

- 14.1.1 refurbish the Structure to meet the 40 tonnes Assessment Live Loading in accordance with BD21/01 of the DMRB if the Structure is set out in table 1 – weight restricted structures of schedule 15 (*Deemed to Comply*);
 - 14.1.2 change the height of the Structure if it was subject to any Height Restriction at the date of this Contract as set out in "Table 2 – Height Restricted Structures" of schedule 15 (*Deemed to Comply*);
 - 14.1.3 change the width of the Structure if it was subject to any Width Restriction as set out in "Table 3 – Width Restricted Structures" of schedule 15 (*Deemed to Comply*); and/or
 - 14.1.4 carry out any works to the Structure so that it is no longer Deemed to Comply in respect of Containment as set out in "Table 4 – Containment (Footway/Verge Protection)" of schedule 15 (*Deemed to Comply*).
- 14.2 Deemed to Comply Street Lighting is deemed to comply with the requirements of BS5489:2003 and BS EN13201:2003.

PART E - LAND RIGHTS

15. AUTHORITY ACCESS

15.1 Trials

- 15.1.1 Any study or trial referred to in clause 43.4.3.3 shall be conducted by or on behalf of the Authority in such manner as to minimise the loss of availability of any part of the Project Network or any adverse effect on traffic flows on the Project Network arising from such study or trial and no such study or trial shall, without the consent of the Service Provider (such consent not to be unreasonably withheld or delayed), substantially affect the physical integrity of the Project Network. If the Authority or a third party on its behalf conducts a study or trial referred to in clause 43.4.3.3 and in accordance with this clause 15.1, the Service Provider shall be entitled to an Excusing Cause (subject to and in accordance with clause 47 (Excusing Cause)).
- 15.1.2 The Service Provider shall procure that all Relevant Authorities have access to all Work Sites throughout the Term in order to carry out any work (including surveys and inspections) in accordance with any Law or to exercise any right,

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

15.2 Authority monitoring of Service Provider's obligations

- 15.2.1 Subject to the provisions of clause 38 (Monitoring of Surveys and Inspections), and without prejudice to clause 72 (Step-In), clause 15.1 (Authority Access) and schedule 4 (Payment Mechanism), if the Authority reasonably believes that there has been a material failure by the Service Provider to carry out the Service in respect of a particular type of Project Network Part or part of the Services in accordance with the Method Statements, schedule 2 (Output Specification) or the Service Provider Programmes other than the Core Investment Period Programme then the Authority shall have the right to carry out such inspections, surveys or tests as it considers necessary in order to satisfy the Authority, acting reasonably, that the Service Provider is carrying out its obligations under this Contract and to ascertain, if there has been a breach by the Service Provider of its obligations pursuant to this Contract, and what action may be necessary to remedy any such breach.
- 15.2.2 The Authority shall notify the Service Provider a minimum of ten (10) Business Days in advance of the date on which it intends to carry out any inspection, survey or test pursuant to clause 15.2.1, and the Service Provider or Service Provider Party shall have the right to attend such inspection, survey or test. The Authority shall consider in good faith any reasonable request by the Service Provider for the inspection, survey or test to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the inspection, survey or test on the notified date would materially prejudice the Service Provider's ability to provide the Services.
- 15.2.3 If the Authority exercises its rights pursuant to this clause 15.2 (*Authority monitoring of Service Provider's obligations*), the Service Provider shall give

the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any such inspections, surveys or tests.

15.2.4 If the Authority exercises its rights pursuant to this clause 15.2 (*Authority monitoring of Service Provider's obligations*) and it is found that:

15.2.4.1 the Service Provider has breached any of its obligations monitored pursuant to this Contract and to the extent that the Authority has not previously been notified of the extent of the breach and the steps being taken by the Service Provider to rectify such breach, the Authority shall be entitled to be reimbursed by the Service Provider for the cost of such inspections, surveys or tests as are carried out by or on behalf of the Authority;

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

15.2.5 When carrying out inspections, surveys or tests pursuant to this clause 15.2 (*Authority monitoring of Service Provider's obligations*), the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider and shall comply with any instructions of the Service Provider in relation to health and safety matters.

15.2.6 Whether or not the Authority has carried out any inspection, survey or test pursuant to clause 15.2.1, where the Authority reasonably considers that there has been a material failure by the Service Provider to carry out the Services in respect of a particular type of Project Network Part or part of the Services in accordance with the Method Statements, schedule 2 (*Output Specification*) or the Service Provider Programmes other than the Core Investment Period Programme, the Authority shall be entitled to:

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

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

15.2.7 If, pursuant to clause 15.2.6.2, the Service Provider agrees (acting reasonably) that it has breached any of its obligations:

15.2.7.1 the Service Provider shall provide to the Authority within five (5) Business Days of the notice pursuant to clause 15.2.6.1, a plan dealing with the rectification of such breach ("**Service Provider Breach Rectification Plan**") which shall, where appropriate, include such revised Service Provider Programmes as the Service Provider considers appropriate to remedy its breach (having regard to its obligations in clause 29 (*Obligation to Provide the Service and Performance Standards*)), which shall be submitted to the Authority pursuant to schedule 20 (*Review Procedure*);

15.2.7.2 the Authority, acting reasonably shall confirm to the Service Provider within ten (10) Business Days of the submission of the Service Provider Breach Rectification Plan, whether it accepts or rejects the Service Provider Breach Rectification Plan based upon the grounds for withholding consent set out in paragraph 3.2 of Schedule 20 (*Review Procedure*). Where the Authority rejects the Service Provider Breach Rectification Plan or the Service Provider has not provided a Service Provider Breach Rectification Plan, the Authority may (acting reasonably) develop and notify the Service Provider

of the Service Provider Breach Rectification Plan,
but it must do so on the following principles:

- (a) if the Service Provider has submitted a plan, the Authority's plan may only differ from the Service Provider's plan to the extent reasonably necessary to address the grounds of objection made by the Authority to the Service Provider's plan in accordance with paragraph 3.2 of Schedule 20 (Review Procedure);
- (b) the Authority's plan shall not require the Service Provider to incur costs or expenditure that are unreasonable or disproportionate in the context of the Service Provider's breach and the actions necessary to remedy it; and
- (c) the Authority's plan shall be prepared in accordance with Good Industry Practice.

15.2.7.2A if the Authority accepts the Service Provider Breach Rectification Plan or notifies the Service Provider of the Service Provider Breach Rectification Plan in accordance with clause 15.2.7.2, the Service Provider shall fully implement the Service Provider Breach Rectification Plan within the period specified in the Authority's notice and any costs incurred in implementing the Service Provider Breach Rectification Plan shall be at the Service Provider's own expense;

15.2.7.3 during the period where the Service Provider is implementing and completing the Service Provider Breach Rectification Plan pursuant to clause 15.2.7.2, the Service Provider shall provide to the Authority such information and/or evidence as the Authority shall reasonably require to satisfy itself that the breach is being rectified and that the Service Provider is implementing the Service Provider Breach Rectification Plan; and

15.2.7.4 in the event that the Service Provider fails to carry out the Service Provider Breach Rectification Plan pursuant to clause 15.2.7 and/or the rectification work is not carried out to the standard specified in the Service Provider Breach Rectification Plan, the Authority shall notify the Service Provider of its failure and those aspects of the Service Provider Breach Rectification Plan that it intends to undertake itself and thereafter may itself carry out such aspects of the Service Provider Breach Rectification Plan and in the event that the Authority carries out such aspects, the Service Provider shall reimburse the Authority's costs of doing so.

15.2.8 If, pursuant to clause 15.2.6.2, the Service Provider disagrees (acting reasonably) that it has breached any of its obligations the matter shall be referred to the Dispute Resolution Procedure.

15.3 Obligation to make Equipment Available

The Service Provider shall:

15.3.1 make the Service Provider Party Equipment available for such use as may reasonably be required by the Authority or its employees or agents in connection with this Contract (and in the case of an Emergency in connection with such Emergency); and

15.3.2 procure that the Service Provider Party Equipment is insured in respect of such use throughout the Term and in accordance with the provisions of clause 68 (*Insurance*) and schedule 6 (*Insurance*).

15A UNASCERTAINED LAND RIGHTS

15A.1 Subject to clauses 17 (Necessary Consents) and 40 (Third Party Agreements), and to the extent that the provisions of clause 6 (Authority Statutory Powers) do not apply, if any Unascertained Land Right hinders, delays or prevents the Service Provider from performing the Services or any of its obligations under this Contract in accordance with this Contract's requirements, the Service Provider shall as soon as reasonably practicable notify the Authority, such notice to include details of:

15A.1.1 the Unascertained Land Right in question; and

15A.1.2 those Services or other obligations whose performance is hindered, delayed or prevented by such Unascertained Land Right; and the Parties shall meet within ten (10) Business Days of the Service Provider's notice to discuss the matter and agree an appropriate course of action in order to facilitate the performance of the Services or obligations.

