co pursuant to this Schedule 17 (*Compensation on Termination*) (excluding the Adjusted Highest Compliant Tender Price).

SCHEDULE 18

HANDBACK PROCEDURE

- 1 In this Schedule 18 (*Handback Procedure*) and elsewhere in this Agreement (save where Schedule 1 (*Definitions and Interpretations*) provides to the contrary) the following words shall have the following meanings:

"Handback Amount"	means the estimated cost of carrying out the Handback Works;
"Handback Inspection"	has meaning given in paragraph 3 of this Schedule 18 (<i>Handback Procedure</i>);
"Handback Programme"	means the programme for carrying out the Handback Works over the remainder of the Project Term describing the total works to be carried out and the method of carrying out such works during the overall period in which the Handback Works are to be executed;
"Handback Works"	means the maintenance works (if any) required to be carried out in respect of the Project Facilities in order to procure that they will, on the Expiry Date, satisfy the Handback Requirements;
"New Structure"	means Structures comprising entirely of new elements above and below ground that have been constructed during the Construction Phase;
"Retention Fund"	has meaning given in paragraph 7 of this Schedule 18 (<i>Handback Procedure</i>);

- 2 On the Expiry Date:

- 2.1 each element of the Project Facilities shall be in a condition which is consistent with the condition specified in Appendix 1 to this Schedule 18 (*Handback Procedure*) (collectively referred to as the **"Handback Requirements"**);
- 2.2 Project Co shall provide all support required and undertake all actions required to ensure that all data on the Asset Management System is securely migrated (in a readable, editable and compatible form) from the Asset Management System to the Authority's system;
- 2.3 Project Co shall comply with their obligations in paragraph A2.3.1(a) of Appendix 2 (*Information Requirements*) of Schedule 30 (*BIM Protocol*); and
- 2.4 Project Co shall at its own cost deliver up to the Authority, in the manner and at the location as the Authority shall specify, all such records as are referred to in paragraph 2.2 of Part 6 (*Reports, Information and Records*) of Schedule 6 (*Construction Matters*) which are in existence at the end of the Project Term (or, where those records are required by statute to remain with Project Co, copies thereof) or such part of such records as the Authority may by notice to Project Co specify.

- 3 Not less than two (2) years (but no greater than five (5) years) prior to the Expiry Date, Project Co shall conduct the inspections specified in Appendix 1 to this Schedule 18 (*Handback Procedure*) in respect of each element of the Project Facilities (each being a **"Handback Inspection"**, and collectively referred to as the **"Handback Inspections"**) and shall prepare

inspection reports recording the outcome of each Handback Inspection (taking account of the expected condition of the relevant elements of the Project Facilities at the Expiry Date). The Authority shall be given a minimum twenty (20) Business Days' notice of all such Handback Inspections and shall be entitled to attend all such Handback Inspections.

- 4 Within sixty (60) Business Days after the completion of each Handback Inspection:
 - 4.1 Project Co shall provide inspection reports in relation to each Handback Inspection to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*); and
 - 4.2 if it is found that any element of the Project Facilities is not in a condition consistent with the Handback Requirements, Project Co shall forthwith provide to the Authority's Representative in accordance with Schedule 8 (*Review Procedure*):
 - 4.2.1 Project Co's proposal as to the Handback Works;
 - 4.2.2 Project Co's proposal as to the Handback Programme; and
 - 4.2.3 Project Co's estimate of the cost of the Handback Amount;
- 5 The Authority's Representative may, within fifteen (15) Business Days after receipt of the details set out in paragraph 4 from Project Co, raise comments in accordance with paragraph 3 of Schedule 8 (*Review Procedure*) on Project Co's proposals and estimate referred to in paragraph 4 of this Schedule 18 (*Handback Procedure*) or the conclusions of the inspection reports in respect of the Handback Inspections.
- 6 On agreement, or determination in accordance with Schedule 20 (*Dispute Resolution Procedure*), of the Handback Works, the Handback Programme and/or the Handback Amount (as the case may be), Project Co shall procure that the Handback Works are carried out to the satisfaction of the Authority's Representative in accordance with Good Industry Practice and in accordance with the Handback Programme so as to meet the Handback Requirements. Project Co shall carry out the Handback Works at its own cost notwithstanding that the actual cost of the Handback Works may be higher than the Handback Amount.
- 7 From the date of the agreement (or determination in accordance with Schedule 20 (*Dispute Resolution Procedure*)) of the matters identified in paragraph 6 of this Schedule 18 (*Handback Procedure*), the Authority shall be entitled to withhold thirty per cent (30%) of each subsequent Monthly Service Payment up to the amount of the Handback Amount and the provisions of paragraph 11 of this Schedule 18 (*Handback Procedure*) shall apply. The Authority shall pay such amounts into an interest bearing account in its own name (the "**Retention Fund**").
- 8 Project Co may elect by notice in writing to the Authority within ten (10) Business Days of the agreement (or determination in accordance with Schedule 20 (*Dispute Resolution Procedure*)) of the matters identified in paragraph 6 of this Schedule 18 (*Handback Procedure*) to procure the provision of a bond (the "**Handback Bond**") in favour of the Authority (and in a form acceptable to the Authority (acting in its sole discretion)) for an amount equal to the Handback Amount and from a bank or insurance company authorised to carry out business in the United Kingdom, and upon delivery of the same to the Authority, the provisions of paragraph 7 of this Schedule 18 (*Handback Procedure*) shall not apply.
- 9 Not used.
- 10 Notwithstanding:
 - 10.1 the agreement of the Authority's Representative to any Handback Works, the Handback Programme or the Handback Amount;

10.2 the participation of the Authority's Representative in any inspection under this Schedule; and/or

10.3 the complete or partial carrying out of the Handback Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works in accordance with the Service Level Specification and Method Statement for the Project Facilities.

- 11 Where paragraph 7 of this Schedule 18 (*Handback Procedure*) applies, if and to the extent that Project Co carries out any material part of the Handback Works in accordance with paragraph 6 of this Schedule 18 (*Handback Procedure*), Project Co may make a claim for payment for the work carried out. Any such claim shall be accompanied by a certificate by Project Co setting out the works performed and the value of such works. The Authority shall be entitled to require any reasonable further evidence in respect of the valuation of the works. The Authority shall make payment of the amount of a valid claim within twenty (20) Business Days of the date of the claim and shall be entitled to withdraw that amount from the Retention Fund. If at any time the amount in the Retention Fund is insufficient to cover the costs claimed by Project Co, the Authority shall pay the unpaid portion of such valid claim from any amounts which subsequently stand to the credit of the Retention Fund. In the event that the amount remaining in the Retention Fund on the Expiry Date is insufficient to cover Project Co's costs which have not been paid, Project Co shall bear the balance of such costs itself.
- 12 Not later than sixty (60) Business Days before the Expiry Date, Project Co and the Authority's Representative shall conduct a joint inspection of the Project Facilities. Such inspection shall confirm whether or not the condition of the Project Facilities is in accordance with paragraph 2 above.
- 13 On, or within ten (10) Business Days after, the Expiry Date, the Authority's Representative shall either:
 - 13.1 issue to Project Co a Handback Certificate and return the Handback Bond or pay any balance standing to the credit of the Retention Fund (as appropriate), to Project Co; or
 - 13.2 issue a non-compliance report notifying Project Co of its decision not to issue the Handback Certificate stating the inspections which failed and the reasons for such decision.
- 14 Any notice given by the Authority's Representative in accordance with paragraph 13.2 shall set out each respect in which the Handback Works have not been completed or the Project Facilities do not comply with the Handback Requirements and shall state the Authority's Representative's estimate of the cost of procuring that the Project Facilities comply in all respects with the Handback Requirements. The Authority's Representative shall only withhold issuing the Handback Certificate on the grounds of non-compliance of Handback Works with the Handback Requirements.
- 15 Project Co may, within ten (10) Business Days after receipt of the notice given in accordance with paragraph 13.2 of this Schedule 18 (*Handback Procedure*) by notice to the Authority's Representative, object to any matter set out in the Authority's Representative's notice. The notice from Project Co shall give details of the grounds of such objection and shall set out Project Co's proposals in respect of such matters.

- 16 If no agreement is reached between Project Co and the Authority's Representative as to any matter referred to in Project Co's notice given in accordance with paragraph 15 of this Schedule 18 (*Handback Procedure*) within ten (10) Business Days of receipt of that notice by the Authority's Representative, then either Project Co or the Authority's Representative may refer the matter for determination in accordance with Schedule 20 (*Dispute Resolution Procedure*) as to:
- 16.1 whether the Project Facilities comply in all respects with the Handback Requirements; and
 - 16.2 the estimated cost of procuring that the Project Facilities comply in all respects with the Handback Requirements, where the Project Facilities do not comply in all respects with the Handback Requirements.
- 17 If it is agreed or determined in accordance with Schedule 20 (*Dispute Resolution Procedure*) that the Project Facilities did not, at the Expiry Date, comply in all respects with the Handback Requirements, Project Co shall pay to the Authority an amount equal to the estimated cost of completing such Handback Works (less, where applicable, (i) any amounts standing to the credit of the Retention Fund at that time (which shall be for the account of the Authority), or (ii) the amount called upon by the Authority under the Handback Bond) or procuring that the Project Facilities comply in all respects with the Handback Requirements. Such payment shall be made not later than twenty (20) Business Days after the estimated cost has been agreed or determined and, upon such payment being received by the Authority, the Authority's Representative shall issue the Handback Certificate and return (where applicable) the Handback Bond to Project Co.

APPENDIX 1

Handback Requirements

[REDACTED]

SCHEDULE 19

RECORD PROVISIONS

SECTION 1

GENERAL REQUIREMENTS

- 1 Project Co shall retain and maintain all the records (including superseded records) referred to in Section 2 (*Records to be Kept*) of this Schedule 19 (*Record Provisions*) in accordance with this Section 1 (*General Requirements*) of this Schedule 19 (*Record Provisions*), the requirements of Good Industry Practice, in chronological order, in a form that is capable of audit and at its own expense. Project Co shall make such records available for inspection to the Authority where it has reasonable cause for requiring such records, on giving reasonable notice shall 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 Schedule 19 (*Record Provisions*).
- 2 Wherever practical, original records shall be retained and maintained in hard copy form. True copies of the original records may be kept by Project Co where it is not practicable to retain original records.
- 3 Those records relating to the Project Operations (including the design, construction, development, enhancement and maintenance of the Project Facilities) shall be retained for the duration of the Agreement.
- 4 Financial and other records (including without limitation all information provided in support of any Change) shall be retained and maintained by Project Co for a period of at least six (6) years after the end of the Project Term in sufficient detail, in appropriate categories and generally in such a manner to enable Project Co to comply with its obligations under Clause 67.1 (*Information and Audit Access*) and where appropriate to enable the data in such records to be entered into the Financial Model so that the output from the Financial Model (on the basis of such data) can be directly compared with the actual financial cashflow and performance of Project Co.
- 5 Where Project Co wishes to dispose of any records maintained as provided in this Schedule 19 (*Record Provisions*) which are more than fifteen (15) years old, or in respect of which the required period for their retention has expired, then Project Co shall notify the Authority and if, within forty (40) Business Days of such notice, the Authority elects to receive certain of those records, then Project Co shall deliver up such records to the Authority in the manner and at the location as the Authority shall reasonably specify, and the costs of retaining those records in safe storage and delivering up the same shall be borne by Project Co.
- 6 Subject to paragraph 5, for a period of not more than six (6) years following the termination for whatever reason of this Agreement, Project Co shall retain in safe storage all such records as are referred to in Section 2 (*Records to be Kept*) of this Schedule 19 (*Record Provisions*) which were in existence at the date of termination of this Agreement. On the expiry of such period or at the earlier request of the Authority (and the parties acknowledge that such a request shall be deemed to have been issued by the Authority upon the occurrence of any of the events set out in Clause 44.1.1 whether prior to or following termination of this Agreement), Project Co shall deliver up all those records (or where those records are required by statute to remain with Project Co or a Contracting Associate of Project Co, copies thereof) to the Authority in the manner and at the location as the Authority shall reasonably specify. The Authority shall make available to Project Co all the records Project Co delivers up

pursuant to this paragraph subject to reasonable notice. The costs of retaining those records in safe storage and delivering up the same shall be borne:

- 6.1 by Project Co where the termination arises as a result of a Project Co Event of Default; and
 - 6.2 by the Authority where the termination arises for any other cause.
- 7 Without prejudice to the foregoing, Project Co shall provide the Authority:
- 7.1 as soon as they may be available and in any event within sixty (60) Business Days after the end of the first six (6) months of each financial year of Project Co which falls during the Project Term, a copy, certified as a true copy by an officer of Project Co, of its unaudited interim accounts and, if appropriate, of consolidated unaudited interim accounts of Project Co, its Subsidiaries and Holding Company (if any) which would (if Project Co were listed on the London Stock Exchange whether or not it is) be required to be sent to shareholders as at the end of and for each such six (6) month period; and
 - 7.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of Project Co but not later than one hundred and thirty (130) Business Days after the end of each accounting reference period of Project Co part or all of which falls in a Contract Year, a copy of Project Co's audited accounts and if appropriate, of the consolidated audited accounts of Project Co and, its Associated Companies (if any), in respect of that period, prepared in accordance with the Companies Act 2006 and generally accepted accounting principles and bases in England and Wales, consistently applied together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.
- 8 Project Co shall 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 Funders during the preceding three (3) month period and, at the request of the Authority, provide to the Authority any information provided to it by the Senior Funders during the Project Term and any other information relating to the Project that the Authority may reasonably require.
- 9 Any drawings required to be made or supplied pursuant to this Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids and shall conform to British Standards 1192 or 308 or equivalent as appropriate. Where by prior agreement the Authority has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), drawings and other documents shall be made or supplied in such form as has been agreed.
- 10 Upon termination or expiry of this Agreement, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project, Project Co shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the Authority to provide information relating to Project Co's costs of operating and maintaining the Project.
- 11 Project Co shall use all reasonable endeavours to assist the Authority in its preparation of any report and/or return required pursuant to regulations, directions or guidance applicable to the Authority (in each case as amended, replaced or consolidated from time to time) or as required by external agencies including without limitation, reports and returns regarding the physical condition of the Project Facilities, health and safety, under the Regulatory Reform (Fire Safety) Order 2005, relating to environmental health, or the Welsh Ministers from time to time.

Project Co shall comply with its obligations under Clause 67.4 (*Information and Audit Access*) and shall retain records of its information all action taken by it pursuant to Clause 67.4.1

(Information and Audit Access), and, such other records as the Authority may reasonably request that Project Co retains in connection with network and information system security.

SECTION 2

RECORDS TO BE KEPT

- 1 This Agreement, its Schedule and the Project Documents including all amendments to such agreements.
- 2 Project Co shall at all times maintain a full and easily searchable record of particulars of the costs of performing the Project Operations, including those relating to the design, construction, maintenance, operation and finance of the Project Facilities. This shall require Project Co to keep (and where appropriate to procure that the sub-contractors shall keep) books of account in accordance with best accountancy practice with respect to the Agreement showing in detail:
 - 2.1 administrative overheads;
 - 2.2 payments to Sub-Contractors and to sub-contractors;
 - 2.3 capital and revenue expenditure;
 - 2.4 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 34.12, Schedule 16 (*Change Protocol*) and Clause 37 (*Changes in Law*).and Project Co shall have (and procure that the sub-contractors shall have) the books of account evidencing the items listed in paragraphs 2.1 to 2.4 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.
- 3 All other documents, software or other information expressly referred to in this Agreement.
- 4 Records relating to the appointment and supersession of the Authority's Representative and Project Co's Representative.
- 5 Project Data.
- 6 Documents, drawings, design data or submissions raised in accordance with Schedule 8 (*Review Procedure*).
- 7 Documents relating to planning applications, consents, refusals and appeals.
- 8 Records relating to any specialist or statutory inspections of the Project Facilities.
- 9 Notices, reports, results and certificates relating to completion of the Works and completion of the commissioning activities (including all documents related to the building warrant).
- 10 All operation and maintenance manuals and a full record of all maintenance procedures carried out during the Project Term.
- 11 Documents relating to events of Force Majeure, Delay Events, Compensation Events and Relief Events and the consequences of the same.
- 12 All formal notices, reports or submissions made to or received from the Authority's Representative in connection with the provision of Services, the Monitoring of Performance or the availability of the Project Facilities.

- 13 All certificates, licences, registrations or warranties related to the provision of Services.
- 14 Documents in support of claims for Services Payments.
- 15 Documents submitted in accordance with Schedule 16 (*Change Protocol*) and all documents provided in support.
- 16 Documents related to referrals to the Dispute Resolution Procedure.
- 17 Documents related to change in ownership or any interest in any or all of the shares in Project Co and/or Hold Co.
- 18 Documents relating to the rescheduling of the indebtedness of Project Co or refinancing of the Project.
- 19 Tax invoices and records related to Value Added Tax.
- 20 Financial records, including audited and unaudited accounts of Hold Co and Project Co and related reports
- 21 Records required by Law (including in relation to Health and Safety matters and health and safety files prepared pursuant to CDM Regulations) and all Consents, Orders and New Orders
- 22 Documents relating to insurance and insurance claims.
- 23 All other records, notices or certificates required to be produced and/or maintained by Project Co pursuant to this Agreement or any Project Document.
- 24 Records of all persons employed by Project Co or its sub-contractors and who are wholly or mainly engaged in the delivery of Services.
- 25 For the avoidance of doubt, all items listed above should be stored in a secure but easily searchable and retrievable format.

SCHEDULE 20

DISPUTE RESOLUTION PROCEDURE

- 1 The procedure set out in this Schedule 20 (*Dispute Resolution Procedure*) shall apply to any dispute, claim or difference arising out of or relating to this Agreement ("**Dispute**") except where it has been excluded from this procedure by an express term of this Agreement.
- 1A The Fast Track Dispute Resolution Procedure as set out in Appendix A to this Schedule 20 (*Dispute Resolution Procedure*) shall apply to any dispute between the parties concerning:
- 1A.1 a notice under Clause 16.4.2 (*Permit to Use*) as to whether or not the PTU Criteria for a Phase have been satisfied ("**PTU Dispute**");
 - 1A.2 a notice under clause 16.10E.2 (*Snagging Items*) as to whether or not the Snagging Items have been completed ("**Snagging Dispute**");
 - 1A.3 a notice under clause 16.17.2 (*Taking Over Certificate*) as to whether or not the Taking Over Criteria have been satisfied ("**Taking Over Dispute**");
 - 1A.4 a notice under clause 16.27.2 (*Handing Over Certificate*) as to whether or not the Handing Over Criteria have been satisfied ("**Handing Over Dispute**");
 - 1A.5 a notice under clause 21.3.2 (*Restricted Services Commencement Notice*) as to whether or not the Restricted Services Readiness Criteria have been satisfied ("**RS Dispute**"),

and the Fast Track Dispute Resolution Procedure shall apply to any PTU Dispute, Snagging Dispute, Taking Over Dispute, Handing Over Dispute or RS Dispute in place of, and to the exclusion of, paragraphs 4 to 9 (inclusive) of this Schedule 20 (*Dispute Resolution Procedure*).

- 2 This Dispute Resolution Procedure shall not impose any pre-condition on either party or otherwise prevent or delay either party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that party requires either:
- 2.1 an order (whether interlocutory or final) restraining the other party from doing any act or compelling the other party to do any act; or
 - 2.2 a judgement for a liquidated sum to which there is no arguable defence.
- 3 Further, save in the case of any PTU Dispute, Snagging Dispute, Taking Over Dispute, Handing Over Dispute or RS Dispute, this Dispute Resolution Procedure shall not impose any pre-condition on either party or otherwise prevent or delay either party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute where an Adjudication in accordance with paragraph 6 of this Schedule 20 (*Dispute Resolution Procedure*) has not been commenced or concluded. However, in such circumstances, the parties shall jointly apply to the Court for such proceedings to be stayed until no earlier than twenty-eight (28) days from the provision of a decision to be issued in accordance with paragraph 6.5 of this Schedule20 (*Dispute Resolution Procedure*).

4 LIAISON COMMITTEE

Subject to paragraph 2 of this Schedule 20 (*Dispute Resolution Procedure*), any Dispute shall first be referred to the Liaison Committee.

5 MEDIATION

- 5.1 The parties may (if both parties so agree) refer the Dispute to mediation on such conditions as may be agreed between the parties. Any mediation shall be completed within thirty (30) Business Days of such referral (unless otherwise agreed by the parties) and any agreement arising therefrom shall be recorded in writing and signed by the parties and shall be binding and final to the extent set out in such agreement unless otherwise agreed.
- 5.2 For the avoidance of doubt, mediation shall not be a precondition to the commencement of Adjudication or court proceedings.

6 ADJUDICATION

- 6.1 Any Dispute shall be referred to Adjudication by either party at any time (notwithstanding that other dispute resolution procedures are running concurrently) giving the other party to the Dispute notice of its intention to refer the Dispute to adjudication (the "**Notice of Adjudication**"). The party giving the Notice of Adjudication (the "**Referring Party**") shall by the same means of communication send a copy of the Notice of Adjudication to an adjudicator selected in accordance with paragraph 6.2 below or paragraph 6.14 (*Related Adjudicator*) below (the "**Adjudicator**").
- 6.2 The Adjudicator nominated to consider a Dispute referred to him shall, subject to paragraph 6.14, be selected from the relevant panel of adjudicators appointed in accordance with the following:
- 6.2.1 there shall be two (2) panels of experts, one in respect of construction matters (the "**Construction Panel**") and one in respect of operational and maintenance matters (the "**Operational Panel**"). All the adjudicators on each panel shall be wholly independent of Project Co, the Authority, the relevant Sub-Contractor and any of the major competitors of Project Co or the relevant Sub-Contractor;
 - 6.2.2 the Construction Panel shall be comprised of three (3) experts as identified in paragraph 9 (*Panel Members*);
 - 6.2.3 the Operational Panel shall be comprised of three (3) experts as identified in paragraph 9 (*Panel Members*);
 - 6.2.4 if any member of either panel resigns during the term of the Agreement, a replacement expert shall be appointed by Project Co and the Authority as soon as practicable;
 - 6.2.5 if Project Co and the Authority are unable to agree on the identity of any replacement expert, the President for the time being of the Chartered Institute of Arbitrators Wales Branch shall appoint such adjudicator(s) within seven (7) days of any application for such appointment by either party;
 - 6.2.6 in the event that the first panel member approached is unable or unwilling to confirm acceptance of his appointment as Adjudicator or where he fails to respond within two (2) days of the date of the Notice of Adjudication, then the Referring Party shall invite an alternative person from the relevant panel to act as Adjudicator. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Adjudicator within four (4) days of the date of the Notice of

Adjudication or if the parties disagree as to the relevant panel of adjudicators to be used, then the Referring Party may apply to the President for the time being of the Chartered Institute of Arbitrators Wales Branch who shall within seven (7) days of the date of the Notice of Adjudication, nominate an Adjudicator (who shall also within the same period, confirm acceptance of his appointment as Adjudicator) to determine the Dispute described in the Notice of Adjudication;

6.2.7 no member of either panel shall be entitled to accept an appointment to act as Adjudicator unless he is willing also to be appointed as the adjudicator to adjudicate any dispute which:

(a) may arise between Project Co and the Contractor and raises issues which, in the opinion of Project Co, are substantially the same as or connected with the Dispute in relation to which he has been appointed; and/or

(b) may arise between Project Co and the Service Provider and raises issues which, in the opinion of Project Co, are substantially the same as or connected with the Dispute in relation to which he has been appointed.

6.3 The Referring Party shall, within seven (7) days of the date of the Notice of Adjudication, serve its statement of case (the "**Referral Notice**") on the Adjudicator (appointed pursuant to paragraph 6.2) and the other party to the Dispute (the "**Responding Party**"). The Referral Notice shall set out each element of the Referring Party's claim and the relief or remedy sought in sufficient detail so as to enable the Responding Party to understand and, where appropriate, respond to the claim and the Referral Notice shall be accompanied by copies of, or relevant extracts from, this Agreement and such other documents as the Referring Party intends to rely upon. The date of the referral of the Dispute (the "**Referral**") shall be the date of the Referral Notice.

6.4 Within seven (7) days of appointment in relation to a particular Dispute, the Adjudicator shall establish the procedure and timetable for the adjudication. The Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.

6.5 The Adjudicator shall reach a decision on the Dispute within twenty-eight (28) days of the date of the Referral (or such other period as the parties may agree). The Adjudicator may extend the period of twenty-eight (28) days by up to fourteen (14) days with the consent of the Referring Party. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until the Dispute is finally determined by Court proceedings or by an agreement in writing between the parties, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

6.6 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 adjudication, including legal costs and the costs and expenses of any witnesses.

6.7 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an adjudicator and the law relating to arbitration shall not apply to the

Adjudicator or his determination or the procedure by which he reached his determination.

- 6.8 The Adjudicator shall act fairly and 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 Agreement.
- 6.9 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 65 (*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.
- 6.10 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.
- 6.11 The Adjudicator may on his own initiative or on the request of the Referring Party or Responding Party correct his decision so as to remove a clerical or typographical error arising by accident or omission.
- 6.12 Any correction of a decision shall be made within five (5) days of the date upon which the Adjudicator's decision was delivered to the parties.
- 6.13 Any correction of a decision shall form part of the decision.
- 6.14 If any Dispute raises issues which, in the opinion of Project Co, are substantially the same as or connected with issues raised in a dispute or difference arising out of or relating to any other agreement (all such agreements being referred to as the "**Related Agreements**") between:
 - 6.14.1 Project Co and the Contractor; and/or
 - 6.14.2 Project Co and the Service Provider,

which was or has been referred to adjudication (the "**Related Adjudication**") and an adjudicator has already been appointed (the "**Related Adjudicator**") then Project Co may request that the Dispute be referred to the Related Adjudicator and paragraphs 6.15 to 6.17 shall apply.

- 6.15 Subject to paragraphs 6.16 and 6.17 below, in the event that a Related Adjudicator orders that a Dispute under this Agreement be consolidated with a Related Adjudication with which he is dealing under the Related Agreement, then:
 - 6.15.1 with effect from the time of such order, the Dispute shall be determined by the Related Adjudicator, who shall become the Adjudicator; and
 - 6.15.2 such order shall be binding on Project Co and the Authority and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute, with Project Co or the Authority (as the case may be) using its best endeavours to procure that the third party who is a party to the Related

Agreement shall with effect from the time of such order comply with the requirements of the Related Agreement (including if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Related Adjudication; and

6.15.3 notwithstanding paragraph 6.6, Project Co and the Authority shall be jointly responsible with the third party who is a party to the Related Agreement for the Related Adjudicator's fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Agreement, in respect of the period in which the Dispute is consolidated with the Related Adjudication pursuant to an order of the Related Adjudicator ("**Consolidated Adjudication Costs**"). Project Co and the Authority agree that the Related Adjudicator shall have the discretion to make directions to require Project Co, the Authority and the third party who is a party to the Related Agreement to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, Project Co, the Authority and the third party who is a party to the Related Agreement shall bear the Consolidated Adjudication Costs in equal shares, and if Project Co, the Authority or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be.

6.16 Notwithstanding anything to the contrary a Dispute under this Agreement may only be consolidated with a Related Adjudication, if the Related Adjudicator receives particulars of the Dispute within ten (10) days of the referral of the Related Adjudication to the Related Adjudicator under the Related Agreement.

6.17 Where Project Co requests that a Dispute under this Agreement be consolidated (in terms of paragraph 6.14) with a Related Adjudication and heard by the Related Adjudicator, the Dispute may only be consolidated where the Authority has previously consented in writing to the identity of the Related Adjudicator appointed in respect of the Related Adjudication. The Authority's consent to such request shall not be unreasonably withheld and if the Authority refuses to consent, it must give reasons in writing for its refusal. Should the Authority fail to respond within two (2) days of receipt of such a request it shall be deemed to have consented to the appointment of the Related Adjudicator. Where the Related Adjudicator is on the Construction Panel or Operational Panel at the time of the Referral then the Authority shall be deemed to have consented to the appointment of the Related Adjudicator.

7 COURT PROCEEDINGS

Subject to paragraph 6 (*Adjudication*) all Disputes, to the extent not finally resolved pursuant to the procedures set out in the foregoing provisions of this Schedule 20 (*Dispute Resolution Procedure*), shall be referred to the Courts of England and Wales.

8 SUBMISSIONS IN RELATION TO ADJUDICATION

8.1 If any Dispute raises issues which relate to:

8.1.1 any dispute between Project Co and the Contractor arising under the Construction Contract or otherwise affects the relationship or rights of Project Co and/or the Contractor under the Construction Contract (the "**Construction Contract Dispute**"); or

8.1.2 any dispute between Project Co and the Service Provider arising under the Service Contract or otherwise affects the relationship or rights of Project Co and/or the Service Provider under the Service Contract (the "**Service Contract Dispute**"),

then Project Co may include as part of its submissions made to the Adjudicator submissions made by the Contractor or by the Service Provider as appropriate.

8.2 Any submissions made by the Contractor or the Service Provider shall:

8.2.1 be made within the time limits applicable to the delivery of submissions by Project Co to the Adjudicator; and

8.2.2 concern only those matters which relate to the Dispute between the Authority and Project Co arising out of this Agreement or in connection therewith.

8.3 Where the Contractor or the Service Provider makes submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by Project Co.

8.4 The Authority shall have no liability to the Contractor or the Service Provider or the Authority arising out of or in connection with any decision of the Adjudicator or in respect of the costs of the Contractor or the Service Provider in participating in the resolution of any Dispute under this Agreement.

8.5 Project Co shall not allow the Contractor or the Service Provider or the Authority access to any Confidential Information relevant to the issues in dispute between the Authority and Project Co save where:

8.5.1 the Confidential Information is relevant also to the issues relating to the Construction Contract Dispute or the Service Contract Dispute as the case may be; and

8.5.2 Project Co has first delivered to the Authority a written undertaking from the Contractor and/or the Service Provider (as appropriate) addressed to the Authority that they shall not use any such Confidential Information otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such Confidential Information to any third party other than the Adjudicator or the courts or any professional adviser engaged by the Contractor or the Service Provider (as appropriate) to advise in connection with the Dispute.