15A.2 From the date of the notice referred to in Clause 15A.1 until the earlier of:

15A.2.1 the Authority (acting reasonably and having regard to the Service Provider's obligations hereunder) notifying the Service Provider of a solution that does not necessitate the issue of an Authority Change in respect of the Unascertained Land Rights referred to in Clause 15A.1.1 so that the Service Provider is no longer hindered, delayed or prevented from performing the Services or the relevant obligations; or

15A.2.2 an Authority Change being implemented and concluded in accordance with Schedule 17 (Change Protocol),

the Service Provider shall be entitled to an Excusing Cause.

16. OWNERSHIP OF AND ACCESS TO THE PROJECT NETWORK

16.1 Principal Depot and Head Office

The Service Provider shall ensure during the Contract Period that it shall maintain title to the Principal Depot and Service Provider's Head Office on a freehold basis and shall upon termination or expiry of the Contract transfer such Principal Depot and Service Provider's Head Office to the Authority in accordance with Schedule 12 (*Demobilisation*).

16.2 Ownership of Existing Apparatus

Subject to clause 16.3 (*Ownership of New Apparatus*), the Existing Apparatus shall remain the property of the Authority.

16.3 Ownership of New Apparatus

Subject to clause 16.4 (*Licence*), all New Apparatus shall become part of the Project Network and the property of the Authority upon the date on which such New Apparatus is Certified or otherwise installed in accordance with the Contract.

16.4 Licence

The Authority shall, on the terms of the Licence set out in clause 16.5 (*Terms of the Licence*) grant a licence to the Service Provider:

- 16.4.1 to enter into the Project Network with effect from the date of the Contract;
- 16.4.2 in respect of the Existing Apparatus with effect from the date of the Contract and;
- 16.4.3 in respect of the New Apparatus with effect from the date that title in the New Apparatus passes to the Authority pursuant to clause 16.3 (*Ownership of New Apparatus*).

16.5 Terms of the Licence

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

- 16.5.1 the Licence shall permit the Service Provider to:
 - 16.5.1.1 access the Project Network in order to carry out the Services;
 - 16.5.1.2 install Project Network Parts; and/or
 - 16.5.1.3 use, manage, work on, remove, maintain, clean and repair the Project Network Parts; and/or
 - 16.5.1.4 affix or remove Attachments to or from the Project Network Parts (subject to the provisions of schedule 7 (*Attachments*),

in each case in connection with and only insofar as such access, installation, use, management, work, removal, maintenance, cleaning, repair, affixing and

removal is necessary or expedient for the performance of the Service Provider's obligations or the exercise of the Service Provider's rights under this Contract.

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

16.5.2.1 access the Project Network in order to carry out the Services;

16.5.2.2 install Project Network Parts;

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

16.5.2.4 affix or remove Attachments to or from the Project Network Parts (subject to the provisions of schedule 7 (*Attachments*)),

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

16.5.3 the Licence shall terminate:

16.5.3.1 in respect of any De-Accrued Project Network Part, on the date the De-Accrual occurs in accordance with paragraph 3 of schedule 18 (*Accruals and De-Accruals*); and

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

16.5.4 in the exercise of the Licence the Service Provider shall comply with the provisions of clause 29.1 (*Standard of Service*) and obtain all Necessary

Consents to the extent that such Necessary Consents can be obtained by the Service Provider as a matter of law;

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

16.5.5.1 any right of the Authority pursuant to clause 5.16 (NRSWA) and/or any other express provision of this Contract to provide the Services;

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

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

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

16.5.7 the Parties acknowledge and agree that the Authority in granting this Licence has not granted and does not purport to grant any additional or implied rights which the Service Provider requires in order to perform the Services (including the requirements set out in clause 17 (*Necessary Consents*)).

16.6 Existing Apparatus

Subject to clause 68 (*Insurance*):

From 00.00.01 on the Service Commencement Date, and thereafter until it reverts to the Authority in accordance with clause 16.8 (*Transfer of Risk to the Authority*), all risk in the Existing Apparatus shall be borne by the Service Provider. The Service Provider shall, in providing the Services and at its own cost, take such steps as are necessary to repair or replace any item of Existing Apparatus which for any reason is

damaged (whether as a result of accident or vandalism or otherwise) so that schedule 2 (*Output Specification*) and the other requirements of this Contract are complied with.

16.7 New Apparatus

Subject to clause 68 (*Insurance*):

Risk in the New Apparatus shall be the responsibility of the Service Provider until it reverts to the Authority in accordance with clause 16.8 (*Transfer of Risk to the Authority*). The Service Provider shall, in providing the Services, take such steps as are necessary to repair or replace any item of New Apparatus which for any reason is damaged (whether as a result of an accident, vandalism or otherwise) so that schedule 2 (*Output Specification*) and the other requirements of this Contract are complied with.

16.8 Transfer of Risk to the Authority

Subject to schedule 18 (*Accruals and De-Accruals*), risk in the Apparatus shall pass to the Authority at 23:59:59 on the last day of the Term.

17. NECESSARY CONSENTS

17.1 Obtaining of Necessary Consents

Subject to paragraph 3.4 of Schedule 7 (*Attachments*) and to clause 17.9 (*Smallbrook Depot and Stag Lane Depot*), the Service Provider shall obtain all Necessary Consents as are required to carry out the Services to the extent that such Necessary Consents can be obtained by the Service Provider as a matter of law and the Service Provider shall not do anything, or permit anything to be done, in relation to the Services which will cause a Necessary Consent to be breached or revoked.

17.2 Necessary Consents for affixing Project Network Parts

The Service Provider may, in the course of providing the Services, be required to affix Project Network Parts to structures or buildings other than other Project Network Parts and the Service Provider shall:

- 17.2.1 diligently and without delay and, to the extent that it is lawfully entitled to do so, take such action as is necessary or appropriate to liaise with, and obtain

Necessary Consents from, Owners (of the structure to which it is proposed Project Network Parts will be attached);

17.2.2 keep the Authority informed of progress on a continuing basis at all reasonable times, and upon reasonable request by the Authority;

17.2.3 where the Service Provider, using all reasonable endeavours, has been unable to obtain a Necessary Consent from an Owner, give written notice to the Authority informing the Authority that the Service Provider has been unable to obtain such Necessary Consent and such notice shall set out:

17.2.3.1 details of the relevant Project Network Part, structure or building and Owner;

17.2.3.2 documentary evidence of all reasonable endeavours taken by the Service Provider to secure such Necessary Consent; and

17.2.3.3 proposed alternative design solutions whereby the relevant Project Network Part could be affixed in another location or to another structure or building (or another Project Network Part) which design solutions shall be the minimum departure from the Highways Standards.

17.3 Process to be followed where consent not obtained

Upon receipt by the Authority of a notice served pursuant to clauses 17.2.3 or 17.6.2:

17.3.1 where the Authority reasonably believes that the Service Provider has not complied with clause 17.2.3, the Authority shall inform the Service Provider what further steps it wishes the Service Provider to take (which may include the submission of further design solutions) to comply with clause 17.2.3 and the Service Provider shall either take such steps or refer the matter to the Dispute Resolution Procedure; and

17.3.2 when the Authority is satisfied that the Service Provider has complied with clause 17.2.3, the Parties shall meet as soon as is reasonably practicable and in any event no later than five (5) Business Days after the Service Provider's

notice under clause 17.2.3 to discuss the means by which the failure to obtain the Necessary Consent to affix the Project Network Parts to the structures or buildings can be overcome and the continued performance of this Contract can be facilitated. Such steps may include the Authority seeking to obtain the Necessary Consent and/or the Authority agreeing to a departure from a Highways Standard and/or the Project Network Part being affixed in an alternative location as directed by the Authority.

17.4 Excusing Cause

From the date twenty (20) Business Days after the date on which the Authority first meets with the Service Provider pursuant to clause 17.3.2 until the earlier of:

- 17.4.1 the Service Provider or the Authority obtains the Necessary Consent to affix the Project Network Part;
- 17.4.2 the Project Network Part is installed in another location in accordance with schedule 2 (*Output Specification*);
- 17.4.3 the relevant Project Network Part is De-Accrued in accordance with schedule 18 (*Accruals and De-Accruals*); or
- 17.4.4 an Authority Change is implemented in accordance with the schedule 17 (*Change Protocol*),

any failure to obtain a Necessary Consent to affix a Project Network Part to a structure or building other than other Project Network Part shall constitute an Excusing Cause.

17.5 Removal of Project Network Part

The Service Provider shall be responsible for dealing with (in accordance with the Public Health Act 1961 and any other applicable Legislation) any requests from Owners to:

- 17.5.1 remove a Project Network Part from structures temporarily during periods of repair or reconstruction; and
- 17.5.2 remove a Project Network Part from structures or buildings permanently.

17.6 Owner's request to remove Project Network Parts

In the event that a request is made by an Owner to remove a Project Network Part from a building or structure pursuant to clause 17.5 (*Removal of Project Network Part*), the Service Provider shall:

- 17.6.1 where the Project Network Part is to be removed temporarily, remove and refix the relevant Project Network Part and during the period of removal take such alternative measures as are necessary to ensure schedule 2 (*Output Specification*) is complied with;
- 17.6.2 where the Owner has requested the Project Network Part be removed permanently, inform the Authority forthwith and use reasonable endeavours to agree with the Owner that the Project Network Part remain in its original position. Where the Service Provider has been unable to obtain agreement from the Owner that the Project Network Part shall remain in its original position, the Service Provider shall notify the Authority of the information set out in clause 17.2.3 and thereafter the provisions of clauses 17.3 (*Process to be followed where consent not obtained*) and 17.4 (*Excusing Cause*) shall apply.

17.7 Court Proceedings to remove Project Network Part

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

17.8 Service Provider to take Proceedings

The Authority may serve written notice on the Service Provider requiring the Service Provider, at the Authority's cost (to the extent such costs are reasonably and properly incurred by the Service Provider):

- 17.8.1 to diligently and without delay prepare the paperwork in the name of the Authority in respect of any proceedings taken or to be taken by the Authority pursuant to clause 17.7 (*Court Proceedings to remove Project Network Part*); and/or

17.8.2 to attend any court proceedings, provided that the Authority shall, as soon as practicable following a reasonable request from the Service Provider, sign any necessary documentation and take such other necessary steps or steps reasonably required by the Service Provider which only the Authority is able to take relating to any such proceedings.

and if either Party becomes aware that the Authority is not entitled pursuant to any Legislation, to delegate responsibility under this clause 17.8 (Service Provider to take Proceedings) to the Service Provider, that Party shall inform the other Party of that fact and as soon as reasonably practicable thereafter the Authority and/or the Service Provider shall take such steps as are necessary to ensure compliance with the relevant Legislation.

17.9 Smallbrook Depot and Stag Lane Depot

17.9.1 The Authority shall, as soon as reasonably possible but no later than the date arising two (2) months before the Planned Service Commencement Date in the case of the Smallbrook Depot and the date arising five (5) months before the Planned Service Commencement Date in the case of the Stag Lane Depot, provide to the Service Provider a separate certificate of lawfulness of existing use or development under s191 of the Town and Country Planning Act 1990 in respect of each of the Smallbrook Depot and the Stag Lane Depot. Such certificate shall provide for continued use of the Smallbrook Depot as a highways depot for the storage of materials and associated highway purposes and for continued use of the Stag Lane Depot as a highways winter maintenance and salt store depot (“**Permitted Use**”).

17.9.2 The Parties acknowledge and agree that, without prejudice to the Service Provider’s obligations under the licences granted pursuant to clause 8.3B and 8.3C (*Mobilisation*) and under the Smallbrook Depot Lease and the Stag Lane Depot Lease, in the event that the Service Provider’s or Service Provider Party’s use of the Smallbrook Depot and/or Stag Lane Depot for the Permitted Use is adversely affected by:

17.9.2.1 the acts or omissions of the Authority or an Authority Party other than a decision by the Authority (in its capacity as local planning authority) not to grant planning permission in respect of the Smallbrook Depot and/or the Stag Lane Depot; or

17.9.2.2 legal proceedings or threatened legal proceedings by a third party,

then the Service Provider shall be entitled to a Compensation Event pursuant to clause 46 (*Compensation Events*).

17A ADVERTISEMENTS AND ATTACHMENTS

The parties shall comply with the provisions of schedule 7 (*Attachments*).

18. ACCESS TO THIRD PARTY LAND TO INSTALL PROJECT NETWORK PARTS

18.1 Service Provider to Secure Access

Whenever the due performance of the Services necessitates the Service Provider entering land off the Project Network in order to install and/or attach and/or maintain and/or carry out any work in respect of a Project Network Part which is outside the control of the Authority, the Service Provider shall use all reasonable endeavours to secure access to such land for the Authority and the Service Provider for such period as may be required by either of the Parties to facilitate the due performance of this Contract.

18.2 Notification

Where the Service Provider is unable to gain access as required by clause 18.1 (*Service Provider to Secure Access*):

18.2.1 the Service Provider shall use all reasonable endeavours to identify an alternative access or (if appropriate) an alternative location as soon as reasonably practicable;

18.2.2 if the Service Provider is unable to identify an alternative access or (if appropriate) an alternative location it shall notify the Authority as soon as reasonably practicable of the Service Provider's inability to obtain the required access to such land and such notice shall include:

18.2.2.1 all relevant details of the land;

18.2.2.2 the access required;

18.2.2.3 the reason for the access;

18.2.2.4 the duration for which such access is required; and

18.2.2.5 documentary evidence of the reasonable endeavours taken by the Service Provider to obtain such access and/or identify an alternative access or location.

18.3 Process where Access not Obtainable

Upon receipt by the Authority of a notice served pursuant to clause 18.2.2:

18.3.1 where the Authority reasonably believes that the Service Provider has not complied with clause 18.2.1, it shall inform the Service Provider of the further steps it requires the Service Provider to take to comply with clause 18.2.1 and the Service Provider shall either take such steps or refer the matter to the Dispute Resolution Procedure;

18.3.2 when the Authority is satisfied that the Service Provider has complied with clause 18.2.1, the Parties shall meet as soon as is reasonably practicable and in any event no later than five (5) Business Days after the Service Provider's notice under clause 18.2.2 to agree what action should be taken to secure the necessary access which may include the Authority taking such steps as, in its absolute discretion, it shall decide to obtain the required access on the Service Provider's behalf;

18.3.3 if an alternative location or access has not been identified or the Authority has not obtained the access required to install and/or attach and/or maintain and/or carry out any work in respect of the Project Network Part within twenty (20) Business Days of the meeting held pursuant to clause 18.3.2 then clause 18.4 (*Excusing Cause*) shall apply.

18.4 Excusing Cause

From the date of the meeting referred to in clause 18.3.2 until the earlier of:

18.4.1 the Authority obtaining the required access;

18.4.2 the Parties agreeing an alternative location whereby access to third party land is no longer required;

18.4.3 an Authority Change is implemented in accordance with schedule 17 (*Change Protocol*),

such failure to obtain access shall constitute an Excusing Cause.

18.5 Third Party Railway Agreements and Railway Access Compensation Event

18.5.1 The Service Provider shall provide the Authority with such reasonable assistance as the Authority may reasonably request in relation to:

18.5.1.1 the Authority's agreement with the Isle of Wight Steam Railway Company of the terms of the Rail Access Protocol;

18.5.1.2 the Authority's agreement with Network Rail of the terms of any Replacement Network Rail Agreement; and

18.5.1.3 determining which of the terms of the Rail Access Protocol and the Replacement Network Rail Agreements shall constitute Delegated Obligations for the purpose of clause 40 (Third Party Agreements) to enable the Service Provider to perform its obligations in relation to the performance of its obligations under this Contract in respect of the Railway Structures.

18.5.2 The Authority shall procure that the Rail Access Protocol and the Replacement Network Rail Agreements shall contain such provisions as the Service Provider may reasonably require to enable the Service Provider to perform its obligations under this Contract in respect of the Railway Structures, save that:

18.5.2.1 the Service Provider shall not be liable for any payments to be made by the Authority to the relevant Railway Third Party pursuant to the Rail Access Protocol and/or the relevant Replacement Network Rail Agreement other than all costs in connection

with (a) obtaining railway possessions and (b) any railway safety measures, in each case that are required to be applied for the purpose of performing the Service Provider's obligations under this Contract in respect of the Railway Structures;

18.5.2.2 the terms of the relevant Replacement Network Rail Agreement shall be no more onerous upon Network Rail than those contained in the relevant Expired BRB Agreement; and

18.5.2.3 the Authority shall be deemed to have met its obligations under this clause 18.5.2 if the Replacement Network Rail Agreement is on the same terms as the corresponding Expired BRB Agreement, as amended solely to extend the term so as to cover the period during which the Service Provider requires access.

18.5.3 The Authority shall, within twenty (20) Business Days' of the relevant execution date, provide the Service Provider with executed copies of the Rail Access Protocol and/or the relevant Replacement Network Rail Agreement and the Authority's proposal as to which of its obligations shall be Delegated Obligations, taking into consideration the representations (if any) of the Service Provider under clause 18.5.1.3. The Parties shall act reasonably to agree the extent of such Delegated Obligations as soon as is reasonably practicable. Once agreed or otherwise determined, the Service Provider shall perform the relevant Delegated Obligations, and the provisions of clause 40 (Third Party Agreements) shall apply in respect of such Delegated Obligations.