9 **PANEL MEMBERS**

The panel members referred to in paragraph 6 are as follows:

Construction Panel [REDACTED]

Operational Panel [REDACTED]

10 **NO LOSS**

Where the Authority would otherwise be expressly liable to make payment to Project Co of sums which include amounts payable in turn by Project Co to any Sub-Contractor, the Authority shall not be entitled to withhold, reduce or avoid any such payment to Project Co in

reliance only on the fact that the amount which is due from Project Co to the Sub-Contractor or the entitlement of the Sub-Contractor to payment of such amount as a result of the circumstances giving rise to the Authority's obligation to pay, is conditional on the entitlement of, or receipt of payment by Project Co from the Authority.

11 **CONTINUING OBLIGATIONS**

Unless this Agreement has already been repudiated or terminated, the parties shall, (notwithstanding that any Dispute is subject to the Dispute Resolution Procedure set out in this Schedule 20 (*Dispute Resolution Procedure*)), continue to carry out their obligations in accordance with this Agreement.

Appendix A - Fast Track Dispute Resolution Procedure

- 1 Any dispute between the parties in regard to a PTU Dispute, Snagging Dispute, Taking Over Dispute, Handing Over Dispute or RS Dispute shall be resolved in accordance with this Appendix A to Schedule 20.
- 2 In the event Project Co disagrees with a notice issued by the Authority under Clause 16.4.2 (*Permit to Use*), Clause 16.10E.2 (*Snagging Items*), clause 16.17.2 (*Taking Over Certificate*) or clause 16.27.2 (*Handing Over Certificate*) ("**Authority Rejection Notice**"), Project Co shall be entitled to refer the dispute for determination under this Fast Track Dispute Resolution Procedure, by the issue of written notice to the Authority ("**Fast Track Dispute Notice**"), setting out:
 - 2.1 details of the aspect(s) of the Authority Rejection Notice issued by the Authority under Clause 16.4.2 (*Permit to Use*), Clause 16.10E.2 (*Snagging Items*), clause 16.17.2 (*Taking Over Certificate*) or clause 16.27.2 (*Handing Over Certificate*) with which Project Co disagrees; and
 - 2.2 the reason(s) for such disagreement,provided that any Fast Track Dispute Notice must be served no later than three (3) Business Days following the date of receipt by Project Co of the Authority's PTU Rejection Notice. If no Fast Track Dispute Notice is served by Project Co by the date which is three (3) Business Days following the date of receipt by Project Co of the Authority's PTU Rejection Notice then the Authority's PTU Rejection Notice shall be deemed to be agreed and accepted by Project Co in all respects and Project Co shall have no further right to dispute the Authority's PTU Rejection Notice .
- 3 Immediately upon service by Project Co of any Fast Track Dispute Notice, the Authority and Project Co shall attempt to agree a shortlist of persons whom they would consider suitable to act as the Expert and shall invite them (in turn in the order in which they appear on the agreed shortlist) to accept the reference of the PTU Dispute, Snagging Dispute, Taking Over Dispute, Handing Over Dispute or RS Dispute (as applicable). In the event that the Authority and Project Co cannot agree the identity of the Expert within two (2) Business Days, either of them may request the President for the time being of the Institute of Civil Engineers to nominate a suitable individual, and such individual shall be the Expert for the purposes of this Fast Track Dispute Resolution Procedure. Any such invitation to any such Expert must make it clear that a decision is required within ten (10) Business Days of the date of receipt of Project Co's Statement of case pursuant to paragraph 11 below.
- 4 The Expert shall (unless otherwise agreed) be an independent individual with knowledge of and experience in certifying completion of project finance projects in the highways sector.
- 5 Upon the Expert confirming his willingness, ability and availability to act, Project Co shall appoint the Expert on terms approved by the Authority on the basis that the Expert shall act as an independent Expert owing an equal duty of care to each of Project Co and the Authority. Project Co shall send a copy of the Fast Track Dispute Notice to the Expert as soon as reasonably practicable (and in any event within one (1) Business Day) after he has been appointed.
- 6 Within two (2) Business Days of the appointment of the Expert:
 - 6.1 Project Co shall serve its statement of case on the Expert and the Authority (in hard copy and, if directed by the Expert, in electronic form), setting out the nature of Project Co's case and appending the supporting documentation which Project Co considers relevant to the PTU Dispute, Snagging Dispute, Taking Over Dispute, Handing Over Dispute or RS Dispute (as applicable) and shall as a minimum:

- 6.1.1 set out with adequate specificity the issue or issues to be investigated and resolved by the Expert;
- 6.1.2 provide such evidence as Project Co considers necessary to support its assertion that:
 - (a) in relation to a PTU Dispute, the PTU Criteria have been satisfied for the relevant Phase; and
 - (b) in relation to a Snagging Dispute, the Snagging Items have been completed;
 - (c) in relation to a Taking Over Dispute or Handing Over Dispute, the Taking Over Criteria and/or Handing Over Criteria (as applicable) for the relevant Phase have been satisfied;
 - (d) in relation to a RS Dispute, the Restricted Services Readiness Criteria have been satisfied.
- 6.1.3 be accompanied by a copy of this Agreement, the Authority's PTU Rejection Notice, any other relevant contractual documents, specifications and/or any technical documents or other data relevant to an initial understanding of the issue; and
- 6.2 the Authority may serve its own statement of case on the Expert and Project Co (in hard copy and, if directed by the Expert, in electronic form), providing its reasons for determining that Project Co had not:
 - 6.2.1 in relation to a PTU Dispute, satisfied the PTU Criteria for the relevant Phase;
 - 6.2.2 in relation to a Snagging Dispute, completed the Snagging Items;
 - 6.2.3 in relation to a Taking Over Dispute or Handing Over Dispute, satisfied the Taking Over Criteria or Handing Over Criteria (as applicable) for the relevant Phase;
 - 6.2.4 in relation to a RS Dispute, satisfied the Restricted Services Readiness Criteria,

clarifying or adding to the matters set out in the PTU Rejection Notice to be investigated by the Expert and appending any additional supporting documentation upon which the Authority wishes to rely.
- 7 The role of the Expert shall be to investigate using his professional skill and experience the issues raised by the PTU Dispute, Snagging Dispute, Taking Over Dispute or Handing Over Dispute (as applicable) and to determine for himself the correct answer as to:
 - 7.1 in relation to a PTU Dispute:
 - 7.1.1 whether or not the PTU Criteria are satisfied in respect of the relevant Phase (which was the subject of the Authority's PTU Rejection Notice) such that the relevant Phase is complete; and
 - 7.1.2 (if the Expert determines that the PTU Criteria have been satisfied in respect of the relevant Phase) the date on which the Permit to Use for the relevant Phase should properly have been issued under Clause 16.4.1(*Permit to Use*);

- 7.2 In relation to a Snagging Dispute:
 - 7.2.1 whether or not the Snagging List in respect of all Phases has been completed; and
 - 7.2.2 (if the Expert determines that all Snagging List in respect of all Phases has been completed) the date on which the Final Snagging Items Completion Certificate for the should properly have been issued under Clause 16.10E.1 (*Snagging Items*);
- 7.3 in relation to a Taking Over Dispute whether or not the Taking Over Criteria are satisfied in respect of the relevant Phase (which was the subject of the Authority's PTU Rejection Notice);
- 7.4 in relation to a Handing Over Dispute whether or not the Handing Over Criteria are satisfied in respect of the relevant Phase (which was the subject of the Authority's PTU Rejection Notice);
- 7.5 in relation to a RS Dispute:
 - 7.5.1 whether or not the Restricted Services Readiness Criteria are satisfied; and
 - 7.5.2 (if the Expert determines that the Restricted Services Readiness Criteria have been satisfied) the date on which the Restricted Services Commencement Notice should properly have been issued under clause 21.3.1 (*Restricted Services Commencement Notice*).
- 8 The Expert shall not act in a judicial or quasi-judicial capacity but instead will act on his own behalf and seek to determine on a wholly independent basis his view of the correct answer. The Expert shall act as an expert and not as an arbitrator or adjudicator and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert, his decision or the procedure by which he reaches his decision.
- 9 Save as provided in paragraph 7 above, the Expert shall not have jurisdiction to determine issues of fault in terms of responsibility for non-conformity with this Agreement flowing from any conclusion of the Expert, nor to determine the financial or other consequences arising from any non-conformity with this Agreement or delay in the performance of this Agreement. Any such matters which are outside the Expert's jurisdiction shall to the extent necessary be dealt with pursuant to the Dispute Resolution Procedure set out in paragraphs 4 to 9 inclusive of the front end of this Schedule 20.
- 10 The parties shall co-operate with the Expert and shall provide such assistance and documentation as the Expert reasonably requires for the purposes of reaching its decision, including making available prompt access to enable the Expert to inspect the relevant Works.
- 11 The Expert shall provide to the Authority and Project Co his written decision on the dispute within ten (10) Business Days after the date of receipt of Project Co's statement of case in accordance with paragraph 6 above. The Expert shall state the reasons for his decision. In the absence of manifest error, bad faith or fraud, the Expert's decision shall be binding on the parties who shall forthwith give effect to the decision.
- 12 The Expert's costs shall be borne by Project Co. Each party shall bear its own costs arising out of the referral.
- 13 All information, data or documentation disclosed or delivered by either party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential. The Expert shall not 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 Expert's work.

SCHEDULE 21**PROJECT CO INFORMATION****SECTION 1****PROJECT CO INFORMATION****Name** : Future Valleys Project Co Limited**Date of Incorporation** : 4th September 2020**Registered number** : 12857623**Registered office** : Fulcrum, 105 Piccadilly, Mayfair London, W1J 7NJ**Directors** :

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Secretary : n/a**Subsidiary undertakings at the date of this Agreement** : n/a**Authorised and issued share capital at the date of this Agreement** :

Name and address of registered holder	Number and class held	Amount paid up
Future Valleys Hold Co Limited	30,000 ordinary shares	£30,000

Loan Stock at the date of this Agreement issued as follows:

Name and address of registered holder	Nominal value of Loan stock
N/A	N/A

Loan Stock Provisions: N/A

SECTION 2
HOLD CO INFORMATION

Name : Future Valleys Hold Co Limited

Date of Incorporation : 3rd September 2020

Registered number : 12855952

Registered office : Fulcrum, 105 Piccadilly, Mayfair, London, W1J 7NJ

Directors :

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Secretary : n/a

Subsidiary undertakings at the date of this Agreement : Future Valleys Project Co Limited

Authorised and issued share capital at the date of this Agreement :

Name and address of registered holder	Number and class held	Amount paid up
FCC Concesiones de Infraestructuras S.L.U	12,750 ordinary shares	£12,750
Meridiam Investments SAS	12,750 ordinary shares	£12,750
DBW Investments (MIMS) Limited	4,500 ordinary shares	£4,500

Loan Stock at the date of this Agreement issued as follows:

Name and address of registered holder	Nominal value of Loan stock
N/A	N/A

Loan Stock Provisions: N/A

SCHEDULE 22
CERTIFICATES

Handback Certificate

Issued by: Authority's Representative

Address: [INSERT ADDRESS]

Authority: [INSERT NAME]

Address: [INSERT ADDRESS]

Project Co: [INSERT NAME]

Address: [INSERT ADDRESS]

Issue date:

Works :

Situated at :

Design Build Finance and Maintain Agreement between [*insert name of the Authority*] and [*insert name of Project Co*] dated:

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement, *I/we certify that the condition of the Project Facilities is in accordance with paragraph 2 of Schedule 18 (*Handback Procedure*) of above mentioned Design Build Finance and Maintain Agreement.

Capitalised terms used in this Certificate shall have the meaning given to them in the afore-mentioned Design Build Finance and Maintain Agreement (except where they are defined specifically in this Certificate).

To be signed by or for the issuer named above.

Signed.....

[INSERT NAME OF AUTHORITY]

* *delete as appropriate*

Final Snagging Items Completion Certificate

Issued by: Authority – **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Issued to:

Project Co: **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Authority: **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Issue date:

Works:

Situated at:

Design Build Finance and Maintain Agreement between *[insert name of the Authority]* and *[insert name of Project Co]* dated:

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement , *I/we certify that the Snagging Items included on Snagging List [Insert List Number.....] have been completed in respect of all Phases and that the Snagging Completion Date was achieved on [♦].

Capitalised terms used in this Certificate shall have the meaning given to them in the afore-mentioned Design Build Finance and Maintain Agreement (except where they are defined specifically in this Certificate).

To be signed by the issuer named above

Signed..... Date

[INSERT NAME OF AUTHORITY]

Receipt of this Certificate must to be acknowledged by Project Co's Representative.

Signed..... Date

Name:

Receipt of this Certificate must be acknowledged by the Authority's Representative.

Signed..... Date

Name:

**delete as appropriate*

Interim Snagging Items Completion Certificate

Issued by: Authority – **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Issued to:

Project Co: **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Authority: **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Issue date:

Works:

Situated at:

Design Build Finance and Maintain Agreement between *[insert name of the Authority]* and *[insert name of Project Co]* dated:

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement , *I/we certify that the Snagging Items included on Snagging List [Insert List Number.....] (other than Seasonal Planting) have been completed in respect of Phase [◆].

Capitalised terms used in this Certificate shall have the meaning given to them in the afore-mentioned Design Build Finance and Maintain Agreement (except where they are defined specifically in this Certificate).

To be signed by the issuer named above

Signed..... Date

[INSERT NAME OF AUTHORITY]

Receipt of this Certificate must to be acknowledged by Project Co's Representative.

Signed..... Date

Name:

Receipt of this Certificate must be acknowledged by the Authority's Representative.

Signed..... Date

Name:

**delete as appropriate*

Phase Snagging Items Completion Certificate

Issued by: Authority – **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Issued to:

Project Co: **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Authority: **[INSERT NAME]**

Address: **[INSERT ADDRESS]**

Issue date:

Works:

Situated at:

Design Build Finance and Maintain Agreement between *[insert name of the Authority]* and *[insert name of Project Co]* dated:

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement , *I/we certify that all the Snagging Items included on Snagging List [Insert List Number.....] have been completed in respect of Phase [◆].

Capitalised terms used in this Certificate shall have the meaning given to them in the afore-mentioned Design Build Finance and Maintain Agreement (except where they are defined specifically in this Certificate).

To be signed by the issuer named above

Signed..... Date

[INSERT NAME OF AUTHORITY]

Receipt of this Certificate must to be acknowledged by Project Co's Representative.

Signed..... Date

Name:

Receipt of this Certificate must be acknowledged by the Authority's Representative.

Signed..... Date

Name:

**delete as appropriate*

Handing Over Certificate**Issued by:** [Authority - *[INSERT NAME]*]Address: *[INSERT ADDRESS]***Issued to:**Project Co: *[INSERT NAME]*Address: *[INSERT ADDRESS]*Authority: *[INSERT NAME]*Address: *[INSERT ADDRESS]*

Issue Date:.....

Works:

Situated at:

Design Build Finance and Maintain Agreement between *[insert name of Authority]* and *[insert name of Project Co]* dated:.....

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement, *I/we certify that:

1. The Works in respect of **[insert description of relevant Temporary Use Area]** have been completed to such an extent so as to satisfy the relevant Handing Over Certificate Criteria.
2. This Certificate shall serve as the Handing Over Certificate for **[insert description of relevant Temporary Use Area]**.

Capitalised terms used in this Certificate shall have the meaning given to them in the afore-mentioned Design Build Finance and Maintain Agreement (except where they are defined specifically in this Certificate).

To be signed by or for the issuer named above.

Signed:

[INSERT NAME OF AUTHORITY]

*delete as appropriate

Taking Over Certificate**Issued by:** [Authority - *[INSERT NAME]*]Address: *[INSERT ADDRESS]***Issued to:**Project Co: *[INSERT NAME]*Address: *[INSERT ADDRESS]*Authority: *[INSERT NAME]*Address: *[INSERT ADDRESS]*

Issue Date:.....

Works:

Situated at:

Design Build Finance and Maintain Agreement between *[insert name of Authority]* and *[insert name of Project Co]* dated:.....

Under the terms of the above-mentioned Design Build Finance and Maintain Agreement, *I/we certify that:

1. The Works in respect of **[insert description of relevant Temporary Highways Area]** have been completed to such an extent so as to satisfy the relevant Taking Over Certificate Criteria.
2. This Certificate shall serve as the Taking Over Certificate for **[insert description of relevant Temporary Highways Area]**.

Capitalised terms used in this Certificate shall have the meaning given to them in the afore-mentioned Design Build Finance and Maintain Agreement (except where they are defined specifically in this Certificate).

To be signed by or for the issuer named above.

Signed:

[INSERT NAME OF AUTHORITY]

*delete as appropriate

SCHEDULE 23

REFINANCING

Requirement for Authority Consent

- 1 Project Co shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and Project Co shall at all times act in good faith with respect to any Refinancing.
- 2 The Authority shall be entitled to receive a one-third share of any Refinancing Gain arising from any Qualifying Refinancing.
- 3 The Authority shall not unreasonably withhold or delay its consent to a Qualifying Refinancing.

Project Co Details

- 4 Project Co 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 the Refinancing whether that Refinancing is a Qualifying Refinancing or not.

Receipt of Gain

- 5 The Authority shall receive its share of any Refinancing Gain as:
 - 5.1 a single payment of the amount which, but for the provisions of this Schedule 23, (*Refinancing*) would otherwise be capable of being released as a Distribution on or about the date of the Refinancing;
 - 5.2 a reduction in the Annual Service Payments over the remaining term of this Agreement; or
 - 5.3 a combination of the above.

Method of Calculation

- 6 The Authority and Project Co will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain. For the avoidance of doubt the calculation of the Authority's share of any Refinancing Gain pursuant to this Agreement shall be treated wholly separately from the calculation of Distributions which may be due and payable to the Authority as a Relevant Person. 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 Schedule 20 (*Dispute Resolution Procedure*).

Costs

- 7 The Refinancing Gain shall be calculated after taking into account 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 Project Co within twenty-eight (28) days of any Qualifying Refinancing.

- 8 Without prejudice to the other provisions of this Schedule 23 (*Refinancing*), Project Co shall:
- 8.1 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
 - 8.2 include a provision in the Funding Agreements (other than the Subordinated Funding Agreements) whereby it is entitled to be informed of any proposals which the Senior Funders may have to refinance the Funding Agreements (other than the Subordinated Funding Agreements).

Definitions

In this Schedule 23 (*Refinancing*) and elsewhere in this Agreement (save where Schedule 1 (*Definitions and Interpretation*) provides to the contrary) the following words and expressions shall have the following meanings:

"Distribution"

means:

(a) whether in cash or in kind, any:

- (i) dividend or other distribution in respect of share capital (whether made validly in accordance with the Articles of Association or otherwise);
- (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
- (iii) payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);
- (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
- (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any

calculation of Refinancing Gain;

"EEA"

means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"Equity IRR"

means the projected nominal, post Project Co tax blended rate of return to the Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made;

"Exempt Refinancing"

means:

- (a) any Refinancing that was fully taken into account in the calculation of the Annual Service Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at Financial Close;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Sub-Contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
 - (vi) restrictions imposed by the Senior Funders on the dates at which the Senior Debt can be advanced to Project Co under the Senior Funding Agreements and/or amounts released from the Escrow Account and/or the Drawdown Account, each as defined in the Senior Funding Agreements and which are given as a result of any

- failure by Project Co to ensure that the construction work is performed in accordance with the agreed construction programme and which is notified in writing by Project Co or the Senior Funders to the Authority prior to being given];
- (vii) changes to milestones for drawdown and/or amounts released from the Escrow Account and/or the Drawdown Account set out in the Senior Funding Agreements and which are given as a result of any failure by Project Co to ensure that construction work is performed in accordance with the agreed construction programme and which is notified in writing by Project Co or the Senior Funders to the Authority prior to being given;
 - (viii) failure by Project Co to obtain any consent by statutory bodies required by the Senior Funding Agreements; or
 - (ix) voting by Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Change under this Agreement;
 - (e) any sale of shares in Project Co or Hold Co by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in Project Co or Hold Co provided that this paragraph (e) shall, in respect of shares in Hold Co, only apply for so long as Hold Co holds one hundred per cent (100%) of the issued share capital of Project Co;
 - (f) any sale or transfer of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements or securitisation of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements; or
 - (g) any Qualifying Bank Transaction;
 - (h) any amendment, variation, replacement or supplement of any Initial Funding Agreement

as a result of a transition away from LIBOR to a new benchmark,

provided that in respect of limbs (a) to (h) above this shall not include any Permitted Refinancing Financial Indebtedness (as defined in the Common Terms Agreement);

"Insurance Undertaking"

has the meaning given in the rules from time to time of the Financial Conduct Authority;

"Net Present Value"

means the aggregate of the discounted values, calculated as at the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"Notifiable Financings"

means any Refinancing described in paragraphs (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting Project Co's or any Associated Company's ability to carry out any such refinancing or other arrangements that would have a similar effect;

"Project Accounts"

means accounts referred to in and required to be established under the Senior Funding Agreements;

"Qualifying Bank Transaction"

means:

- (a) the syndication by a Senior Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Funding Agreements;
- (b) the grant by a Senior Funder of any rights of participation, or the disposition by Senior Funder of any of its rights or interests (other than as specified in paragraph (a) above in respect of the Senior Funding Agreements in favour of:
 - (i) any other Senior Funder;
 - (ii) any institution which is recognised or permitted under Law to accept deposits in England and Wales (including and pursuant to article 5 of the Financial Services and Markets 2000 (Regulated Activities) Order 2001, Council Directive 2013/36/EU or the Temporary Permissions Regime, each as applicable from time to time);
 - (iii) a local authority or public authority;

- (iv) a trustee of a charitable trust which has (or has had at any time during the previous two (2) years) assets of at least ten million pounds (£10 million) (or its equivalent in any other currency at the relevant time);
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least 50 members and assets under management of at least ten million pounds (£10 million) (or its equivalent in any other currency at the relevant time);
 - (vi) [an EEA or Swiss Insurance Undertaking];
 - (vii) a Regulated Collective Investment Scheme;
 - (viii) any Qualifying Institution; or
 - (ix) any other institution in respect of which the prior written consent of the Authority has been given; and/or
- (c) the grant by a Senior Funder of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of Project Co or Hold Co, whether by way of security or otherwise, in favour of:
- (x) any other Senior Funder;
 - (xi) any institution specified in paragraphs (b)(ii) to (b)(vii) above;
 - (xii) any Qualifying Institution; or
 - (xiii) any other institution in respect of which the prior written consent of the Authority has been given;

"Qualifying Institution"

means:

- (a) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48EC relating to the taking up and pursuit of the business of credit institutions, or which is otherwise permitted to accept deposits in any EEA member state; or

- (b) a trustee for any entity listed in paragraph (b)(ii) to (b)(viii) of the definition of Qualifying Bank Transaction, other than a trustee whose acquisition grant or disposition is made in concert with the Shareholders and/or the Subordinated Lenders for the purpose of giving rise to a Refinancing Gain;

"Qualifying Refinancing"

means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

"Refinancing"

means:

- (a) any amendment, variation, novation, supplement or replacement of any Funding Agreement (other than any Subordinated Funding Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement (other than any Subordinated Funding Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements (other than the Subordinated Funding Agreements) or the creation or granting of any other form of benefit or interest in either the Funders' Agreements (other than the Subordinated Funding Agreements) or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting Project Co's or any Associated Company's ability to carry out any of (a) to (c) above;
- (e) any Permitted Refinancing Financial Indebtedness (as defined in the Common Terms Agreement);

"Refinancing Gain"

means an amount equal to the greater of zero and $(A - B) - C$, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing but disregarding any Distribution that, but for the Refinancing, would not be made) to be made to each

Relevant Person over the remaining term of this Agreement following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and

C = any adjustment required to raise the pre-Refinancing Equity IRR to the Threshold Equity IRR;

"Regulated Collective Investment Scheme"	has the meaning given in the rules from time to time of the Financial Conduct Authority;
"Relevant Person"	means a Shareholder and any of its Associates;
"Shareholder"	means any person from time to time holding share capital in Project Co or Hold Co;
"Temporary Permissions Regime"	means the temporary permissions regime established by HM Treasury under the European Union (Withdrawal Act) 2018 and EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149).
"Threshold Equity IRR"	[REDACTED]

SCHEDULE 24
LIAISON PROCEDURE

- 1 The Authority and Project Co shall establish and maintain throughout the Project Term a joint liaison committee (the "**Liaison Committee**"), consisting of three (3) representatives of the Authority (one of whom shall be appointed Chairman) and three (3) representatives of Project Co which shall have the functions described below.
- 2 The functions of the Liaison Committee shall be:
 - 2.1 to provide a means for the joint review of issues relating to all day to day aspects of the performance of this Agreement;
 - 2.2 to provide a forum for joint strategic discussion, considering actual and anticipated changes in the market and business of the Authority, and possible variations of this Agreement to reflect those changes or for the more efficient performance of this Agreement; and
 - 2.3 in certain circumstances, pursuant to Schedule 20 (*Dispute Resolution Procedure*), to provide a means of resolving disputes or disagreements between the parties amicably.
- 3 The role of the Liaison Committee is to make recommendations to the parties, which they may accept or reject at their complete discretion. Neither the Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Agreement or to make any decision which is binding on the parties. Neither party shall rely on any act or omission of the Liaison Committee, or any member of the Liaison Committee acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of either party.
- 4 The parties shall appoint and remove their representatives on the Liaison Committee by written notice delivered to the other at any time. A representative on the Liaison Committee may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other party's representatives may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.
- 5 Subject to the provisions of this Agreement, the members of the Liaison Committee may adopt such procedures and practices for the conduct of the activities of the Liaison Committee as they consider appropriate from time to time and:
 - 5.1 may invite to any meeting of the Liaison Committee such other persons as its members may agree; and
 - 5.2 receive and review a report from any person agreed by its members.
- 6 Recommendations and other decisions of the Liaison Committee must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the Authority and not less than one (1) representative of Project Co.
- 7 Each member of the Liaison Committee shall have one (1) vote. The Chairman shall not have a right to a casting vote.
- 8 The Liaison Committee shall meet at least once each quarter (unless otherwise agreed by its members) and from time to time as necessary.

- 9 Any member of the Liaison Committee may convene a meeting of the Liaison Committee at any time.
- 10 Meetings of the Liaison Committee shall be convened on not less than ten (10) Business Days' notice (identifying the agenda items to be discussed at the meeting) provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 11 Where the Liaison Committee decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.
- 12 Minutes of all recommendations (including those made by telephone or other form of telecommunication) and meetings of the Liaison Committee shall be kept by Project Co and copies circulated promptly to the parties, normally within five (5) Business Days of the making of the recommendation or the holding of the meeting. A full set of minutes shall be open to inspection by either party at any time, upon request.

SCHEDULE 25

INSURANCE PROCEEDS ACCOUNT AGREEMENT

AGREEMENT

AMONG:

- (1) [PROJECT CO] of [♦] (the "**Issuer**");
- (2) [AUTHORITY] (the "**Authority**");
- (3) [FUNDER] of [♦] (the "**Account Bank**"); and
- (4) [TRUSTEE] of [♦] (the "**Security Trustee**").

WHEREAS

- (A) The Issuer and the Authority have agreed to open an insurance proceeds account in their joint names.
- (B) The parties hereto have agreed to set out the terms on which payments may be made to or from that account in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

"Account Holders"	has the meaning given in Clause 2 (<i>Insurance Proceeds Account</i>);
"Account"	has the meaning given in Clause 2.1 (<i>Insurance Proceeds Account</i>);
"Credit Provider"	means [♦];
"Design, Build, Finance and Maintain Agreement"	means the agreement dated [♦] between the Project Co and the Authority in relation to [♦];
"Event of Default"	has the meaning given in Clause 4.5 (<i>General Provisions for the Account</i>) of this Agreement;
"Qualifying Bank"	any institution which is recognised or permitted under Law to accept deposits in England and Wales (including and pursuant to article 5 of the Financial Services and Markets 2000 (Regulated Activities) Order 2001, Council Directive 2013/36/EU or the Temporary Permissions Regime, each as applicable from time to time);
"Senior Finance Documents"	means [♦];
"Security Documents"	means [♦];
"Temporary Permissions Regime"	means the temporary permissions regime established by HM Treasury under the European Union (Withdrawal Act) 2018 and EEA Passport

Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1149).

- 1.1 Capitalised terms defined in the Design Build Finance and Maintain Agreement shall have the same meaning in this Agreement.

2 INSURANCE PROCEEDS ACCOUNT

Each of the Issuer and the Authority (together the "**Account Holders**") hereby appoint [♦] as the Account Bank.

- 2.1 The Account Bank has opened on its books, at its office at [♦], an account in the joint names of the Account Holders designated the Authority Insurance Proceeds Account (the "**Account**").
- 2.2 The Account Bank shall, save as otherwise provided herein, maintain the Account in accordance with its usual practices, provided that, in the event of any conflict between the provisions of this Agreement and any applicable mandate, the provisions of this Agreement shall prevail.
- 2.3 Notwithstanding anything else in this Agreement, no person shall request or require that any withdrawal be made from the Account if it would cause the Account to become overdrawn and to the extent that any withdrawal (if made in full) would cause the Account to become so overdrawn, such withdrawal shall be made in part in as great an amount as possible as will not result in such Account becoming overdrawn.
- 2.4 Where any withdrawal required under this Agreement cannot be made in its entirety, the Account Bank shall promptly notify both of the Account Holders of that fact and provide details of the payment not made, the date on which it should have been made and the amount unpaid.
- 2.5 Each amount from time to time standing to the credit of the Account shall bear interest at the rate agreed between the Account Bank and the Account Holders from time to time, such interest to be credited to the Account in accordance with the relevant mandate.
- 2.6 Subject to and in accordance with the provisions of this Agreement, including without limitation Clause 4 (*General Provisions for the Account*) of this Agreement, the Account Bank agrees that it shall make such payments out of the amount standing to the credit of the Account as may from time to time be requested by the Account Holders jointly subject to the restrictions as contained in this Agreement. Save as otherwise provided in this Agreement, no party shall be entitled to require the Account Bank to make, and the Account Bank shall not make, any payment out of the amount standing to the credit of the Account.
- 2.7 Subject to Clause 8.6 (*The Account Bank*) of this Agreement, the Account Holders shall maintain the Account with the Account Bank until the termination of the Design Build Finance and Maintain Agreement. If so instructed after the termination of the Design Build Finance and Maintain Agreement, the Account Bank shall, at the sole cost and expense of the Issuer, terminate the Account in accordance with the relevant instructions and pay any amount standing to the credit of such accounts as the Account Holders may elect in accordance with Clause 4.1 (*General Provisions for the Account*) of this Agreement.