18.5.4 The Parties agree that, in respect of any period where the Rail Access Protocol or a Replacement Network Rail Agreement is not in full force and effect, then save in respect of any Emergency or response to Category 1 Defects, in which case the Service Provider shall provide such notice to the Authority as is reasonable in the circumstances, the Service Provider shall provide the Authority with written notice of its requirements for access to the Railway Structures for the purpose of performing its obligations under this

Contract in respect of such Railway Structures, and the Service Provider shall provide the Authority with such reasonable assistance as the Authority may reasonably require in procuring such access. The Service Provider must provide such written notice no later than:

18.5.4.1 36 months prior to the date such access is required, in the case of works during the CIP necessary to strengthen the Railway Structures up to 40 tonnes; and

18.5.4.2 12 months prior to the date such access is required in all other cases.

18.5.5 In the event that the Service Provider has provided the Authority with notice pursuant to clause 18.5.4 and the Service Provider is unable to perform its obligations as a consequence of not being provided with access to the relevant Railway Structure by either Railway Third Party then the Service Provider shall be entitled to a Compensation Event in accordance with clause 46 (*Compensation Events*).

19. USE AND DISPOSAL OF THE PROJECT NETWORK

19.1 The Service Provider shall not use the Project Network for any purpose other than in respect of the performance of the Service Provider's obligations or the exercise of its rights under this Contract.

19.2 Restriction on Transfer and Disposal

Subject to clause 19.3 (*Disposal*) the Service Provider shall not sell, lease, transfer, grant rights over or otherwise dispose or part with possession of (or purport to do any of the foregoing) any interest in any item of the Project Network without obtaining the prior written consent of the Authority other than by way of security in favour of the Senior Lenders.

19.3 Disposal

The Service Provider shall dispose of, at its own cost pursuant to schedule 2 (*Output Specification*), Project Network Part Waste or Scrap items which arise as a result of the Service Provider carrying out the Services.

19.4 Consent

19.4.1 Any consent granted by the Authority pursuant to clause 19.2 (*Restriction on Transfer and Disposal*) may be given generically in relation to a particular Project Network Part, or specifically in relation to materials forming a Project Network Part, and shall be subject to such conditions as the Authority may specify in its absolute discretion (including as to price and that any proceeds, including any related profit, is remitted to and belongs to the Authority or as it otherwise may direct).

19.4.2 Any sale, transfer, grant or other disposal pursuant to this clause 19 (*Use and Disposal of the Project Network*) is made without any warranties as to the condition or any other matter whatsoever being given by or on behalf of the Authority.

19.5 Disposal of Materials

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

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

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

- 19.5.1.3 subject to the rights of any Third Party, whether being rights in or to the Project Network Materials, Land Rights or otherwise;
- 19.5.1.4 subject to any limitation, restriction or condition whether pursuant to any Law or otherwise, applying to or affecting the right of the Authority to undertake any excavation, extraction, disposal, exploitation or other dealing;
- 19.5.1.5 subject to the granting of any Necessary Consents; and
- 19.5.1.6 in compliance at all times with the Carbon Management Programme Strategy and Implementation Plan.

20. SECURITY OF PROJECT NETWORK

20.1 Responsibility for Protestors and Trespassers

The Authority shall not be responsible for any Protestor or Trespasser nor for any act or omission of any such person during the Term.

20.2 Service Provider to Bear Loss

Nothing in this clause 20 (*Security of Project Network*) shall affect:

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

20.2.2 the Service Provider's entitlement to make or recover pursuant to any Claim against any Protestor or Trespasser for damage suffered by the Service Provider, its agents, contractors or sub-contractors or any employees of any of them.

20.3 No Payments to Protestors

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

20.4 Gypsies and Travellers

20.4.1 The Service Provider shall notify the Authority forthwith of the presence of any gypsies, travellers or any other unauthorised occupation on the Project Facilities or Project Network.

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

20.4.3 From the date on which the Service Provider notifies the Authority in accordance with clause 20.4.1 until the earlier of:

20.4.3.1 possession being re-established following a successful action for possession being brought under clause 20.4.2; or

20.4.3.2 an Authority Change being implemented in accordance with schedule 17 (*Change Protocol*),

the acts (or presence) of gypsies and travellers shall constitute an Excusing Cause (subject to and in accordance with clause 47 (Excusing Cause)) save to the extent arising (or persisting) by reason of the Service Provider's failure to take such steps in relation to them as are required by this clause 20.4 (*Gypsies and Travellers*).

PART F - PROGRAMMES

21. SERVICE PROVIDER PROGRAMMES

21.1 Service Provider Programmes

21.1.1 The Service Provider shall:

21.1.1.1 prepare and develop each Service Provider Programme:

- (a) in accordance with Good Industry Practice;
- (b) in order to meet the requirements of schedule 2 (*Output Specification*);
- (c) in a way which will assist the Authority in carrying out its retained obligations under the Traffic Management Act;
- (d) in order to be consistent with all other Service Provider Programmes and comply with the Method Statements; and
- (e) to incorporate those Additional Schemes agreed pursuant to clause 26A (*Additional Schemes*) and/or those Additional Drainage Schemes agreed pursuant to clause 26B (*Additional Drainage Schemes*);

21.1.1.2 diligently perform the Services in accordance with the Service Provider Programmes as applicable from time to time, provided that the Service Provider shall not be permitted to perform any of the Services that are required to be contained within the Service Provider Programmes if such Services have not been programmed in a Service Provider Programme and subject to clause 23 (*Updates and Changes to Service Provider Programmes*), approved by the Authority pursuant to schedule 20 (*Review Procedure*).

21.1.2 The Service Provider warrants that it has prepared all of the Service Provider Programmes which are set out in schedule 21 (*Service Provider Programmes and Quality Plans*) in accordance with this clause 21 (*Service Provider Programmes*).

21.2 Alternative Schemes

21.2.1 The Service Provider shall ensure that each Annual Programme includes alternative programmes of work ("**Alternative Schemes**"), which shall:

21.2.1.1 include programmed work across all PFI Districts;

21.2.1.2 subject to the provisions of clause 21.2.2 amount to not less than thirty per cent (30%) of the works programmed in the relevant Annual Programme (excluding the Alternative Schemes) for the following year,

and such Alternative Scheme shall be used in substitution for such original programmed works in determining whether a Milestone has been achieved for the purposes of this Contract.

21.2.2 Where in the case of Milestone 13 and Milestone 14 thirty percent (30%) of the works programmed in the relevant Annual Programme (excluding the Alternative Schemes) are not available the Parties and Independent Certifier (acting reasonably) may agree a reduced number of schemes.

21.2.3 The Service Provider may undertake Alternative Schemes without re-submitting the Annual Programme to schedule 20 (*Review Procedure*) in the following circumstances:

21.2.3.1 pursuant to clause 27.3.1.5; or

21.2.3.2 where the Service Provider is unable to undertake the original programmed works set out in the Annual Programme as a direct result of:

- (a) an Emergency;
- (b) the Authority acting in its capacity as a Highway Works Authority and undertaking or procuring the undertaking of any works and/or management from a party other than the Service Provider or Service Provider Party; or
- (c) the Authority changing the date of a Category A Special Event or Category B Special Event within two (2)

Months of the scheduled date for such Category A Special Event or Category B Special Event; or

21.2.3.3 where the Parties, each acting reasonably, so agree.

21.2.4 Where, pursuant to clause 21.2.1, the Service Provider wishes to undertake any Alternative Scheme it shall notify the Authority as soon as reasonably practicable following its decision to undertake an Alternative Scheme.

22. LIAISON WITH STAKEHOLDERS

The Service Provider shall comply with the provisions of PS10 of schedule 2 (*Output Specification*) in relation to liaison with relevant stakeholders.

23. UPDATES AND CHANGES TO SERVICE PROVIDER PROGRAMMES

23.1 Subject to clause 21.2.3, where the Service Provider wishes to revise any Service Provider Programme for any reason, then it shall make such amendments as are necessary to the relevant Service Provider Programme(s) and shall submit the same to the Authority for review in accordance with schedule 20 (*Review Procedure*).

23.2 Upon request by the Authority, the Service Provider shall provide to the Authority hard copies of all or some of the Service Provider Programmes (as requested by the Authority). The reasonable costs and expenses properly incurred of providing such copies to the Authority (using wherever practicable the rates set out in the Catalogue in schedule 17 (*Change Protocol*)) shall be borne by the Authority save in circumstances where the Authority is unable to access copies of the Service Provider Programmes on-line by reason of any fault or problem relating to the Service Provider's information technology systems.