3 RECEIPTS AND PAYMENTS

- 3.1 The Account may only be used in accordance with the terms of and for the purposes set out in this Clause 3 (*Receipts and Payments*).
- 3.2 The Account shall be used for receiving, to the extent required by Clause 57 (*Insurance*) of the Design Build Finance and Maintain Agreement, the proceeds of all Insurances (as defined in the Design Build Finance and Maintain Agreement).
- 3.3 Subject to restrictions set out in this Agreement, the Account shall only be used for applying the proceeds of the Authority Insurances in accordance with Clause 57 (*Insurance*) of the Design Build Finance and Maintain Agreement either directly or indirectly by way of the reimbursement to the Issuer of costs or expenses incurred or monies paid by it (or on its behalf) in or towards satisfaction of the reinstatement restoration or replacement requirements of that Clause 57 (*Insurance*). In the event that any amount standing to the credit of the Account is not so required to be applied, such amount shall (subject to Clause 4.3 and 4.5 (*General Provisions for the Account*) below) be paid by the Account Bank to the Receipts Account¹⁵, or as otherwise instructed by the Security Trustee pursuant to Clause 4.5 below.

4 GENERAL PROVISIONS FOR THE ACCOUNT

- 4.1 Subject to Clauses 4.3 and 4.5 below, and provided that:
- 4.1.1 the Account Bank has received notice in writing from two signatories, one of which shall be an authorised signatory of the Issuer and the other an authorised signatory of the Authority, as listed under the applicable mandate that such payment is authorised under this Agreement; and
- 4.1.2 no notice has been given to the Account Bank by the Credit Provider prior to the making of such payment or transfer of an Event of Default which is subsisting and the Account Bank has no actual notice that an Event of Default will occur as a result of the making of any such payment or transfer,
- the Account Bank agrees that it shall only make payments or transfers from the Account on the request of the Account Holders.
- 4.2 The Authority undertakes to provide notice to the Account Bank as prescribed in Clause 4.1.1 for, the purposes of applying any part of the balance standing to the credit of the Account in accordance with Clause 3.3 of this Agreement. Each of the Account Bank and the Issuer shall be entitled to treat any act of the authorised signatory of the Authority as being expressly authorised by the Authority and neither the Account Bank nor the Issuer shall be required to determine whether an express authority has in fact been given.
- 4.3 No payments or transfers from the Account shall be made after an Event of Default which is continuing until the Credit Provider has confirmed to the Account Bank that such payment or transfer may be made except as expressly permitted under this Agreement. The Account Bank shall not be under any obligation to investigate the compliance of any payment with this Agreement.

¹⁵ To be defined on a project specific basis.

- 4.4 All amounts withdrawn from the Account for transfer to another account or for application in or towards making a specific payment or meeting a specific liability shall be transferred to that account or applied in or towards making that payment or meeting that liability, and for no other purpose.
- 4.5 Notwithstanding any other provision of this Agreement, at any time following the occurrence of any Event of Default (as defined in Schedule 4 (*Funders' Direct Agreement*) of the Design Build Finance and Maintain Agreement) which is continuing and has not been waived or remedied, the Security Trustee may at any time give notice to the Account Bank instructing it not to act on the instructions of or at the request of the Issuer in relation to any sums at any such time standing to the credit of the Account. Without prejudice to the foregoing, the Account Bank agrees that it shall pay any amount standing to the credit of the Account and payable to the Issuer in accordance with Clause 3.3 (*Receipts and Payments*) of this Agreement to such a bank account as the Security Trustee shall direct following the occurrence of any Event of Default. The Account Bank agrees that it shall not so act and shall act on the instructions of the Security Trustee in place of the Issuer.
- 4.6 In establishing the balance standing to the credit of the Account at any time, the Account Bank may take into account credits to and withdrawals from such Account which are to be made on such day.

5 **QUALIFYING BANK**

If at any time the Account Bank ceases to be a Qualifying Bank, the Account Holders shall promptly open or cause to be opened a new account with a Qualifying Bank on the same terms as the Account and the Account Holders shall take all such action as may be required to open the new account.

6 **CHARGES**

The charges of the Account Bank (if any) for the operation of the Account shall be for the account of the Account Holders in equal amounts and shall be debited from the balance standing to the credit of the Account as from time to time agreed between the Account Bank, the Authority and the Issuer.

7 **MANDATES**

Each of the Account Holders will deliver to the Account Bank on or prior to the date hereof the applicable mandate together with authorised signature lists for both the Issuer and the Authority.

8 **THE ACCOUNT BANK**

- 8.1 The Account Bank may:
- 8.1.1 engage and pay reasonable fees for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;
 - 8.1.2 rely upon any communication or document believed by it to be genuine and, in particular, rely upon any notice, request or other communication of the Account Holders for the purposes of this Agreement if such notice, request or other communication purports to be signed or sent by or on behalf of an authorised signatory of the Account Holders;

- 8.1.3 assume that no Event of Default has occurred unless it has actual notice to the contrary; and
- 8.1.4 assume that all conditions for the making of any payment out of the amount standing to the credit of the Account which is specified in the Design Build Finance and Maintain Agreement or any of the Senior Finance Documents has been satisfied, unless it has actual notice to the contrary.
- 8.2 Notwithstanding anything to the contrary expressed or implied herein and subject to Clause 2 (*Insurance Proceeds Account*) of this Agreement, the Account Bank shall not:
 - 8.2.1 be bound to enquire as to the occurrence or otherwise of an Event of Default or be affected by notice of any of the same except by reason of and to the extent expressly provided in this Agreement;
 - 8.2.2 be bound to account to any other party hereto for any sum or the profit element of any sum received by it for its own account;
 - 8.2.3 save as provided in this Agreement be bound to disclose to any other person any information relating to any other party hereto;
 - 8.2.4 be under any fiduciary duty towards any other party hereto or under any obligations other than those for which express provision is made in this Agreement;
 - 8.2.5 have any responsibility to ensure that the information set out in any instructions received by it hereunder are correct or to check or enquire as to or otherwise be affected by whether any condition has been or will be met or fulfilled or any instruction is properly given on behalf of the person from whom it purports to be given or any instruction is given properly other than to exercise the bankers duty of care; or
 - 8.2.6 have any responsibility to any party if any instruction which should be given by the Account Holders to the Account Bank under or in connection with this Agreement is for any reason not received by the Account Bank or is not made at the time it should be made.
- 8.3 The Account Bank does not have and does not accept any responsibility for the accuracy and/or completeness of any information (other than statements provided in accordance with Clause 9.2 of this Agreement (Acknowledgements by the Account Bank)) and the Account Bank shall not be under any liability as a result of taking or omitting to take any action in relation to the Account, save in the case of negligence or wilful misconduct or breach of its obligations under this Agreement.
- 8.4 Each of the other parties hereto agrees that it will not assert or seek to assert against any director, officer or employee of the Account Bank any claim it might have against the Account Bank in respect of the matters referred to in Clause 8.3 above.
- 8.5 The Account Bank may accept deposits from, lend money to, invest in and generally engage in any kind of banking or other business with the Account Holders, the Shareholders and any other party to any of the Project Documents.

- 8.6 The Account Bank may, at any time, (without assigning any reason therefor) notify the Account Holders in writing that it wishes to cease to be a party hereto as Account Bank (a "**cessation notice**"). Upon receipt of a cessation notice the Account Holders may nominate a Qualifying Bank as a successor to the Account Bank (a "**successor Account Bank**"). If no such nomination is made before the date specified in the cessation notice as being the date on which the Account Bank wishes to cease to be a party hereto (the "**cessation date**") (which date shall be a Business Day falling not less than thirty (30) days after the date of delivery of the cessation notice to the Account Holders) then the Account Bank may nominate a Qualifying Bank as successor Account Bank itself.
- 8.7 If a successor Account Bank is nominated under the provisions of Clause 8.6 above, then on the cessation date, provided the successor Account Bank has executed and delivered to the Account Holders a deed of novation in such form as the Account Holders may require undertaking to become a party to and bound by the terms and conditions of this Agreement and to become a party to such other documents as may be required by the Security Trustee in order to perfect the security created by the Senior Finance Documents:
- 8.7.1 the successor Account Bank shall open on its books at its principal office an account equivalent to that described in Clause 2 (*Insurance Proceeds Account*) of this Agreement and any amounts standing to the credit of the Account shall be transferred to the corresponding one of such account;
 - 8.7.2 any reference in the Design Build Finance and Maintain Agreement or any Senior Finance Document to the Account shall be deemed to refer to the corresponding account opened pursuant to Clause 8.7.1;
 - 8.7.3 the Account Bank shall cease to be a party hereto as Account Bank and shall cease to have any obligation hereunder in such capacity (but without prejudice to any accrued liabilities under this Agreement and its obligations under this Clause 8 (*The Account Bank*)) (but shall remain entitled to the benefit of the provisions of this Clause 8 (*The Account Bank*)); and
 - 8.7.4 the successor Account Bank and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Account Bank had been an original party hereto as Account Bank.

9 ACKNOWLEDGEMENTS BY THE ACCOUNT BANK

- 9.1 Notwithstanding anything to the contrary in any applicable mandate, the Account Bank hereby waives so far as it may validly and lawfully do so any right it has or may hereafter acquire to combine, consolidate or merge the Account with any other account of the Account Bank, Account Holders or the Security Trustee or any other person or with any liabilities of Account Holders or the Security Trustee or any other person to the Account Bank. In addition, the Account Bank agrees so far as it may validly and lawfully do so that it may not set off, combine, withhold or transfer any sum standing to the credit of the Account in or towards satisfaction of any liabilities to the Account Bank of the Account Holders, the Security Trustee or any other person.
- 9.2 After the date hereof and until the Account Bank has been notified by the Account Holders of the termination of the Design Build Finance and Maintain Agreement or until the Account Bank ceases to be a party to this Agreement pursuant to the provisions of Clause 8.7 (*The Account Bank*) above, the Account

Bank shall provide each of the Account Holders and the Security Trustee with statements in respect of the Account, such statement to be supplied in accordance with any reasonable request therefor by the Account Holders.

10 **ASSIGNMENT**

The Account Holders may not assign any of their rights under this Agreement or in relation to the Account otherwise than pursuant to the Security Documents or as permitted under the Design Build Finance and Maintain Agreement. The Security Trustee may assign its rights under this Agreement to a successor Security Trustee appointed in accordance with the Security Trustee and Intercreditor Deed and shall promptly give notice of any such assignment to the Account Bank. The Account Bank shall not be entitled to novate (except in accordance with Clause 8.7 (*The Account Bank*) above) or assign all or any part of its rights under this Agreement.

11 **SECURITY TRUSTEE**

The Security Trustee is party hereto solely for the purpose of receiving the benefits and exercising the rights specifically allocated to it under the terms of this Agreement.

FURTHER ASSURANCE

The parties hereto agree that they will co-operate fully to do all such further acts and things and execute any further documents as may be necessary or reasonably desirable to give full effect to the arrangements contemplated by this Agreement, subject to any such party being reimbursed to its satisfaction for any costs, expenses (including VAT) liabilities or fees reasonably incurred by it in the negotiation, preparation or execution of any such further documents.

12 **AMENDMENTS**

The provisions of this Agreement may not be amended (otherwise than in accordance with the terms hereof) except by written agreement between all the parties hereto.

13 **NOTICES**

13.1 Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be made by [email or letter] delivered by first class registered post.

13.2 Subject to Clauses 13.3 and 13.4 (*Notices*) any communication or document to be made or delivered by one person to another pursuant to or in connection with this Agreement shall (unless that other person has by ten (10) days' written notice to the other specified another address) be made or delivered to that other person at the address set out in Clauses 13.5 to 13.8 signed by an authorised signatory or signed by an authorised signatory in any deed of novation and shall be deemed to have been made or delivered:

13.2.1 (in the case of any communication made by letter) when delivered to that address provided that if such communication or document would otherwise be deemed to have been received on a day which is not a Business Day or after 5pm on a Business Day it shall be deemed to have been received on the next subsequent Business Day; or

13.2.2 (in the case of any communication by email),

(a) at the time the email enters the Information System of the intended recipient designated by them to receive

electronic notices pursuant to this Agreement (as identified by the email address specified in Clauses 13.5 to 13.8 (*Notices*)), if sent on a Business Day between the hours of 9am and 4pm; or

- (b) by 11am on the next following Business Day, if the email enters the intended recipient's relevant Information System after 4pm, on a Business Day but before 9am on that next following Business Day,

and provided no error message indicating failure has been received by the sender and provided that within twenty-four (24) hours of transmission a hard copy of the email (signed by or on behalf of the person giving it) is sent by post or delivered by hand to the intended recipient in accordance with the provisions of this Clause 13 (*Notices*) and where such notice is addressed to the Authority, copied to [♦].¹⁶

- 13.3 If any communication is made or document is delivered to the Security Trustee, such communication or document shall be effective only if the same is expressly marked for the attention of the officer identified by the Security Trustee, as the case may be, in Clause 13.8 (*Notices*) (or such other officer as the Credit Provider or the Security Trustee, as the case may be, shall from time to time specify for this purpose).
- 13.4 If any communication or document is made or delivered to the Account Bank or the Security Trustee, such communication or document shall be effective only when received by the Account Bank, or the Security Trustee.
- 13.5 Any notice to be given to the Authority should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by the Authority.
- 13.6 Any notice to be given to the Issuer should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by the Issuer.
- 13.7 Any notice to be given to the Account Bank should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by the Account Bank.
- 13.8 Any notice to be given to the Security Trustee should be marked for the attention of [♦] and delivered to [♦] or emailed to [♦] or such other party or address or email address as notified in writing by the Security Trustee.

14 MISCELLANEOUS

The parties hereto each acknowledge that the Security Trustee when acting hereunder shall be acting in accordance with and subject to the terms of the [Security Trustee and Intercreditor Deed].

15 COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes

¹⁶ Insert Welsh Ministers details.

16 **GOVERNING LAW AND JURISDICTION**

This Agreement is governed by, and shall be construed in accordance with, the laws of England and Wales.

17 **THIRD PARTY RIGHTS**

It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that save to the extent expressly provided in this Agreement, it is expressly declared that no rights shall be conferred under and arising out of this Agreement upon any person who is not a party to this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed the day and year first above written:

SCHEDULE 26**COMMERCIALLY SENSITIVE INFORMATION**

Where information or material falls within more than one category identified in column 1 of the table below, it shall be deemed to fall within the category whose corresponding period of confidentiality identified in column 2 of the table below will expire the soonest.