23.3 In the event that the Service Provider wishes to carry out unprogrammed Services and other provisions in this Contract (which are not included in an Alternative Scheme) which the Service Provider requires to carry out as a matter of Urgency and cannot make the relevant amendments to the Service Provider Programme(s) under clause 23.1 due to the timescales involved:

23.3.1 the Service Provider shall notify the Authority Representative of the Services and other provisions in this Contract it wishes to carry out, the amendments that would be required to the relevant Service Provider Programmes, the reason that the Services are Urgent and that the Service Provider therefore cannot comply with the procedure in clause 23.1, and its proposed amendment to the timescales in schedule 20 (*Review Procedure*) in relation to this matter; and

23.3.2 the Authority Representative shall, within five (5) Business Days of receipt by the Authority Representative of the notice issued by the Service Provider pursuant to clause 23.3.1 (or such lesser period as is agreed by the Parties (acting reasonably) having regard to the Services in question and circumstances giving rise to the Urgency):

23.3.2.1 notify the Service Provider that it agrees that the matter is Urgent and that the timescales in schedule 20 (*Review Procedure*) can be amended as proposed by the Service Provider, and paragraph 2 of schedule 20 (*Review Procedure*) shall be amended accordingly; or

23.3.2.2 notify the Service Provider that it disagrees that the matter is Urgent, in which event the matter shall be referred to the Dispute Resolution Procedure.

23.4 On the occurrence of:

23.4.1 a Relief Event;

23.4.2 a Compensation Event;

23.4.3 an Excusing Cause; or

23.4.4 a Force Majeure Event,

the Service Provider shall revise each Service Provider Programme to take into account any effects that any such event has on the provision of the Services and the other provisions in this Contract as is agreed between the Parties pursuant to clause 45 (*Relief Events*), clause 46 (*Compensation Events*), clause 47 (*Excusing*

Causes) and/or clause 78 (*Termination following a Force Majeure Event*) and/or is determined pursuant to clause 82 (*Dispute Resolution Procedures*) and submit the same to the Authority's Representative within ten (10) Business Days of the date of such agreement for review in accordance with schedule 20 (*Review Procedure*) and PS1 of schedule 2 (*Output Specification*) to the extent that the relevant amendment to the Service Provider Programme had not been agreed or determined at the time of agreeing or determining the relevant Relief Event, Excusing Cause, Compensation Event or Force Majeure Event.

23.5 Disputes

23.5.1 If, in accordance with the provisions of schedule 20 (*Review Procedure*), the Parties are unable to agree the contents of any Service Provider Programme, the matter shall be referred to the Dispute Resolution Procedure.

23.5.2 Until such time as the disputed matter is agreed or determined in accordance with the Dispute Resolution Procedure, the Service Provider shall comply with:

23.5.2.1 the undisputed contents of the relevant Service Provider Programme; and

23.5.2.2 the instructions of the Authority in respect of the disputed contents of the relevant Service Provider Programme, provided that the Service Provider shall not be required to act in accordance with any instructions that are not compliant with Law.

24. ROAD CLOSURES

The Service Provider shall not effect any Road Closures save in accordance with the relevant Service Provider Programme(s) and subject to any Necessary Consents which the Service Provider requires before it is able to carry out the Services, notwithstanding that the Service Provider shall be permitted to effect a Road Closure where it considers, acting reasonably, that such Road Closure is necessary due to an Emergency.

25. MANAGEMENT INFORMATION SYSTEM AND ISLE OF WIGHT TRAFFIC MODEL

With effect from the Service Commencement Date, the Service Provider shall procure that:

- 25.1 there is a Management Information System in place for use in relation to the Project which complies in all material respects with the provisions of schedule 2 (*Output Specification*); and
- 25.2 the Isle of Wight Traffic Model is updated in accordance with PS9 of schedule 2 (*Output Specification*).

26. SPECIAL EVENTS

26.1 Category B Special Events

26.1.1 The Authority may amend the list and details of Category B Special Events for which the Special Events Services are to be provided in respect of the dates, times and type provided that:

26.1.1.1 it includes no more than forty (40) Category B Special Events;

26.1.1.2 the Authority notifies the Service Provider at least two (2) Months in advance of any change to such Category B Special Event; and

26.1.1.3 the Special Events Services required to be provided by the Service Provider are substantially the same as those required to be provided prior to such amendment.

26.1.2 If the Authority requires the Service Provider to provide the Special Events Services for more than forty (40) Category B Special Events in any Contract Year, the provisions of schedule 13 (*Call-Off Services*) shall apply.

26.1.3 If the Authority requires the Service Provider to provide the Special Events Services for less than forty (40) Category B Special Events in any Contract Year, the Service Provider shall be obliged to provide in substitution of such Category B Special Events an equivalent amount of services in respect of Category C Special Events in the same Contract Year (in order to make up the

deficit for such Contract Year) at no additional cost to the Authority, provided that such substitute services in respect of Category C Special Events shall not require resources greater than the equivalent resources that would have been required to provide the Special Event Services in relation to the Category B Special Event that has been substituted.

26.2 Step-In to protect the delivery of a Category A Special Event

26.2.1 If the Authority reasonably believes that the Service Provider is failing to carry out any part of the Services in accordance with the provisions of this Contract, and such failure is likely to impact on or prevent the delivery of a Category A Special Event, it shall notify the Service Provider of:

26.2.1.1 the action it wishes to take;

26.2.1.2 the reason for such action;

26.2.1.3 the date it wishes to commence such action; and

26.2.1.4 to the extent practicable, the effect on the Service Provider and its obligations to provide the Services during the period such action is being taken,

and the Authority shall take such action and any consequential action as it reasonably believes is necessary. The Authority shall step out when the Authority requires the Service Provider to resume the provision of the Services.

26.2.2 If the Authority exercises its rights pursuant to clause 26.2.1, the Service Provider shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of such action, and the Authority shall be entitled to be reimbursed by the Service Provider for the cost of such action which shall be made by way of an adjustment to the Monthly Payment in accordance with the provisions of clause 65 (*Financial Adjustments*).

26.2.3 When carrying out any action pursuant to clause 26.2.1, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider.

26.3 Category A and Category B Special Events

- 26.3.1 The Service Provider shall provide the Category A Special Events in accordance with the Special Events Services set out in PS9, clauses 26.3.3 to 26.4 below and clause 26.2 (*Step-In to protect the delivery of a Category A Special Event*).
- 26.3.2 The Service Provider shall provide the Category B Special Events in accordance with the Special Events Services set out in PS9, clauses 26.3.3 to 26.4 below and clause 26.1 (*Category B Special Events*).
- 26.3.3 The Service Provider shall attend meetings at which the planning of, or Services required from the Service Provider in respect of, Category A or Category B Special Event (as relevant) are being discussed, as required and notified by the Authority.
- 26.3.4 The Authority shall notify the Service Provider of its requirements in respect of each Category A Special Event or Category B Special Event (as relevant) ("**Category A Special Event Notification**" or "**Category B Special Event Notification**") no later than three (3) Months prior to the date on which the Category A Special Event or Category B Special Event (as relevant) shall commence. The Category A Special Event Notification or Category B Special Event Notification (as relevant) shall include:
- 26.3.4.1 the traffic management arrangements the Authority requires the Service Provider to operate during the occurrence of the Category A Special Event or Category B Special Event and the expected duration of such Category A Special Event or Category B Special Event (as relevant); and
 - 26.3.4.2 the Authority's requirements for the Service Provider to:
 - (a) provide temporary signs, barriers, cones and Traffic Signals;
 - (b) remove temporary signs, barriers, cones and Traffic Signals;

- (c) amend timings of Traffic Signals in accordance with the Traffic Management Plan for the Category A Special Event or Category B Special Event (as relevant);
- (d) temporarily remove, modify or reinstate Apparatus and/or Street Furniture in order to facilitate the Category A Special Event or Category B Special Event (as relevant);
- (e) provide additional Winter Service operations during the Category A Special Event or Category B Special Event (as relevant);
- (f) bring forward or delay any planned maintenance and/or surveys and/or inspections in respect of any specific Project Network Parts;
- (g) display messages using signage or on variable message signs or electronic message signs in relation to the Category A Special Event or Category B Special Event (as relevant);
- (h) attach items (other than Festive Decorations) to Lighting Columns or other Project Network Parts;
- (i) provide stewards at road closure points;
- (j) attend any planning meetings as directed by the Authority,

26.3.4.3 including in each case, the date, time by which and location where any such requirement must take place.

26.3.5 The Service Provider shall notify the Authority within ten (10) Business Days of receipt of the Category A Special Event Notification or Category B Special Event Notification (as relevant) and the Service Provider shall either:

26.3.5.1 raise any queries and/or requests for further information it (acting reasonably) requires in order to comply with the Authority's requirements as set out in the Category A Special Event Notification or Category B Special Event Notification (as relevant), including the extent to which the Service Provider believes that the Authority's requirements do not reflect the requirements of annexure 16 (*Category A and Category B Special Events*) in respect of such Category A Special Event or Category B Special Event; or

26.3.5.2 confirm that it does not require any further information in respect of the Category A Special Event Notification or Category B Special Event Notification.