Category of Information/Material	Period for which information is to be kept confidential
Financial Model (as at Financial Close)	From the Effective Date until the date falling two (2) years after the Actual Completion Date.
Financial Model (amended from time to time in accordance with this Agreement)	From the date of the relevant Financial Model until the date falling two (2) years after the later of: (a) the Actual Completion Date; and (b) the date on which the amendments to Financial Model are agreed in accordance with this Agreement.
Prices within the Catalogue of Small Works and Services	Period during which the relevant prices are applicable.
Small Works and Services Rates	Period during which the relevant Small Works and Services Rates are applicable.
Project Co bank account information	Project Term
Equity IRR	In the case of the Equity IRR contained in the Financial Model as at Financial Close from the Effective Date until the date falling two (2) years after the Actual Completion Date. In the case of the Equity IRR contained in the Financial Model as amended from time to time in accordance with this Agreement, from the date of the relevant Financial Model until the date falling two (2) years after the later of: (a) the Actual Completion Date; and (b) the date of the Financial Model containing the relevant information.
Ancillary Documents	Project Term
Funding Agreements	Project Term
Information about Project Co's processes, methodologies, working methods and information relating to the development of	Trade secrets – Project Term All other cases – five (5) years from the date on which

Schedule 26 - Commercially Sensitive Information

new processes and methodologies which amounts to a trade secret or which, if disclosed, could reasonably be considered to provide a commercial advantage to Project Co's competitors	the information is produced to the Authority.
Breakdown of prices within the overall contract price (to the extent not disclosed within the Financial Model)	Project Term
Information on Project Co's costing mechanisms including information obtained from Project Co relating to project risks and pricing of the same and cost information relating to third party contractors and the Sub-Contractors	Project Term
Financial term sheets and related funding information including any funder pricing	Two (2) years from the date on which the information is produced to the Authority.
Information relating to the appointment of Project Co as the preferred bidder to the Project (including the preferred bidder letter and correspondence and minutes relating to the same)	Until the date falling two (2) years after the Actual Completion Date.
Information contained within or relating to Project Co's bid for the Project except as otherwise listed in this Schedule 26 (<i>Commercially Sensitive Information</i>) or otherwise provided in the Agreement	Until the date falling two (2) years after the Actual Completion Date.

SCHEDULE 27 - NOT USED

SCHEDULE 28
DISASTER PLAN

[REDACTED]

SCHEDULE 29
COMMUNITY BENEFITS

SECTION 1

AUTHORITY'S COMMUNITY BENEFITS REQUIREMENTS

1 Definitions

In this schedule 29 (*Community Benefits*) unless the context otherwise requires:

- 1.1 **"Apprentice"** means either or both of Apprentice (new) or Apprentice (existing);
- 1.2 **"Apprentice (existing)"** means an individual already undertaking a vocational construction skills training course leading to the award of a National Vocational Qualifications (NVQ) Level 2 or equivalent qualification;
- 1.3 **"Apprentice (new)"** means a new entrant individual undertaking a vocational construction skills training course leading to the award of a National Vocational Qualification (NVQ) Level 2 or equivalent qualification;
- 1.4 **"Community Initiative"** means an initiative leaving a lasting legacy within the community, including (but not limited to) regeneration, Welsh language and culture and initiatives which tackle poverty;
- 1.5 **"Community Engagement"** means any Project Co communication or interaction with the community which may include (but is not limited to) the circulation of newsletters, presentations or meetings with community groups;
- 1.6 **"Graduate"** means an individual who has completed their undergraduate degree and is undertaking a professional engineering training scheme recognised and accredited by a national professional body (such as the Institution of Civil Engineers) and leading to membership of the professional body at technician or chartered level or equivalent;
- 1.7 **"Jobs Created (Disadvantaged Worker)"** means a sustainable job for an individual who:
 - (a) has not been in regular paid employment for the previous 6 months; or
 - (b) is between 15 and 24 years of age; or
 - (c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular employment; or
 - (d) is over the age of 50 years; or
 - (e) lives as a single adult with one or more dependents; or
 - (f) works in a sector or profession in a Member State where the gender imbalance is at least 25% higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group; or
 - (g) is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to employment;

- 1.8 **"Jobs Created (NEET/LT Unemployed)"** means a sustainable job for an individual who has been long-term workless, unemployed and out of full time education or training for more than 6 months;
- 1.9 **"Person Week"** means a person employed for five days in connection with the Project, either on the Site or as otherwise agreed by the Authority;
- 1.10 **"Placement"** means a position intended to enable an individual to learn, develop or enhance their knowledge and skills in relation to the employment market that lasts between 11 days and 100 days and which includes elements of job coaching support;
- 1.11 **"Pupil Interactions"** means an interaction with 1 pupil for a minimum of 1 hour. A lesson of 1 hour for 30 pupils equals 30 interactions;
- 1.12 **"Small and Medium-sized Enterprise" or "SMEs"** means small or medium sized enterprises that are legally independent, have, a turnover of no more than €50m per annum and have no more than 250 employees;
- 1.13 **"Science, Technology, Engineering and Mathematics" or "STEM"** means science, technology, engineering and maths subjects;
- 1.14 **"Taster Position"** means a position that is intended to introduce an individual to a specific industry, occupation or position and may have a duration between 1 day and 10 days;
- 1.15 **"Training Plan"** means a document which outlines details about the formal training an Apprentice, Graduate or trainee will undertake; and
- 1.16 **"Work Experience"** means a young person aged 16-19 undertaking a placement as part of the national curriculum or as a specific qualification such as a Diploma programme, the Young Apprenticeship programme or a programme led apprenticeship.

Part 1 - Authority's Community Benefit Requirements

2 Authority's Community Benefit Requirements

- 2.1 The Authority requires Project Co to deliver tangible and measurable community benefits linked to the subject-matter of the Agreement (within the meaning of Regulation 67(5) of the Public Contract Regulations 2015), with particular focus on achieving the objectives of the Well-being of Future Generations (Wales) Act 2015. Central to this requirement, is therefore that Project Co delivers:
 - 2.1.1 Recruitment and training of unemployed and economically inactive people.
 - 2.1.2 Creating new apprenticeships, particularly for young people aged 16-24 who are NEET, LT Unemployed or a Disadvantaged Worker, and providing opportunities for experience for existing apprentices.
 - 2.1.3 Developing supply chain initiatives that support opportunities for SMEs and social enterprises.
 - 2.1.4 Minimising adverse environmental impact of the Project and, wherever possible, making a positive impact on the environment and, by extension, the health and wellbeing of local people.

- 2.1.5 Delivering educational initiatives, such as engagement with local schools on the promotion of STEM subjects, and career workshops on trades and professional services encompassed within the Project Operations.
- 2.1.6 Maximising engagement with the third sector.
- 2.1.7 Delivering community initiatives, to support community engagement, regeneration, the Welsh language and culture and community cohesion.
- 2.2 Such community benefits shall, as a minimum, include achievement of the Authority's Community Benefit Requirement KPIs set out in Part 2 of this Section 1 of Schedule 29 (*Community Benefits*) and such other benefits as are described as ACBR Enhancements and/or Additional Community Benefit Project Co Proposals in Project Co's Community Benefit Method Statements within Part 2 of Section 2 of this Schedule 29 (*Community Benefits*) and Clauses 29.10 and 29.12 of the Agreement.
- 2.3 The Authority requires all Additional Community Benefit Project Co Proposals to be tangible and measurable community benefits, linked to the subject-matter of the Agreement. These Additional Community Benefit Project Co Proposals are described in the table at Part 1 of Section 2 of Schedule 29 (*Project Co's Community Benefit Method Statements*) and methodologies for their implementation are set out in Part 2 of Section 2 of Schedule 29 (*Project Co's Community Benefit Method Statements*). Such proposals must align with the key policy objectives outlined above.
- 2.4 Project Co shall ensure that the requirements in this Schedule 29 (*Community Benefits*) shall fulfil and be compatible with all applicable Law relating to equality, non-discrimination, openness and transparency, and these requirements are to be read and construed in such a manner.

3 Monitoring and Reporting

- 3.1 Within fifteen (15) Business Days of the Commencement Date, Project Co shall provide to the Authority, a profile for the planned delivery of all Authority Community Benefits Requirements KPIs, ACBR Enhancements and Additional Community Benefits Project Co Proposals during the Construction Phase.
- 3.2 Within fifteen (15) Business Days of the first Payment Commencement Date, Project Co shall provide to the Authority a profile for the planned delivery of all Authority Community Benefits Requirements KPIs, ACBR Enhancements and Additional Community Benefits Project Co Proposals during the Operational Term.
- 3.3 In relation to the Works and prior to the issue of the final Permit to Use, Project Co shall provide:
 - 3.3.1 on each Quarterly Works Monitoring Date, a Quarterly Works Monitoring Report in accordance with Clause 29.10.2 of this Agreement; and
 - 3.3.2 on each Annual Works Monitoring Date, an Annual Works Monitoring Report, in accordance with Clause 29.10.3 of this Agreement.

- 3.4 In relation to the Services during the Operational Term, Project Co shall provide on each Annual Operations Monitoring Date an Annual Operations Monitoring Report in accordance with clause 29.12.2.
- 3.5 The reports referred to in paragraphs 3.3 and 3.4 above shall include, but not be limited to:
 - 3.5.1 delivery performance to date against the planned delivery profile provided pursuant to paragraphs 3.1 and 3.2 above for all the:
 - 3.5.1.1 Authority's Community Benefit Requirement KPIs;
 - 3.5.1.2 ACBR Enhancements;
 - 3.5.1.3 Additional Community Benefit Project Co Proposals;
 - 3.5.2 mitigation proposals for delivery of any community benefits which are more than ten per cent (10%) behind the planned delivery profile.
- 3.6 When requested by the Authority, a training provider or a trainee, Project Co shall maintain a Training Plan and provide evidence of work undertaken for an Apprentice's or Graduate's portfolio. The Training Plans and other documents must be available for inspection by the Authority at any time.
- 3.7 Each of the Authority's Community Benefits Requirements KPIs shall be monitored and reported independently. An individual may be counted in multiple categories as follows:
 - 3.7.1 an Apprentice who is a NEET/LT Unemployed or Disadvantaged Worker may be recorded in both the Apprentice KPI and the NEET/LT Unemployed or Disadvantaged Worker KPI
 - 3.7.2 a NEET/LT Unemployed or Disadvantaged Worker who undertakes a training course may be recorded in both the Training KPI and the NEET/LT Unemployed or Disadvantaged Worker KPI.
 - 3.7.3 an Apprentice who undertakes a training course unrelated to their apprenticeship may be recorded in both the Training KPI and the Apprentice KPI.
 - 3.7.4 a Graduate who undertakes a training course may be recorded in both the Training KPI and the Graduate KPI.
- 3.8 An individual who is a NEET/LT Unemployed and a Disadvantaged Worker may not be counted in both the NEET/LT Unemployed KPI and Disadvantaged Worker KPI.
- 3.9 To comply with Data Protection Laws, Project Co shall obtain from each new entrant trainee on the register signed statement authorising the release of personal data (as defined by Data Protection Laws) to the Authority for the purposes of contract monitoring.
- 3.10 The Authority shall have the right to undertake audits in relation to community benefits in accordance with Clause 67 (*Information and Audit Access*) and Schedule 19 (*Records Provisions*).
- 3.11 If the Authority becomes aware of circumstances which may result in non-compliance by Project Co of any community benefit the Authority may serve notice on Project Co to rectify such potential non-compliance.

4 **Supply Chain**

Project Co shall:

- 4.1 advertise SME/supply chain opportunities in the sell2wales portal; and
- 4.2 participate in "Meet the Buyer" events.

Part 2 – Authority's Community Benefit Requirement KPIs

Target Area	Construction Phase KPI Target	Construction Lump Sum Payment (indexed)	Total Value (Construction Phase)	Operational Term KPI Target	Operational Lump Sum Payment (indexed)	Total Value (30 years Operational Term)
Jobs Created (NEET/LT Unemployed)	3,100 Person Weeks	[REDACTED]	[REDACTED]	25 Person Weeks per 2 years	[REDACTED]	[REDACTED]
Jobs Created (Disadvantaged Worker)	6,500 Person Weeks	[REDACTED]	[REDACTED]	25 Person Weeks per 2 years	[REDACTED]	[REDACTED]
Apprentices	4,150 Person Weeks	[REDACTED]	[REDACTED]	50 Person Weeks per 2 years	[REDACTED]	[REDACTED]
Graduates	1,100 Person Weeks	[REDACTED]	[REDACTED]	N/A	[REDACTED]	[REDACTED]
Training (including Work Experience, Placement and Taster Positions, excluding Apprentices and Graduates)	2,950 Person Weeks	[REDACTED]	[REDACTED]	10 Person Weeks average per 2 years	[REDACTED]	[REDACTED]
School engagement (STEM) – Pupil	18,100 Pupil Interactions	[REDACTED]	[REDACTED]	60 Pupil Interactions per 2 years	[REDACTED]	[REDACTED]

Schedule 29 - Community Benefits

Interactions						
School engagement (STEM) (including but not limited to attendance at career fairs or interviews) - hours donated (excluding interaction activities included above)	2,000 hours donated	[REDACTED]	[REDACTED]	30 hours donated per 2 years	[REDACTED]	[REDACTED]
Community Initiatives	60 Community Initiatives	[REDACTED]	[REDACTED]	2 Community Initiative per 2 years	[REDACTED]	[REDACTED]
Community Engagement	20 Community Engagements	[REDACTED]	[REDACTED]	1 Community Engagement per 2 years	[REDACTED]	[REDACTED]
Annual Operations Monitoring Report	N/A	[REDACTED]	[REDACTED]	1 per year	[REDACTED]	[REDACTED]
Annual Works Monitoring Report	1 Annual reports	[REDACTED]	[REDACTED]	N/A	[REDACTED]	[REDACTED]
Quarterly Works Monitoring Report	4 Quarterly reports per year	[REDACTED]	[REDACTED]	N/A	[REDACTED]	[REDACTED]

Total Value			[REDACTED]			[REDACTED]

Part 3 - Dashboard Template

[REDACTED]

Part 4 - Annual Report

[REDACTED]

SECTION 2

PROJECT CO'S COMMUNITY BENEFITS METHOD STATEMENTS

Part 1 - ACBR Enhancements and Additional Community Benefit Project Co Proposals

[REDACTED]

Part 2 - Project Co's Community Benefit Method Statements

[REDACTED]

Section A - Authority's Community Benefit Requirement KPIs

[REDACTED]

Section B - ACBR Enhancements

[REDACTED]

Section C - Additional Community Benefit Project Co Proposals

[REDACTED]

SCHEDULE 30
BIM PROTOCOL

[REDACTED]

SCHEDULE 31

INTERIM PROJECT REPORT

- 1 An Interim Report shall include:
 - 1.1 a detailed description of the circumstances leading to the occurrence of the relevant Funding Default;
 - 1.2 details of any action taken by Funders and it is anticipated will be taken by Funders under the Common Terms Agreement;
 - 1.3 confirmation of whether it is known if Funders intend to issue a waiver in respect of the relevant Funding Default and/or any other action which Funders have advised may be taken;
 - 1.4 a programme of action which will, if performed, remedy or otherwise resolve the matters which gave rise to the relevant Funding Default;
 - 1.5 copies of all information reports or other documents that have been provided to Funders and details of such other information, reports and/or documents that will be provided to Funders pursuant to Clause 11 of the Common Terms Agreement;
 - 1.6 details of any additional information and/or reports which have been requested by Funders; and
 - 1.7 all such other information or documentation pertaining to a Funding Default as the Authority in such form as the Authority (acting reasonably) may request.

SCHEDULE 32

STATUTORY FRAMEWORK AND THIRD PARTY AGREEMENTS

Section 1: Third Party Agreements

Part 1: List of Third Party Agreements

Part 2: Retained Obligations

Part 3: Delegated Obligations

Part 4: Retained Rights

Part 5: Delegated Rights

Part 6: Interested Parties

Part 7: Relevant Authorities

Section 2: Statutory Framework

Part 1: Authorised Roads Order Functions

Part 2: Authorised Highway Functions

Section 3: Roads Liaison Procedure

SECTION 1

THIRD PARTY AGREEMENTS

1. In this Section 1 (*Third Party Agreements*) of Schedule 32 (*Statutory Framework and Third Party Agreements*), unless a contrary indication appears, capitalised terms have the meanings assigned to them in this agreement or in the relevant Third Party Agreement (as the context requires).
2. The summary information contained in Parts 2 to 5 (inclusive) of this Section 1 (*Third Party Agreements*) is for explanatory and identification purposes, and is, therefore, without prejudice or limitation to the provisions of the Third Party Agreements, which should be referred to for the relevant detail and so as to understand their nature and scope.