26.3.6 The Authority shall respond as soon as reasonably practicable to any Service Provider request for further information issued pursuant to clause 26.3.5.1.

26.3.7 Within ten (10) Business Days of the Authority response to the Service Provider issued pursuant to clause 26.3.6 the Parties shall meet and endeavour to agree the Special Event Services that the Service Provider shall provide in relation to the Category A Special Event Notification or the Category B Special Event Notification (as the case may be), including:

26.3.7.1 taking into account any comments, concerns or revisions that the Service Provider as in respect of the Category A Special Event Notification or Category B Special Event Notification with an explanation as to why; and

26.3.7.2 agreeing, where the Service Provider has stated that the Authority's requirements do not meet the requirements of annexure 16 (*Category A and Category B Special Events*), the additional cost of delivering the Category A Special Event Notification or Category B Special Event Notification in excess

of the requirements set out in annexure 16 (*Category A and Category B Special Events*), the additional cost of delivery of such Category A Special Event or Category B Special Event based on the rates set out in the Catalogue, or where no applicable rates are included in the Catalogue, paragraph 2.2 of part 1 of schedule 17 (*Change Protocol*) irrespective of whether such payment exceeds the amount specified in the definition of Low Value Change.

26.3.8 The Service Provider shall, within ten (10) Business Days of the meeting with the Authority held pursuant to clause 26.3.7 above, issue to the Authority a specification ("**Special Event Services Specification**") which shall set out the agreement reached in respect of the Category A Special Event or Category B Special Event.

26.3.9 The Authority shall notify the Service Provider as soon as reasonably practicable following receipt of the Special Event Services Specification that either:

26.3.9.1 the Authority requires the Service Provider to implement the Special Event Services Specification;
or

26.3.9.2 the Authority is unable to agree the Special Event Services Specification issued by the Service Provider, in which case the Authority shall reissue the Special Events Services Specification with its required amendments in order to meet the requirements of the Category A Special Event Notification or Category B Special Event Notification.

26.3.10 The Service Provider shall provide the Special Event Services in accordance with the Special Event Services Specification agreed in accordance with clause 26.3.9.1 or issued by the Authority in accordance with clause 26.3.9.2.

26.4 Payment for Category A and Category B Special Event Services

No additional payment shall be made by the Authority for the provision of Category A Special Event Services or Category B Special Event Services save that:

26.4.1 where the cost of providing additional services in excess of those set out in annexure 16 (*Category A and Category B Special Events*) have been agreed between the Parties pursuant to clause 26.3.7.2 the Service Provider shall include such amounts agreed in the following Draft Monthly Payment Report;

26.4.2 where the Service Provider is providing Special Event Services pursuant to a Special Event Services Specification issued by the Authority in accordance with clause 26.3.9.2 the Service Provider shall include such additional reasonably and properly incurred amounts required to comply with any element of such Special Event Services Specification in excess of the requirements of annexure 16 (*Category A and Category B Special Events*) in the following Draft Monthly Payment Report.

26A

ADDITIONAL SCHEMES

26A.1

General

26A.1.1 No later than four (4) months before the commencement of each Contract Year, the Authority shall notify the Service Provider of the funds it has available for the completion of Additional Schemes in such Contract Year.

26A.1.2 The parties shall, following the Authority's notification pursuant to clause 26A.1.1, meet and agree:

(a) the scope of such Additional Schemes to be undertaken by the Service Provider in such Contract Year; and

(b) the cost of such Additional Schemes.

26A.1.3 Upon agreement of the matters set out in clause 26A.1.2, the Service Provider shall include the Additional Schemes in the Annual Programme for the subsequent Contract Year in accordance with clause 21.1.1.

26A.1.4 The Service Provider shall not carry out any additional scheme until approval has been obtained for the Annual Programme, and thereafter only in accordance with the Annual Programme.

26A.2 Certification and approval of Additional Schemes

26A.2.1 Upon completion of the scope agreed pursuant to clause 26A.1.2(a) in respect of each Additional Scheme, the Service Provider shall prepare a certificate of completion which shall clearly identify the relevant Additional Scheme and the relevant cost agreed pursuant to clause 26A.1.2(b).

26A.2.2 Upon receipt of such certificate, the Authority Representative shall review the Additional Scheme and either notify the Service Provider of:

- (a) its approval of such certificate; or
- (b) its rejection of such certificate, in which case the Authority shall provide the Service Provider with a Snagging List in relation to the Additional Scheme, following which the Service Provider shall rectify those matters identified in the Snagging List, and prepare a further certificate of completion pursuant to clause 26A.2.1.

26A.2.3 The Service Provider shall include the costs agreed pursuant to clause 26A.1.2(b) in respect of each Additional Scheme which have been approved by the Authority in accordance with clause 26A.2.2(a) as part of the next Draft Monthly Payment Report following completion of the relevant Additional Scheme pursuant to clause 56.4 (Draft Monthly Payment Report).

26A.2.4 Any dispute as to the completion of Additional Schemes may be referred by either party to the Dispute Resolution Procedure.

26B ADDITIONAL DRAINAGE SCHEMES

26B.1 General

26B.1.1 No later than four (4) months before the commencement of each Contract Year during the Core Investment Period, the Service Provider shall notify the Authority of the Additional Drainage Schemes it proposes to undertake in such Contract Year.

26B.1.2 The parties shall, following the Service Provider's notification pursuant to clause 26B.1.1, meet and agree:

- (a) the scope of the Additional Drainage Schemes to be undertaken by the Service Provider in such Contract Year; and
- (b) subject to clause 26B.1.2(c), the cost of implementing such Additional Drainage Schemes, which shall not exceed the Aggregate Additional Drainage Scheme Amount relevant to that Contract Year; and
- (c) in the event that the Parties agree that the cost of implementing such Additional Drainage Schemes shall exceed the Aggregate Additional Drainage Scheme Amount:
 - (i) those costs which exceed the Aggregate Additional Drainage Scheme Amount for the relevant Contract Year ("**Excess Additional Drainage Scheme Costs**");
 - (ii) the additions to payments of the Monthly Unitary Charge as a Sundry Adjustment (as the same is defined in paragraph 3.1 of Schedule 4 (Payment Mechanism) to which the Service Provider is entitled in respect of the Excess Additional Drainage Scheme Costs; and
 - (iii) those adjustments to be made to the Aggregate Additional Drainage Scheme Amounts in respect of Contract Years

during the Core Investment Period following the relevant Contract Year, to take account of the Excess Additional Drainage Scheme Costs provided that the total costs in respect of implementing all Additional Drainage Schemes shall not exceed one million pound (£1,000,000) in aggregate.

26B.1.3 Upon agreement of the matters set out in clause 26B.1.2, the Service Provider shall include the Additional Drainage Schemes in the Annual Programme for the subsequent Contract Year in accordance with clause 21.1.1.

26B.1.4 The Service Provider shall not carry out any Additional Drainage Scheme until approval has been obtained for the Annual Programme, and thereafter only in accordance with the Annual Programme.

26B.2 Certification and approval of Additional Drainage Schemes

26B.2.1 Upon completion of the scope agreed pursuant to clause 26B.1.2(a) in respect of each Additional Drainage Scheme, the Service Provider shall prepare a certificate of completion which shall clearly identify the relevant Additional Drainage Scheme and the relevant cost agreed pursuant to clause 26B.1.2(b) or clause 26B.1.2(c).

26B.2.2 Upon receipt of such certificate, the Authority Representative shall review the Additional Drainage Scheme and either notify the Service Provider of:

- (a) its approval of such certificate; or
- (b) its rejection of such certificate, in which case the Authority shall provide the Service Provider with a Snagging List in relation to the Additional Drainage Scheme, following which the Service Provider shall rectify those matters identified in the Snagging List, and prepare a further certificate of completion pursuant to clause 26B.2.1.

26B.2.3

In the event that, in respect of any Contract Year:

- (a) the costs which the Service Provider has incurred in respect of implementing the Additional Drainage Schemes; are less than
- (b) those agreed with the Authority pursuant to clause 26B.1.2(b) or clause 26B.1.2(c), as the case may be,

the Service Provider shall include as part of the final Draft Monthly Payment Report for the Contract Year pursuant to clause 56.4 (Draft Monthly Payment Report), a statement of such sum as represents the difference between the sums in clause 26B.2.3(a) and clause 26B.2.3(b), and this sum shall be deducted as a Sundry Adjustment (as the same is defined in paragraph 3.1 of Schedule 4 (Payment Mechanism)).

26B.2.4

Any dispute as to the completion of Additional Drainage Schemes may be referred by either party to the Dispute Resolution Procedure.