PART 1: LIST OF THIRD PARTY AGREEMENTS

List of Third Party Agreements (copies of which are included at Appendix A to this Part 1 (<i>List of Third Party Agreements</i>) of Section 1 (<i>Third Party Agreements</i>) of Schedule 32 (<i>Statutory Framework and Third Party Agreements</i>))	
Document Number	Description of Third Party Agreement
1.	Asset protection agreement dated 24 July 2018 between (1) the Welsh Ministers and (2) National Grid Gas PLC (" NGG "), and a side letter from NGG to the Welsh Ministers of the same date relating to the said asset protection agreement (together the " National Grid Asset Protection Agreement ").
2.	Agreement (in the form of a letter) between (1) the Welsh Government and (2) Welsh Water dated 2 May 2018, recording the Welsh Government's agreement to various matters in connection with the Project (the " Welsh Water Agreement ").
3.	Agreement between (1) the Welsh Ministers and (2) Merthyr Tydfil County Borough Council dated 2 June 2020, in relation to a the acquisition of an area land forming part of Cefn Coed Cemetery (the " Cefn Coed Cemetery Licence ")
4.	[REDACTED]

**Appendix A to Part 1 (*List of Third Party Agreements*) of Section 1 (*Third Party Agreements*) of
Schedule 32 (*Statutory Framework and Third Party Agreements*)**

PART 2: RETAINED OBLIGATIONS

[REDACTED]

PART 3: DELEGATED OBLIGATIONS

[REDACTED]

PART 4: RETAINED RIGHTS

[REDACTED]

PART 5: DELEGATED RIGHTS

[REDACTED]

PART 6: INTERESTED PARTIES

- 1 The following are Interested Parties in the Project:
 - 1.1 each counterparty to a Third Party Agreement as listed in Section 1 of Part 1 of this Schedule;
 - 1.2 all owners and occupiers with an interest in the land adjoining the Site;
 - 1.3 each party duly authorised by Law to review or otherwise take an interest in the Project Operations, including the Relevant Authorities;
 - 1.4 each TOC Person;
 - 1.5 each of the interested parties identified in the Liaison Procedure Register in Annex 1 of Schedule 32, Section 3 (*Roads Liaison Procedure*) (as amended or updated from time to time) other than those parties who are identified as "Relevant Authorities" in Part 7 (*Relevant Authorities*) of section 1 (*Third Party Agreements*) of this Schedule 32 (*Statutory Framework and Third Party Agreements*); and
 - 1.6 each of the parties identified in the Register of Commitments.
- 2 Requirements of Interested Parties
 - 2.1 Minimum requirements of the Interested Parties, as far as they have been identified as at the date of this Agreement are as follows:
 - 2.1.1 Project Co will meet the minimum requirement of all of the Interested Parties by demonstrating compliance with Schedule 32, Section 3 (*Roads Liaison Procedure*).
 - 2.1.2 those requirements set out in the Register of Commitments;
 - 2.1.3 those requirements set out in Appendix 1/15 (*Accommodation Works*) of Part 4 (*Specification*) of Section 3 (*Authority's Construction Requirements*) of Schedule 6 (*Construction Matters*).
- 3 [REDACTED]

APPENDIX 1: [REDACTED]

APPENDIX 2: [REDACTED]

PART 7: RELEVANT AUTHORITIES

1 National Authorities

- 1.1 Campaign for Protection of Rural Wales
- 1.2 Coal Authority
- 1.3 Crown Estate
- 1.4 Department for Environment Food and Rural Affairs (DEFRA)
- 1.5 Department for Transport
- 1.6 Health and Safety Executive
- 1.7 South Wales Trunk Road Agent (SWTRA)
- 1.8 Welsh Government, Network Management
- 1.9 Brecon Beacons National Park Authority
- 1.10 Technical Approval Authority
- 1.11 Technical Review Panel

2 Local authorities

- 2.1 Merthyr Tydfil County Borough Council
- 2.2 Caerphilly County Borough Council
- 2.3 Rhondda Cynon Taf County Borough Council

3 Emergency Services

- 3.1 Emergency Co-ordination Centre (Wales)
- 3.2 South Wales Police
- 3.3 Gwent Police
- 3.4 South Wales Fire and Rescue Services
- 3.5 Welsh Ambulance Service NHS Trust
- 3.6 NHS Direct Wales

4 Statutory Undertakers

- 4.1 Western Power Distribution
- 4.2 Wales & West Utilities Ltd
- 4.3 British Telecommunications plc (Openreach)
- 4.4 National Grid and National Grid Gas Plc

- 4.5 Dwr Cymru Welsh Water
- 4.6 Network Rail/Transport for Wales
- 4.7 Cluttons LLP (who act for CTIL who manage both O2 & Vodafone masts)

5 Relevant Authorities' Requirements

- 5.1 Minimum requirements of the Relevant Authorities, as far as they have been identified as at the date of this Agreement are as follows:
 - 5.1.1 Project Co will meet the minimum requirement of all of the Relevant Authorities by demonstrating compliance with Schedule 32, Section 3 (*Roads Liaison Procedure*);
 - 5.1.2 those requirements set out in the Register of Commitments; and
 - 5.1.3 Project Co will enter into the Transport for Wales Agreements.

SECTION 2**STATUTORY FRAMEWORK****PART 1: AUTHORISED ROADS ORDER FUNCTIONS**

The following table sets out the Authorised Roads Order Functions referred to in Clause 30 (*No Delegation*) of this Agreement.

For the purposes of this Part 1 (*Authorised Roads Order Functions*) of Section 2 (*Statutory Framework*) of Schedule 32 (*Statutory Framework and Third Party Agreements*), capitalised terms shall (as the context requires) have the meaning as defined in Article 2 of the relevant Side Roads Order or, where not so defined, as defined in this Agreement.

The summary detail contained in this Part 1 (*Authorised Roads Order Functions*) is for explanatory purposes only and is without prejudice to Clause 5.2.4. To avoid doubt, in the event of any inconsistency between the content of this Part 1 (*Authorised Roads Order Functions*) and the relevant article or Paragraph of the applicable Side Roads Order, the Side Roads Order shall take precedence.

No.	Article of the Side Roads Order
1.	Article 3(a): Carry out the improvement of highways
2.	Article 3(b): Stop up highways or areas of highways
3.	Article 3(c): Construct new highways
4.	Article 3(d): Stop up private means of access to premises
5.	Article 3(e): Provide new means of access to premises
6.	Article 3(f): Construct temporarily lengths of highway
7.	Article 3(g): Close lengths of highway temporarily

With regard to the order described in limb (b) of the definition of Side Roads Order, rows 6 and 7 of the table above are not applicable to that order. In all other instances, the Authorised Roads Order Functions listed above apply to each of the orders described in both limb (a) and (b) of the definition of Side Roads Order.

PART 2: AUTHORISED HIGHWAY FUNCTIONS**1 AUTHORISED HIGHWAY FUNCTIONS**

- 1.1 The following paragraphs and tables set out the Authorised Highway Functions referred to in Clause 30 (*No Delegation of Functions*) of this Agreement.
- 1.2 The summary detail contained in this Part 2 (*Authorised Highway Functions*) is for explanatory purposes only and is without prejudice to Clause 5.2.1. To avoid doubt, in the event of any inconsistency between the content of this Part 2 (*Authorised Highway Functions*) and the relevant Law, the Law shall take precedence.

2 FUNCTIONS CONFERRED BY THE HIGHWAYS ACT OR ANY REGULATIONS MADE UNDER THAT ACT

- 2.1 Subject to paragraph 2.2 of this Part 2 (*Authorised Highway Functions*), functions conferred on the Authority by the Highways Act or any regulations under any provision of that Act:

No.	Origin of Power	Statutory Function
1.	Section 41(1) and (1A)	Duty to maintain highways maintainable at public expense
2.	Section 62	General power of improvement
3.	Section 64	Dual carriageways and roundabouts
4.	Section 65	Cycle tracks
5.	Section 66	Footways and guard-rails etc for publicly maintainable highways
6.	Section 68	Refuges
7.	Section 69(1)	Subways
8.	Section 70	Footbridges over highways
9.	Section 71	Margins for horses and livestock
10.	Section 75(1) and (2)	Variation of widths of carriageways and footways
11.	Section 76	Levelling of highways
12.	Section 77	Alteration of levels
13.	Section 78	Cutting off of corners
14.	Section 80(1), (2), and (3)	Power to fence highways
15.	Section 81	Provision of highway boundary posts
16.	Section 92	Reconstruction of bridge maintainable at public expense
17.	Section 96	Powers of highway and local authorities to plant trees, lay out grass verges etc
18.	Section 97	Lighting of highways
19.	Section 99	Metalling of highways

No.	Origin of Power	Statutory Function
20.	Section 100(1) to (5), (6) and (6B)	Entry for works purposes (drainage of highways), except insofar as they relate to the power to enter premises under section 168 of the Water Industry Act 1991
21.	Section 101	Power to fill in roadside ditches etc
22.	Section 102	Provision of works for protecting highways against hazards of nature
23.	Section 103	Provision of posts to indicate depth of flood water
24.	Section 104	Mitigating nuisance of dust
25.	Section 105	Power to improve road-ferries
26.	Section 132(2)	Removal of unauthorised marks on the highway
27.	Section 133	Damage to footways of streets by excavations
28.	Section 139(1) and (2)	Control of builders' skips
29.	Section 140(2)	Removal of builders' skips
30.	Section 141(2)	Restriction on planting of trees etc in or near carriageway
31.	Section 143(1)	Power to remove structures from highways
32.	Section 150(1), (2) and (4)	Duty to remove snow, soil etc from highway), except insofar as they relate to an obstruction in a highway which is the property of any person
33.	Section 154(1) and (2)	Cutting or felling etc trees etc that overhang or are a danger to roads or footpaths
34.	Section 169(1), (2), (3) and (4)	Control of scaffolding on highways
35.	Section 171	Control of deposit of building materials and making of excavations in streets, except insofar as the functions conferred by or under section 171(7) relate to the removal of the property of any person
36.	Section 288	Power to require gas and water pipes to be moved, insofar as that provision applies to the exercise of any other function listed in this schedule

2.2 Paragraphs 2.1 of this Part 2 (*Authorised Highway Functions*) shall not include any function to the extent that the function confers a power or right of entry into or on any premises or land of which the Authority is not the owner or occupier.

3 **FUNCTIONS CONFERRED BY THE NEW ROADS AND STREET WORK ACT 1991 OR ANY REGULATIONS MADE UNDER THAT ACT**

3.1 Subject to paragraph 3.3 of this Part 2 (*Authorised Highway Functions*), functions conferred by or under the NRSWA on the Authority as competent authority by virtue of it being:

3.1.1 the street authority for a street:

No.	Origin of Power	Statutory Function
37.	Section 65(5)	Safety measures
38.	Section 66(3) and (4)	Avoidance of any unnecessary delay or obstruction
39.	Section 68(1)	Facilities to be afforded to street authority
40.	Section 72	Powers of street authority in relation to reinstatement
41.	Section 75	Inspection fees
42.	Section 81	Duty to maintain apparatus

3.1.2 the traffic authority for a highway:

No.	Origin of Power	Statutory Function
43.	Section 65(2)	Safety measures

3.1.3 as a relevant authority, other than a street authority:

No.	Origin of Power	Statutory Function
44.	Section 81	Duty to maintain apparatus

3.1.4 the highway authority for a highway or as the bridge authority for a bridge:

No.	Origin of Power	Statutory Function
45.	Section 83	Works for road purposes likely to affect apparatus in the street
46.	Section 84(1), (3) and (4)	Measures necessary where apparatus affected by major works
47.	Section 88(4) and (5)	Bridges, bridge authorities and related matters

3.2 Subject to paragraph 3.3 of this Part 2 (*Authorised Highway Functions*), functions conferred by or under regulations made under NRSWA on the Authority as competent authority by virtue of it being:

3.2.1 the street authority for a street:

No.	Origin of Power	Statutory Function
48.	By or under any of the Street Works (Inspection Fees) (Wales) Regulations 2006	Undertaker required to pay the street authority a fee for each chargeable inspection carried out by the street authority in Wales

No.	Origin of Power	Statutory Function
49.	By or under regulation 3 of the Street Works (Reinstatement) Regulations 1992	Street authority's power to give notice affecting the standard of reinstatement required
50.	Under regulation 3 or 4 of the Street Works (Maintenance) Regulations 1992	Street authority's power to execute works to enable it to inspect an undertaker's apparatus and to execute any emergency works needed

- 3.3 Paragraphs 3.1 and 3.2 of this Part 2 (*Authorised Highway Functions*) shall not include any function to the extent that the function confers a power or right of entry into or on any premises or land of which the Authority is not the owner or occupier.

4 FUNCTIONS CONFERRED BY MISCELLANEOUS ENACTMENTS

- 4.1 Subject to paragraph 4.2 of this Part 2 (*Authorised Highway Functions*), functions conferred by or under the following miscellaneous enactments on the Authority:

No.	Origin of Power	Statutory Function
51.	Functions conferred on the Welsh Ministers, as the highway authority for a highway, by or under section 153 of the Public Health Act 1875	Power to require gas and water pipes to be moved

- 4.2 Paragraph 4.1 of this Part 2 (*Authorised Highway Functions*) shall not include any function to the extent that the function confers a power or right of entry into or on any premises or land of which the Authority is not the owner or occupier.

SECTION 3

ROADS LIAISON PROCEDURE

[REDACTED]

SCHEDULE 33
RESTRICTED SERVICES

SECTION 1: RESTRICTED SERVICES ACTIVITIES

[REDACTED]

SECTION 2: RESTRICTED SERVICE LEVEL SPECIFICATION

[REDACTED]

SECTION 3: RESTRICTED SERVICES METHOD STATEMENTS

[REDACTED]

SECTION 4: RESTRICTED SERVICES QUALITY PLANS

[REDACTED]

SECTION 5: RESTRICTED SERVICES READINESS CERTIFICATE

[REDACTED]

SECTION 6: NOT USED

SCHEDULE 34
NOT USED

SCHEDULE 35
NETWORK MANAGEMENT

[REDACTED]

SCHEDULE 36
SIDE ROADS WORKS

In this Schedule 36 (*Side Road Works*) and elsewhere in this Agreement (save where Schedule 1 (*Definitions and Interpretation*) provides to the contrary) the following words shall have the following meanings:

"Assessment Date" means the final day of each Assessment Period;

"Assessment Period" means each calendar month except that:

- (a) the first Assessment Period shall commence on the Commencement Date and end on the last day of the calendar month in which the Commencement Date occurs; and
- (b) the final Assessment Period shall end on the date of issue of the Final Taking Over Certificate (or the Termination Date, if earlier);

"FA Due Date" has the meaning given in paragraph 4.2 below;

"Final Account" means an account including the information set out at paragraph 4.1 below;

"Final Date for Payment" means the date specified in paragraph 3.7 in respect of any Interim Payment Certificate and the date specified in paragraph 4.7 in respect of any Final Payment Certificate;

"Final Payment Certificate" means a certificate issued by the Authority in accordance with paragraph 4.3;

"Final Taking Over Certificate" means the final Taking Over Certificate to be issued in respect of all Temporary Highways Areas;

"Interim Application" has the meaning given in paragraph 2.1 below;

"Interim Payment Certificate" means a certificate issued by the Authority in accordance with paragraph 3.1;

"Interim Valuation" means the amount determined in accordance with paragraph 2.4 below;

"Maximum Aggregate Side Roads Works Value" means at each Assessment Date, the applicable value specified in the table included at appendix 1 to this Schedule 36;

"Pay Less Notice" has the meaning given in paragraph 5.2 below;

"Price Breakdown" means the price breakdown set out at appendix 2 to this Schedule 36;

"Side Roads Works" means all and any Works to be carried out on and in respect of Temporary Highways Areas; and

"Side Roads Works Price" means the lump sum payable by the Authority to Project Co in respect of the carrying out the Side Road Works, in accordance with this Agreement, being £[REDACTED].