PART G - MILESTONES

27. MILESTONES

- 27.1 The Service Provider shall achieve Milestone Completion by the relevant Planned Milestone Completion Date. The Milestones and their respective Planned Milestone Completion Dates are set out in the table below:

Table 27.1

Milestone	Planned Milestone Completion Date
Milestone 1	Six (6) Months after the Service Commencement Date
Milestone 2	Twelve (12) Months after the Service Commencement Date
Milestone 3	Eighteen (18) Months after the Service Commencement Date
Milestone 4	Twenty four (24) Months after the Service

Milestone	Planned Milestone Completion Date
	Commencement Date
Milestone 5	Thirty (30) Months after the Service Commencement Date
Milestone 6	Thirty six (36) Months after the Service Commencement Date
Milestone 7	Forty two (42) Months after the Service Commencement Date
Milestone 8	Forty eight (48) Months after the Service Commencement Date
Milestone 9	Fifty four (54) Months after the Service Commencement Date
Milestone 10	Sixty (60) Months after the Service Commencement Date
Milestone 11	Sixty six (66) Months after the Service Commencement Date
Milestone 12	Seventy two (72) Months after the Service Commencement Date
Milestone 13	Seventy eight (78) Months after the Service Commencement Date
Milestone 14	Eighty four (84) Months after the Service Commencement Date

27.2 Unitary Charge Adjustment - Certificate of Completion

Where the Independent Certifier has issued a Certificate of Completion in respect of a Milestone pursuant to the provisions of clause 28 (*Certification*) that Milestone shall, from the relevant Milestone Completion Date, be taken into account for the purposes of calculating the Monthly Unitary Charge in accordance with paragraph 3.2 of schedule 4 (*Payment Mechanism*).

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27.3 Inability to complete Milestone

27.3.1 If the Service Provider, despite having used all reasonable endeavours, considers that it is unlikely to be able to achieve Milestone Completion in a particular PFI District as a direct result of a Compensation Event, Relief Event or Excusing Cause, it shall notify the Authority as soon as it becomes aware of such fact, specifying:

27.3.1.1 the Milestone Completion Criteria it considers it will fail to achieve ("**Specified Criteria**");

27.3.1.2 the reason for such failure;

- 27.3.1.3 the Services that will be affected by such failure ("**Deferred Services**");
- 27.3.1.4 the measures it has taken or proposes to take to minimise the impact of the Compensation Event, Relief Event or Excusing Cause;
- 27.3.1.5 whether an Alternative Scheme or Alternative Schemes can be carried out in order to replace the Deferred Services and if so:
- (a) details as to which Alternative Scheme or Alternative Schemes will be undertaken (which should be in the same PFI District as the Deferred Services wherever possible); and
 - (b) when it proposes to undertake the Deferred Services in respect of the Milestone, which must be at such a time as to ensure that the Service Provider will achieve the Specified Criteria prior to the next following Planned Milestone Completion Date; and
- 27.3.1.6 if it is not reasonably practicable to replace Deferred Services with an Alternative Scheme or Alternative Schemes, the amendments the Service Provider proposes to be made to the Annual Programme (provided that any proposed amendments shall be submitted pursuant to schedule 20 (*Review Procedure*)) setting out, to the extent practicable:
- (a) the Alternative Services it intends to provide and where it proposes to carry out such Alternative Services in another PFI District, evidence that it cannot carry out such services within the relevant PFI District; and
 - (b) when it proposes to undertake the Deferred Services in respect of the Milestone, such Deferred Services shall be carried out at such a time as to ensure that the Service

Provider will achieve the Specified Criteria prior to the next following Planned Milestone Completion Date.

27.3.2 The Authority shall, as soon as reasonably practicable but in any event within twenty (20) Business Days after receipt of such notification, confirm to the Service Provider whether or not it accepts (acting reasonably) that the Service Provider's failure (or likely failure) to achieve the specified Milestone Completion Criteria results directly from the Compensation Event, Relief Event or Excusing Cause.

27.3.3 Subject to clause 27.3.6 if the Service Provider fails to achieve the Specified Criteria and:

27.3.3.1 the Authority accepts (or has accepted) (acting reasonably) that such failure resulted directly from the Compensation Event, Relief Event or Excusing Cause;

27.3.3.2 the Service Provider has undertaken the relevant Alternative Scheme or Alternative Schemes notified in accordance with clause 27.3.1.5 or the Alternative Services in accordance with clause 27.3.1.6; and

27.3.3.3 in respect of the Alternative Services, the Service Provider updates the Annual Programme pursuant to schedule 20 (*Review Procedure*),

the Service Provider shall be deemed to have achieved Milestone Completion in the relevant PFI District.

27.3.4 Without prejudice to clause 27.3.1, where clause 27.3.3 applies, achievement of the Specified Criteria shall be considered an additional Milestone Completion Criterion for the next-following Milestone, such that failure by the Service Provider to achieve the Specified Criteria shall mean it does not achieve Milestone Completion in respect of the relevant PFI District for that next-following Milestone.

27.3.5 Subject to clause 27.3.6, where clause 27.3.3 does not apply, the Service Provider shall not achieve Milestone Completion in the relevant PFI District

(and either Party may refer any dispute for resolution pursuant to the Dispute Resolution Procedure).

27.3.6 In the case of Milestone 14 if the Authority and the Independent Certifier (acting reasonably) agree that there are insufficient Alternative Schemes available and that it was also not practicable for the Service Provider to carry out Alternative Services to bring the WCCI to the standard required to achieve Milestone Completion in any PFI District the Authority shall pay the Service Provider such proportion of the uplift in the Unitary Charge commensurate to the WCCI achieved, as certified by the Independent Certifier, and Milestone Completion shall only occur upon the achievement of the required WCCI, as certified by the Independent Certifier, in the relevant PFI District.

28. CERTIFICATION

28.1 Tests and inspections prior to Certification of Milestones

28.1.1 The Service Provider shall grant the Independent Certifier and the Authority's Representative access at all times (on giving reasonable notice) to the site of any Services being undertaken by the Service Provider in relation to the Core Investment Works in order to enable each of them to assess whether such Services comply with the Milestone Completion Criteria, provided always that the Authority and the Independent Certifier shall use reasonable endeavours to minimise any disruption caused to the relevant Services.

28.1.2 The Parties acknowledge that the Independent Certifier shall undertake those inquiries, tests, investigations, surveys and/or inspections required to be undertaken and/or observed, as the case may be, by the Independent Certifier in connection with the certification of Milestones pursuant to clause 28.2 (*Certification of Milestones*) and in accordance with Appendix 3 (*Methodology to Respond to Scope of Services*) in the Independent Certifier's Appointment.

28.1.3 The Authority's Representative (or any person nominated by the Authority), the Service Provider and the relevant Sub-Contractors shall be entitled to attend any inquiry, test, investigation, survey or inspection contemplated by this clause 28.1 (*Tests and inspections prior to Certification of Milestones*) and shall be entitled to make representations to the Independent Certifier as to whether the Milestone Completion Criteria have been satisfied.

28.2 Certification of Milestones

- 28.2.1 The Service Provider shall notify the Independent Certifier and the Authority five (5) Business Days before the date upon which the Service Provider requires the Independent Certifier to assess whether it has achieved Milestone Completion in respect of each Milestone, which should in any event be no earlier than the Planned Milestone Completion Date.
- 28.2.2 Following notification pursuant to clause 28.2.1 above, the Independent Certifier shall assess whether Milestone Completion has been achieved by the Service Provider, and shall, within ten (10) Business Days of the date of the assessment referred to in clause 28.2.1, issue to the Service Provider (with a copy to the Authority):
- 28.2.2.1 a Certificate of Completion; or
 - 28.2.2.2 a Certificate of Non-Completion, in which case the certificate shall specify the outstanding matters that must be attended to before a Certificate of Completion can be issued.
- 28.2.3 If, in respect of a Milestone, the Independent Certifier has issued a Certificate of Non-Completion, the Service Provider shall:
- 28.2.3.1 attend to all outstanding matters specified in the Certificate of Non-Completion (as relevant) as expeditiously as possible; and
 - 28.2.3.2 notify the Independent Certifier and the Authority as soon as reasonably practicable of the date upon which the Service Provider requires the Independent Certifier to assess whether it has achieved Milestone Completion in which case the provisions of this clause 28.2 (*Certification of Milestones*) shall repeat and apply to the extent relevant until such time as a Certificate of Completion has been issued.

28.3 Minor Snagging Items

28.3.1 In the event that a Certificate of Completion is expressed to be subject to Minor Snagging Items:

28.3.1.1 the Independent Certifier shall within five (5) Business Days of the issue of the relevant Certificate of Completion issue to the Service Provider and the Authority a Snagging List;

28.3.1.2 within five (5) Business Days of receipt from the Independent Certifier of the Snagging List the Service Provider shall provide to the Authority and the Independent Certifier a programme for making good each Minor Snagging Item set out in the Snagging List, provided that such programme shall require that each Minor Snagging Item shall be made good within twenty (20) Business Days of the date of provision of that programme or within such time as is reasonably practicable;

28.3.1.3 the Parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under the Dispute Resolution Procedure, and the programme agreed or determined in accordance with this clause 28.3 (*Minor Snagging Items*) shall be known as the "**Snagging Programme**"; and

28.3.1.4 the Service Provider shall procure that each Minor Snagging Item is made good in accordance with the Snagging Programme to the satisfaction of the Independent Certifier, provided that if any Minor Snagging Item has not been rectified by the date set out in the Snagging Programme then the Authority shall be permitted to withhold the payment of the uplift under the Monthly Unitary Charge for which the Certificate of Completion applies until such time

as such Minor Snagging Item is rectified to the satisfaction of the Independent Certifier.