1. SIDE ROADS WORKS PRICE

- 1.1 Payment of the Side Roads Works Price by the Authority to Project Co for the carrying out of the Side Roads Works shall be in arrears in accordance with this Schedule 36 (*Side Roads Works*).
- 1.2 The Side Roads Works Price shall not be adjusted or altered in any way whatsoever, and Project Co shall not be entitled to receive any payment in addition to the Side Roads Works Price, otherwise than in accordance with the express provisions of this Agreement.
- 1.3 The Side Roads Works Price is exclusive of VAT and Clause 40 (*VAT and Construction Industry Tax Deduction Scheme*) shall apply.

2. INTERIM PAYMENT APPLICATIONS

- 2.1 Project Co shall be entitled to submit interim applications for payments in respect of Side Roads Works undertaken in an Assessment Period ("**Interim Application**"), within five (5) Business Days following the end of that Assessment Period, up to and including the Assessment Period during which the Final Taking Over Certificate is issued.
- 2.2 The Interim Application shall be made in respect of the Side Road Works properly completed in the relevant Assessment Period, up to and including the end of that Assessment Period. For the avoidance of doubt Project Co shall not be entitled to submit more than one (1) Interim Application in respect of any Assessment Period.
- 2.3 The Interim Application shall state the sum Project Co considers to be due and the basis on which such sum has been calculated.
- 2.4 The amount due in respect of Side Road Works in respect of any Assessment Period shall be the Interim Valuation for the relevant Assessment Period, which shall be the total of the following:
 - (a) the total value of:
 - (i) those elements of the Side Roads Works properly executed and completed; and
 - (ii) any materials delivered to the Site but not incorporated in the Side Roads Works, provided that such materials have not been prematurely delivered to Site,

such value being calculated by reference to the Price Breakdown in each case as at the relevant Assessment Date;
 - (b) any other amount to be added to the Side Roads Works Price under the express terms and conditions of this Agreement;

less

 - (c) sums already paid to Project Co pursuant to previous Interim Valuations; and
 - (d) any amount to be deducted from the Side Roads Works Price or due to the Authority from Project Co under the express terms and conditions of this Agreement (which for the avoidance of doubt shall exclude Deductions).
- 2.5 The Authority shall be entitled to inspect the Side Roads Works on reasonable notice to Project Co and Project Co shall provide such information and assistance as is reasonably

requested by the Authority to enable the Authority to calculate the Interim Valuation. Where Project Co fails to comply with this paragraph 2.5, Project Co acknowledges and agrees that the Authority's calculation of the Interim Valuation will be based on the Authority's actual knowledge of the extent to which the Side Roads Works have been completed as at the relevant Assessment Date.

- 2.6 Notwithstanding any other provision of this Schedule 36, the maximum value of the Side Roads Works which may be included within any Interim Application shall not exceed the Maximum Aggregate Side Roads Works Value for the relevant Assessment Date.
- 2.7 Each Interim Application submitted by Project Co pursuant to this paragraph 2 shall be accompanied by:
 - (a) such evidence as is reasonably necessary to demonstrate the completeness of those elements of the Side Roads Works included in the Interim Application for payment; and
 - (b) a progress report detailing the progress of the Side Roads Works against the Programme.
- 2.8 Project Co shall submit in relation to each Interim Application a draft/proforma VAT invoice.
- 2.9 The due date for payment of any sum that may be due by the Authority to Project Co in relation to an Interim Application shall be date which is five (5) Business Days following the later of:
 - (a) the date of receipt by the Authority of an Interim Application; and
 - (b) the date of receipt of a draft/proforma invoice in respect of that Interim Application.

3. INTERIM PAYMENT CERTIFICATE

- 3.1 On or before the fifth (5th) Business Day following the date of receipt of the Interim Application the Authority shall issue a certificate to Project Co (copying such certificate to the Contractor at the same time) certifying:
 - (a) the cumulative sum which (in accordance with paragraph 2.4) is to be payable (or has been paid) by the Authority to Project Co in respect of the Side Roads Works; and
 - (b) the amount of VAT that is payable in respect thereof,
 less:
 - (c) any sums due from Project Co to the Authority or deductions to be made under this Agreement (which for the avoidance of doubt shall exclude Deductions); and
 - (d) any amounts certified for payment on Interim Payment Certificates previously issued
 ("**Interim Payment Certificate**").
- 3.1A Following receipt of the Interim Payment Certificate, Project Co shall issue a valid VAT invoice in respect of the Interim Application.
- 3.2 The Authority may omit from any Interim Payment Certificate any amount required to correct any error made in any previous Interim Payment Certificate.
- 3.3 The Interim Payment Certificate shall set out the amount proposed to be paid and the basis upon which that amount was calculated.

3.4 If the Authority believes that the aggregate of:

- (a) amounts paid in relation to Interim Payment Certificates previously issued; and
- (b) any further amounts due to Project Co (but not yet paid),

exceeds the amount to which Project Co is entitled, the Authority may issue an Interim Payment Certificate in a negative value reflecting the amount Project Co has been overpaid and such sum shall become due from Project Co to the Authority. In relation to any such Interim Payment Certificate in a negative value, the due date shall be the date the Interim Payment Certificate is received by Project Co and the final date for payment shall be twenty (20) days after the due date.

3.5 No payment by the Authority of any amount contained in an Interim Payment Certificate shall of itself be conclusive evidence that any design, works, materials or goods to which it relates are in accordance with this Agreement.

3.6 Where the value of any materials or goods intended for the Side Roads Works and stored off site has been included in any Interim Payment Certificate such materials and goods shall become the property of the Authority upon the issue of the Interim Payment Certificate and thereafter Project Co shall not, except for use in the Side Roads Works, remove or cause or permit the same to be moved or removed from the premises where they are stored, but Project Co shall nevertheless be responsible for any loss thereof or damage thereto and for the cost of storage, handling and insurance of the same until such time as they are delivered to and placed on or adjacent to the Side Roads Works.

3.7 Subject to paragraphs 3.4 and 5 below, the Authority shall pay to Project Co the amount due under any Interim Payment Certificate on or before the final date for payment. The final date for payment for these purposes shall be five (5) Business Days following the date of receipt by the Authority of a valid VAT invoice issued by Project Co pursuant to paragraph 3.1A of this Schedule 36 (Side Road Works).

4. **FINAL CERTIFICATE**

4.1 Within ten (10) Business Days of the issue of the Final Taking Over Certificate, Project Co shall submit to the Authority a statement of final account showing the total sums paid or to be paid together with all further sums which Project Co considers to be due to it under this Agreement in relation to the Side Roads Works, together with the basis of such sums ("**Final Account**"). Project Co shall substantiate its Final Account with such supporting evidence and working papers as the Authority may reasonably require to demonstrate to the Authority's reasonable satisfaction the basis of Project Co's Final Account.

4.2 The due date for payment of any amount which may be payable by the Authority to Project Co in respect of any Final Account shall be five (5) Business Days following receipt by the Authority of the Final Account from Project Co ("**FA Due Date**").

4.3 Within five (5) days of the FA Due Date, the Authority shall issue to Project Co a Final Payment Certificate stating:

- (a) the Side Roads Works Price (as adjusted) which, in the Authority's reasonable opinion, is finally due under this Agreement in respect of the Side Roads Works; and
- (b) the sum of amounts already paid by the Authority to Project Co in relation to the Side Roads Works;

and the balance, if any, shall be due to Project Co from the Authority or to the Authority from Project Co, as the case may be.

- 4.4 The Final Payment Certificate shall set out the amount proposed to be paid and the basis upon which that amount was calculated.
- 4.5 For the avoidance of doubt, upon completion of all elements of the Side Roads Works, the Side Roads Works Price (as adjusted) shall be an amount equal to the Side Roads Works Price:
 - (a) plus any amounts to be added to the Side Roads Works Price under the express terms and conditions of this Agreement; and
 - (b) less any amounts to be deducted from the Side Roads Works Price or due to the Authority from Project Co under the express terms and conditions of this Agreement (which for the avoidance of doubt shall exclude Deductions).
- 4.6 No payment by the Authority of any amount contained in the Final Payment Certificate shall of itself be conclusive evidence that any design, works, materials or goods to which it relates are in accordance with this Agreement.
- 4.7 The final date for payment for any sum due under any Final Payment Certificate by the Authority to Project Co, or by Project Co to the Authority, (as the case may be) shall be twenty (20) days after the FA Due Date.

5. AMOUNTS DUE AND PAY LESS NOTICES

- 5.1 If an Interim Payment Certificate or a Final Payment Certificate is not given in accordance with paragraphs 3 or 4 the amount of payment to be paid by the Authority shall, subject to any Pay Less Notice issued under paragraph 5.2, be the sum stated as due in the relevant Interim Application or Final Account.
- 5.2 If the Authority intends to pay less than the sum stated as due from the Authority in an Interim Payment Certificate, the Final Payment Certificate, an Interim Application or the Final Account, as the case may be, the Authority shall not later than two (2) Business Days before the Final Date for Payment issue a written notice stating the sum the Authority intends to pay together with the basis of the sum it intends to pay and the ground or grounds for withholding payment of any disputed amount ("**Pay Less Notice**"). Where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall not be less than the amount stated as due in the Pay Less Notice. Any failure by the Authority to give a Pay Less Notice shall not be deemed to be an acceptance that the relevant Interim Application represents the value referred to in paragraph 2.4 and, notwithstanding any such failure, Project Co's entitlement shall remain the amount properly due in accordance with this Agreement.
- 5.3 If Project Co disputes all or any of the statements made in any Interim Payment Certificate and/or Pay Less Notice, the matter or matters in question shall be determined under Clause 60 (*Dispute Resolution*).
- 5.4 If the determination of any such Dispute shows that:
 - (a) the Authority has withheld any amount which Project Co was entitled to be paid; or
 - (b) Project Co has claimed under paragraph 2 or paragraph 4 a sum which it was not entitled to be paid,

the Authority shall pay such amount to Project Co or Project Co shall repay such amount to the Authority with interest calculated in accordance with Clause 39.5 (*Late Payments*).

APPENDIX 1: SIDE ROAD WORKS PAYMENT SCHEDULE

[REDACTED]

APPENDIX 2: PRICE BREAKDOWN

[REDACTED]

SCHEDULE 37
LATENT DEFECT IDENTIFIED RISKS

[REDACTED]

SCHEDULE 38
DRAWINGS

[REDACTED]

SCHEDULE 39
AUTHORITY POLICIES

No.	Policy
1.	Turning Heads - 'A Strategy for the Heads of the Valley 2020'
2.	Wales Infrastructure Investment Plan (2012)
3.	Road Safety Framework for Wales
4.	Vibrant and Viable Places (2013)
5.	Written Statement - Transport
6.	Our Valleys, Our Future - Delivery Plan 2018
7.	Our Valleys, Our Future - Delivery Plan 2018 Summary
8.	Our Valleys, Our Future - Delivery Plan 2017
9.	Our Valleys, Our Future - Equality Impact Assessment
10.	Our Valleys, Our Future – Introduction
11.	Our Valleys, Our Future - One Year On
12.	Our Valleys, Our Future - Young Peoples' Summary
13.	Talk Valleys - Engagement Program
14.	Valleys Taskforce - Context Paper
15.	Valleys Taskforce - Summary of Evidence
16.	Cardiff Capital Region City Deal
17.	One Wales: One Planet – the Sustainable Development Scheme for Wales (2009)
18.	Climate Change Strategy for Wales (2010)
19.	Air Quality Strategy for England, Scotland, Wales and Northern Ireland (2011)
20.	One Wales: Connecting the Nation: Wales Transport Strategy (2008)

21.	Environment Strategy for Wales (2006)
22.	The Wales Spatial Plan (2008)
23.	An Active Travel Action Plan for Wales (2016)
1.	Planning Policy Wales (2016) and associated Technical Advice Notes (various dates):
24.	Planning Policy Wales
25.	Technical advice note (TAN) 1: joint housing land availability studies
26.	Technical advice note (TAN) 2: planning and affordable housing
27.	Technical advice note (TAN) 3: simplified planning zones
28.	Technical advice note (TAN) 4: retail and commercial development
29.	Technical advice note (TAN) 5: nature conservation and planning
30.	Technical advice note (TAN) 6: planning for sustainable rural communities
31.	Technical advice note (TAN) 7: outdoor advertisement control
32.	Technical advice note (TAN) 8: renewable energy
33.	Technical advice note (TAN) 8: renewable energy - Map 1
34.	Technical advice note (TAN) 8: renewable energy - Map 2
35.	Technical advice note (TAN) 8: renewable energy - Map 3
36.	Technical advice note (TAN) 8: renewable energy - Map 4
37.	Technical advice note (TAN) 8: renewable energy - Map 5
38.	Technical advice note (TAN) 8: renewable energy - Map 6
39.	Technical advice note (TAN) 8: renewable energy - Map 7
40.	Technical advice note (TAN) 8: renewable energy - Map 8
41.	Technical advice note (TAN) 10: tree preservation orders
42.	Technical advice note (TAN) 11: noise

43.	Technical advice note (TAN) 12: design
44.	Technical advice note (TAN) 13: tourism
45.	Technical advice note (TAN) 14: coastal planning
46.	Technical advice note (TAN) 15: development and flood risk
47.	Technical advice note (TAN) 16: sport, recreation and open space
48.	Technical advice note (TAN) 18: transport
49.	Technical advice note (TAN) 19: telecommunications
50.	Technical advice note (TAN) 20: planning and the Welsh language
51.	Technical advice note (TAN) 21: waste
52.	Technical advice note (TAN) 23: economic development
53.	Technical advice note (TAN) 24: the historic environment
54.	Local Air Quality Management in Wales – Policy Guidance (2017)
55.	Joint Transport Plan for South West Wales 2015 – 2020
56.	Local Development Plan 2006-2021 - Merthyr Tydfil
57.	Local Development Plan 2006-2021 – RCT
58.	Local Development Plan 2006-2021 – Caerphilly
59.	Brecon Beacons National Park Authority Local Development Plan
60.	Taking Wales Forward: The Welsh Government's Well-being Objectives (2016)
61.	Prosperity for All: the national strategy (2017)
62.	Prosperity for All: Economic Action Plan (executive summary)
63.	Prosperity for All: Economic Action Plan
64.	Natural Resources Wales' Well-being Objectives (2017)

HM/HM/421688/18/UKM/117703331.6
21 September 2020 D1V84