28.3.2 For the avoidance of doubt, nothing in this clause 28.3 (*Minor Snagging Items*) shall limit or reduce any remedies or recourse of the Authority pursuant to the provisions of schedule 4 (*Payment Mechanism*) arising out of or consequent upon the existence of any such Minor Snagging Items and/or arising out of or consequent upon any steps taken by the Service Provider to attend to any such Minor Snagging Items.

28.4 Delayed Milestone Completion

28.4.1 Where the Service Provider is delayed in achieving any Milestone by the relevant Planned Milestone Completion Date(s), it shall notify the Independent Certifier and the Authority as soon as reasonably practicable of the date upon which it requires the Independent Certifier to assess whether it has achieved Milestone Completion in respect of the relevant Milestone, in which case the provisions of clause 28.2 (*Certification of Milestones*) shall apply.

28.4.2 Where pursuant to clause 28.2 (*Certification of Milestones*) a Certificate of Completion is issued in respect of a delayed Milestone, the provisions of clause 28.5 (*Dates on which Milestone Completion can occur*) shall apply.

28.5 Dates on which Milestone Completion can occur

28.5.1 In respect of each Milestone, the Milestone Completion Date shall be the date upon which the Certificate of Completion is issued for that Milestone, provided that if a Certificate of Completion is issued before the relevant Planned Milestone Completion Date, the Milestone Completion Date shall be the same as the Planned Milestone Completion Date.

28.6 Effect of Issue of Certificates of Completion etc

28.6.1 As between the Parties, the decision of the Independent Certifier to issue any Certificate of Completion or Certificate of Non-Completion at any time shall, in the absence of fraud or manifest error, be final and binding on the Parties but without prejudice to the right of either Party to make a claim under the Independent Certifier's Appointment.

28.6.2 The issue of any Certificate of Completion shall in no way affect the obligations of the Service Provider under this Contract (including without limitation in respect of any failure by the Service Provider to meet the requirements of schedule 2 (*Output Specification*)).

28.7 Inspections in relation to Powered Apparatus

28.7.1 Following the Core Investment Period:

28.7.1.1 the Service Provider shall self-certify all units of Powered Apparatus being installed by the Service Provider in any particular Month in accordance with Method Statement 20; and

28.7.1.2 the Authority (by itself or through the Authority's Representative or any Authority Party (including the Independent Certifier) having the relevant technical expertise) shall be entitled to inspect, comment upon, or object to at any stage of the installation process (and for a period of two (2) Months thereafter) up to one hundred per cent (100%) of the units of Powered Apparatus being certified by the Service Provider as being installed in that particular Month; and

28.7.1.3 the provisions of clauses 28.7.2 to 28.7.4 (inclusive) shall apply.

28.7.2 The Service Provider shall give at least five (5) Business Days' notice to the Authority on each occasion that the Service Provider intends to carry out a commissioning test (for the purposes of final assessment and issue of a Certificate of Compliance) of the relevant Powered Apparatus. Such notice shall specify the location and time at which the commissioning tests are to be carried out.

28.7.3 If the Authority wishes to attend the Service Provider's commissioning tests, the Authority shall notify the Service Provider that the Authority's Representative and/or any Authority Party who has the relevant technical

expertise shall attend the Service Provider's commissioning tests and carry out such assessments or inspections to satisfy himself or themselves that the Service Provider has carried out the commissioning in accordance with Method Statement 20 and met the requirements of this Contract, including without limitation any requirements set out in schedule 2 (*Output Specification*) (subject to any Minor Snagging Items). The Authority shall use reasonable endeavours to procure that the person(s) attending any assessments or inspections shall not adversely affect the Service Provider's ability to perform its obligations under this Contract.

28.7.4 The Service Provider shall, within two (2) Business Days of completion of the relevant commissioning tests, confirm to the Authority in writing whether or not it is of the view that the relevant item of Powered Apparatus complies with the requirements of this Contract (including schedule 2 (*Output Specification*) subject to any Minor Snagging Items) and, if applicable, submit to the Authority a draft list of the relevant Minor Snagging Items ("**Service Provider's Snagging List**").

28.7.5 If the Authority does not agree with the Service Provider's written confirmation issued pursuant to clause 28.7.4 then the Authority shall, within five (5) Business Days of receipt, notify the Service Provider accordingly, giving details of the affected Powered Apparatus and the grounds of non-compliance (which, to the extent considered appropriate by the Authority, may include information relating to inspections carried out by the Authority during the installation of the Powered Apparatus). Following any such notification, the Service Provider shall, as soon as possible, consider the details of the notification and confirm whether or not it agrees with the Authority's notification.

28.7.6 Where the Service Provider agrees with the Authority's notification given pursuant to clause 28.7.5, the Service Provider shall as soon as possible, take such steps as it considers necessary to ensure that the relevant new Powered Apparatus complies with the requirements of this Contract (including schedule 2 (*Output Specification*) (subject to any Minor Snagging Items)). The Service Provider shall notify the Authority on completion of the relevant steps and the provisions of clauses 28.7.3 to 28.7.5 (inclusive) shall apply until the Authority

accepts the Service Provider's written confirmation or the matter is referred to the Dispute Resolution Procedure.

28.7.7 Where the Authority has served notice pursuant to clause 28.7.5 but the Service Provider does not agree with the Authority's notification, the Parties shall use their reasonable endeavours in good faith to reach agreement by discussion, but if no agreement is reached either Party may refer the matter to the Dispute Resolution Procedure.

28.7.8 Where the Authority has served notice pursuant to clause 28.7.5 and either the Service Provider agrees with the Authority's notification or a dispute is in progress, the relevant Powered Apparatus shall not be treated as being installed for the purposes of this Contract (and no Certificate of Compliance shall be issued) until such date that it is agreed or determined that the relevant Powered Apparatus complies with the requirements of this Contract (including schedule 2 (*Output Specification*)) (subject to any Minor Snagging Items).

28.7.9 Upon the agreement between the Authority and the Service Provider that the relevant Powered Apparatus complies with the requirements of this Contract (including schedule 2 (*Output Specification*)) (subject to any Minor Snagging), the Service Provider shall issue to the Authority a Certificate of Compliance pursuant to Method Statement 20 together with a Service Provider's Snagging List.

28.7.10 Where a Service Provider's Snagging List has been issued the Service Provider shall rectify the Minor Snagging Items within twenty (20) Business Days of the date of issue of the Service Provider's Snagging List.

28.7.11 Failure to Complete Snagging

28.7.11.1 Where the Service Provider fails to rectify the Minor Snagging Items in accordance with the provisions of clause 28.7.10, then the Authority shall be entitled to serve written notice on the Service Provider requiring such works to be carried out within twenty (20) Business Days of receipt of such notice, failing which the Authority shall be entitled to carry out necessary works to rectify the Minor Snagging Items

and the Service Provider shall accept the rectified snagging items without further recourse to the Authority and shall pay the Authority's costs and expenses reasonably and properly incurred in the carrying out of such works in accordance with the provisions of clause 56 (*Payment and Financial Matters*).

28.7.11.2 For the avoidance of doubt, nothing in this clause 28.7 (*Inspections in relation to Powered Apparatus*) shall limit or reduce any remedies or recourse of the Authority pursuant to the provisions of schedule 4 (*Payment Mechanism*) arising out of or consequent upon the existence of any Minor Snagging Items and/or arising out of or consequent upon any steps taken by the Service Provider to attend to any such Minor Snagging Items.

28.8 Inspections in relation to Lifecycle Works Following the Core Investment Period:

28.8.1 The Service Provider shall self-certify all Lifecycle Works in accordance with Method Statement 20 and the Authority (by itself or through the Authority's Representative or any Authority Party (including the Independent Certifier) having the relevant technical expertise) shall prior to final certification of the Lifecycle Works be entitled to inspect, comment upon, or object to at any stage of the carrying out of the Lifecycle Works.

PART H - THE SERVICES

29. OBLIGATION TO PROVIDE THE SERVICE AND PERFORMANCE STANDARDS

29.1 Standard of Service

Subject to clause 53 (*Change in Highway Standards*) and clause 55 (*Change in Authority Policies*) and save as otherwise expressly provided for elsewhere in this Contract, the Service Provider shall provide the Services continuously throughout the Service Period: