

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:

- 29.1.1 in order to comply fully with schedule 2 (*Output Specification*);
- 29.1.2 in accordance with Highways Standards;
- 29.1.3 in accordance with the Method Statements;
- 29.1.4 in accordance with the Service Provider Programmes;
- 29.1.5 in accordance with Good Industry Practice;
- 29.1.6 in accordance with all Necessary Consents;
- 29.1.7 in accordance with the Service Provider's duty of co-ordination as set out in clause 5 (*Delegation of Statutory Functions*);
- 29.1.8 in accordance with all Laws and Codes of Practice relating to the carrying out of the Services;
- 29.1.9 in accordance with the Authority Policies;
- 29.1.10 using reasonable endeavours not to cause any nuisance;
- 29.1.11 without prejudice to clause 16 (Ownership of and Access to the Project Network) and subject to clauses 12 (*Geotechnical and Geological Zones*) and 13 (*Latent Defects*), making good any damage to any Authority Property or Project Network Parts forthwith but only insofar as the same arises from or in connection with the Project; and
- 29.1.12 in accordance with the other provisions of this Contract,

and shall not carry out any services of a type for which a Service Provider Programme is required unless in accordance with the provisions of this Contract.

29.2 Maintenance

The Service Provider shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:

- 29.2.1 the Services are continuously compliant with schedule 2 (*Output Specification*);

- 29.2.2 it can maintain the design intention of the Project Network Parts to achieve their full working life; and
- 29.2.3 the Project Network Parts are handed back to the Authority on the Expiry Date in a condition complying with the requirements of clause 29.3 (*Standard on Expiry*).

29.3 Standard on Expiry

The Service Provider shall perform the Services such that at the Expiry Date all Project Network Parts shall comply with the Handback Requirements.

29.4 Project Network Discoveries

- 29.4.1 As between the Parties, all Finds which are found on or at the Work Sites in the Project Area are or shall become, upon discovery, the absolute property of the Authority.
- 29.4.2 Upon the discovery of any Find during the performance of the Services, the Service Provider shall:
- 29.4.2.1 immediately give notice to the Authority Representative of such discovery;
 - 29.4.2.2 take all steps not to disturb the Find and, if necessary, cease the performance of the Services in so far as the carrying out of such Services would endanger the Find or prevent or impede its excavation; and
 - 29.4.2.3 take all necessary steps to preserve the Find in the same condition in which it was found.
- 29.4.3 The Authority shall procure that the Authority Representative promptly, and in any event within ten (10) Business Days, issues an instruction to the Service Provider specifying what action the Authority Representative requires to be taken in relation to such Find provided that if no instruction is forthcoming within such period the Service Provider may continue to carry out the Services.

29.4.4 The Service Provider shall promptly and diligently comply with any instruction issued by the Authority Representative referred to in clause 29.4.3 at its own cost.

29.4.5 If directed by the Authority Representative, the Service Provider shall allow representatives of the Authority access to the Work Sites in the Project Area for the purposes of removal or disposal of such Find, provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plan for such Services from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Service Provider Representative from time to time.

29.4.6 If any instruction referred to in clause 29.4 (*Project Network Discoveries*) includes a requirement for the Service Provider to suspend the carrying out of the Services and/or to carry out works (being any work of alteration, addition, demolition or extensions or variation at any Work Sites in the Project Area) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be subject to the provisions of Schedule 17 (*Change Protocol*) unless otherwise agreed by the Parties.

30. INCONSISTENCIES RELATING TO THE PROVISION OF THE SERVICES

30.1 Inconsistencies

The obligations in clause 29.1.1 to 29.1.12 are independent obligations and:

30.1.1 the fact that the Service Provider has complied with the Method Statements shall not be a defence to an allegation that the Service Provider has not satisfied or complied with schedule 2 (*Output Specification*); and

30.1.2 the fact that the Service Provider has satisfied and complied with schedule 2 (*Output Specification*) shall not be a defence to an allegation that the Service Provider has failed to comply with the Method Statements.

30.2 Rectification of Inconsistencies

30.2.1 If at any time it becomes apparent to either Party that there is an inconsistency within the terms of schedule 2 (*Output Specification*), that Party shall promptly, on becoming aware of such inconsistency, notify the other Party. On becoming aware, or notified, of such inconsistency the Authority shall:

30.2.1.1 consider what amendments are necessary to make schedule 2 (*Output Specification*) consistent;

30.2.1.2 inform the Service Provider of its proposed amendments to remove the inconsistency; and

30.2.1.3 amend schedule 2 (*Output Specification*) without any adjustments to the Annual Unitary Charge;

30.2.2 subject to clause 53 (*Change in Law*), if at any time it becomes apparent to either Party that there is an inconsistency between schedule 2 (*Output Specification*) and any Legislation or Guidance in force at the date of this Contract that Party shall promptly on becoming aware of such inconsistency notify the other Party. On becoming aware, or on being notified, of such inconsistency the Authority shall:

30.2.2.1 consider what amendments are necessary to make schedule 2 (*Output Specification*) consistent; and

30.2.2.2 inform the Service Provider of its proposed amendments to remove the inconsistency,

and the Service Provider shall not be entitled to any additional monies or adjustment of the Annual Unitary Charge as a result of such inconsistency or its adjustment (and accordingly the risk of there being any such inconsistency shall be borne by the Service Provider), provided that where any amendment or rectification to the schedule 2 (*Output Specification*) proposed pursuant to this clause 30.2.2 shall not be a Change except where it would result in a lower standard of Service to that set out in schedule 2 (*Output Specification*) prior to its amendment or rectification, in which case such amendment or rectification shall be a Change;

30.2.3 if at any time it becomes apparent to either Party that any Method Statement does not satisfy the schedule 2 (*Output Specification*), that Party shall notify the other Party promptly on becoming aware of such inconsistency. On becoming aware, or on being notified, of such inconsistency:

30.2.3.1 the Authority shall require the Service Provider to make such amendments as are necessary to make the relevant Method Statement satisfy schedule 2 (*Output Specification*); and

30.2.3.2 the Service Provider shall submit the revised Method Statement to the Authority for review in accordance with clause 51 (*Amendments to the method statements*) and schedule 20 (*Review Procedure*).

30.2.4 Once the Method Statement is agreed pursuant to paragraph 24 of schedule 20 (*Review Procedure*), the Service Provider shall, at the Service Provider's own expense and cost, rectify the Services or any part thereof which is affected, so that the Project Network Parts shall be of a standard which is at least equal to that set out in the Method Statements following its amendment or rectification.

31. REPRESENTATIVES

31.1 Service Provider Representative

The Service Provider shall employ the Service Provider Representative, the identity of whom will be subject to the prior approval of the Authority (such approval not to be unreasonably withheld or delayed), to act as the Service Provider's representative in connection with the Service Provider's obligations under this Contract. The contact details of the Service Provider Representative shall, at all times, be made known to the Authority by the Service Provider and shall include a telephone number on which the Service Provider Representative or his delegate can be contacted twenty four (24) hours a day and three hundred and sixty five (365) (or, in the case of a leap year, three hundred and sixty six (366)) days a year. The Service Provider Representative shall have the appropriate training and skills to co-ordinate and ensure the Service Provider's proper discharge of its obligations under this Contract.

31.2 Authority of Service Provider Representative

The Service Provider Representative shall have full authority to act on behalf of the Service Provider for all purposes of this Contract. The Authority and the Authority Representative shall be entitled to treat any act or omission of the Service Provider Representative in connection with this Contract as being expressly authorised by the Service Provider (save where the Service Provider has notified the Authority that there are specific exemptions to such authority) and the Authority shall not be required to determine whether any express authority has in fact been given.

31.3 Appointment of Successor

The Service Provider may at any time terminate the appointment of the Service Provider Representative and shall appoint a successor subject to the provisions of clause 31.1 (*Service Provider Representative*).

31.4 Service Provider Alternate Representatives

31.4.1 The Service Provider shall appoint two (2) alternate representatives (the "**Service Provider First Alternate Representative**" and the "**Service Provider Second Alternate Representative**"), the identity of whom will be subject to the prior approval of the Authority (such approval not to be unreasonably withheld or delayed).

31.4.2 In the event that an Authority Party is unable to make immediate contact with the Service Provider Representative (provided that the Authority Party has used the relevant contact details) or the Service Provider Representative states that he is unable to deal with a matter and/or directs that either the Service Provider First Alternate Representative or the Service Provider Second Alternate Representative is contacted, the Authority shall be entitled to contact the Service Provider First Alternate Representative and/or the Service Provider Second Alternate Representative (as the case may be), and the provisions of this Contract dealing with the Service Provider Representative shall apply, *mutatis mutandis*, to the Service Provider First Alternate Representative and/or the Service Provider Second Alternate Representative (as the case may be).

31.5 Authority Representative

The Authority shall appoint (and may replace from time to time) an individual to be the Authority Representative in connection with the Authority's obligations under this

Contract. The Authority Representative shall liaise with the Service Provider Representative, and shall keep the Service Provider informed of the identity and contact details from time to time of the Authority Representative.

31.6 Authority of Authority Representative

The Authority Representative shall have full authority to act on behalf of the Authority for all purposes of this Contract. The Service Provider shall be entitled to treat any act of the Authority Representative in connection with this Contract as being expressly authorised by the Authority (save where the Authority has notified the Service Provider that there are specific exemptions to such authority) and the Service Provider shall not be required to determine whether any express authority has in fact been given.

31.7 Authority Alternate Representatives

31.7.1 The Authority shall appoint two (2) alternate representatives ("**Authority First Alternate Representative**" and "**Authority Second Alternate Representative**").

31.7.2 In the event that the Service Provider is unable to make immediate contact with the Authority Representative (provided the Service Provider has used the relevant Contact Details) or the Authority Representative states that he is unable to deal with a matter and/or directs that either the Authority First Alternate Representative or the Authority's Second Alternate Representative is contacted, the Service Provider shall be entitled to contact the Authority First Alternate Representative and/or the Authority Second Alternate Representative (as the case may be), and the provisions of this Contract dealing with the Authority Representative shall apply, mutatis mutandis, to the Authority First Alternate Representative and/or the Authority Second Alternate Representative (as the case may be).

32. DESIGN

The Service Provider shall ensure that all works carried out in the performance of the Services shall be designed so that the Services can be provided in accordance with the requirements set out in clauses 29.1 and 29.2 (*Standard to which the Service must be provided*).

33. QUALITY MANAGEMENT

33.1 Quality Management Systems and Quality Plans

33.1.1 The Service Provider shall ensure that it has produced the Quality Plans set out in schedule 21 (*Service Provider Programmes and Quality Plans*) in accordance with the requirements of this clause 33 (*Quality Management*) and PS10.

33.1.2 In the event that any ambiguity, uncertainty, Dispute or discrepancy in relation to the application of any Quality Plan arises then so far as practicable, the provisions of this clause 33 (*Quality Management*) shall be interpreted and construed in such a manner as to resolve the apparent ambiguity, uncertainty, Dispute or discrepancy so that all the provisions of this clause 33.1.2 (*Quality Management Systems and Quality Plans*) may be given meaning and effect but, if such interpretation or construction is not possible, the provisions of this clause 33.1.2 (*Quality Management Systems and Quality Plans*) shall be given meaning and effect in the following order of precedence (in descending order):

33.1.2.1 the provisions and standards referred to in clause 33.1;

33.1.2.2 the Quality Plans referred to in clause 33.1; and

33.1.2.3 the Service Provider's quality manuals and procedures and/or any relevant sub-contractor's quality manuals and procedures.

33.2 Sub-Contractors

Where any aspect of the Services are performed by a sub-contractor, then the provisions of this clause 33 (*Quality Management*) (in so far as relevant or appropriate to the activities to be performed by such sub-contractor) shall apply in respect of each sub-contractor (and the Service Provider shall procure that such sub-contractor shall comply with the same), provided that this clause 33 (*Quality Management*) shall not be construed as requiring a sub-contractor to have its own Quality Plans or to appoint a separate Quality Manager but only to comply with the relevant sections of the relevant Quality Plan.

33.3 Changes to the Quality Plans

The Service Provider shall make such changes to the Quality Plans as are required for the Quality Plans to continue to comply with the requirements contained in this Contract (including updating such Quality Plans on an annual basis to reflect amendments to the Service Provider Programmes) and such changes shall be made in accordance with schedule 20 (*Review Procedure*).

33.4 Quality Manuals and Procedures

If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts thereof shall be submitted at the same time that such Quality Plan (or part thereof) or change thereto is submitted pursuant to schedule 20 (*Review Procedure*), and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan (or part thereof) or change thereto pursuant to schedule 20 (*Review Procedure*).

33.5 Quality Manager

The Service Provider shall appoint (or shall procure the appointment of) a person to act as a Quality Manager from the Service Commencement Date who shall not be involved in the day-to-day delivery of the Services, to assist the Service Provider in the performance of its obligations under this clause 33 (*Quality Management*) and:

- 33.5.1 the identity of the Quality Manager (and any replacement) shall be subject to the prior written approval of the Authority Representative (such approval not to be unreasonably withheld or delayed);
- 33.5.2 without limitation, the terms and conditions of the appointment of the Quality Manager shall require him to:
 - 33.5.2.1 ensure the effective operation of the quality systems described in this clause 33 (*Quality Management*);
 - 33.5.2.2 provide the Authority with plans relating to all proposed internal and external audits.
 - 33.5.2.3 internally audit the quality systems at regular intervals (not less frequently than annually) and

report the findings of such audit to the Authority Representative;

- 33.5.2.4 review all quality systems (not less frequently than annually) with the Authority Representative to ensure their continued suitability and effectiveness and in particular to ensure the provisions of clause 33.3 (*Changes to the Quality Plans*) are complied with;
- 33.5.2.5 liaise with the Authority Representative on all matters relating to quality management;
- 33.5.2.6 report to the Service Provider on all matters relating to this clause 33 (*Quality Management*); and
- 33.5.2.7 provide the Authority with copies of all reports and/or results arising out of external audits carried out in accordance with ISO 9001, ISO 14001 (Environment) and OHSAS 18001 (Health and Safety) including copies of all accreditations received.

34. SERVICE PROVIDER'S PERSONNEL

34.1 Skills and Competencies

The Service Provider shall procure that sufficient numbers of Personnel are, at all times, engaged in providing the Services, and that such Personnel:

- 34.1.1 are appropriately skilled and competent;
- 34.1.2 receive such induction training and supervision as is necessary to ensure the proper performance of the Services; and
- 34.1.3 are appropriately qualified.

34.2 Training Records

From the Service Commencement Date, the Service Provider shall keep evidence of all relevant training and instruction of all Personnel together with relevant certificates and qualifications, (and update the same) and copies shall be provided to the Authority on request.

34.3 Provision of Information

Without prejudice to any other obligations of the Service Provider in this Contract, and to the extent permitted by Legislation, the Service Provider shall, within ten (10) Business Days of any request by the Authority, provide to the Authority all information (including any documents) reasonably requested by the Authority relating to Personnel including information (and any documents) regarding the training, skills and competency of each Personnel, the numbers of Personnel employed or engaged in provision of the Services and the terms and conditions of employment or engagement of such Personnel.

34.4 Workforce Policies and Procedures

The Service Provider warrants that the Workforce Policies have been submitted by it and are contained in schedule 35 (*Workforce Policies*) including the following:

- 34.4.1 a Diversity and Equality Policy, to comply with the requirements set out in clause 34.8 (*Diversity and Equality Policy*);
- 34.4.2 a Recruitment and Selection Policy, to comply with the requirements set out in clause 34.9 (*Recruitment and Selection Policy*);
- 34.4.3 a Training and Development Policy, to comply with the requirements set out in clause 34.10 (*Training and Development Policy*); and
- 34.4.4 a Human Resources Policy, to comply with the requirements set out in clause 34.11 (*Human Resources Policy*),

and the Service Provider shall comply with its Workforce Policies.

- 34.5 The Service Provider shall procure that policies and procedures relating to personnel (covering all of the matters required within the

Workforce Policies) are set up and maintained by the Service Provider, all Sub-Contractors and other Key Sub-Contractors.

34.6 Upon amendment by the Service Provider of any of the Workforce Policies, the Service Provider shall submit to the Authority revised Workforce Policies (or any of them) pursuant to schedule 20 (Review Procedure).

34.7 The Service Provider shall procure that the terms and implementation of all Workforce Policies comply with Legislation and Good Industry Practice.

34.8 Diversity and Equality Policy

The Service Provider's Diversity and Equality Policy shall:

34.8.1 set out how the Service Provider will comply with its requirements in clause 97 (*Non-Discrimination*);

34.8.2 set out how the Service Provider will achieve the following:

34.8.2.1 promotion of equality of opportunity for employees;

34.8.2.2 elimination of harassment and unlawful discrimination;

34.8.3 set out the Service Provider's commitment to procuring that equal opportunities and diversity is promoted by each Sub-Contractor and other Key Sub-Contractor, including by ensuring that the equal opportunities policy of each shall be set out in relevant documentation available to its staff and others, and in other relevant literature, including any instructions circulated to those members of the Sub-Contractor's and other Key Sub-Contractor's staff concerned with recruitment, training and promotion; and

34.8.4 ensure that recruitment advertisements will state that the Service Provider and each Sub-Contractor and other Key Sub-Contractor is "striving to be an equal opportunities employer".

and the Service Provider shall, within ten (10) Business Days of receipt of notice provide to the Authority copies of such instructions, documents, advertisements and other literature referred to in clause 34.8.3.

34.9 Recruitment and Selection Policy

The Service Provider's Recruitment and Selection Policy shall:

34.9.1 set out the Service Provider's approach to achieving best practice in its recruitment and selection practices, including:

34.9.1.1 improving management practices;

34.9.1.2 achieving a balanced workforce, eliminating discrimination and promoting equal opportunities, including proposals for ensuring that its recruitment practices are fair and equal, and comply with all requirements set out within this Contract relating to the promotion of diversity, equality and non-discrimination;

34.9.1.3 dismantling barriers to the recruitment of under-represented groups through the use of positive action, including the use of recruitment especially within the hard-to-reach communities and groups, and the Service Provider shall provide for advertising of posts within the relevant communications networks;

34.9.1.4 ensuring that appointments are made on merit.

34.10 Training and Development Policy

The Service Provider's Training and Development Policy shall:

34.10.1 set out the method in which the Service Provider will ensure compliance with its obligations under clause 34.1 (*Skills and Competencies*), including setting out its approach to:

- 34.10.1.1 ensuring that employees are fully conversant and kept up to date with all relevant Legislation, Guidance, Good Industry Practice and required policies, practices, standards and procedures;
 - 34.10.1.2 proposing mechanisms for the continuous assessment of the training and development needs of all employees;
 - 34.10.1.3 producing an annual training and development plan detailing the training and development initiatives planned for its employees for the forthcoming year, taking into account the assessment activities undertaken under clause 34.10.1.2 above;
 - 34.10.1.4 ensuring that new starters undergo thorough training and development and general induction as required;
 - 34.10.1.5 reviewing and evaluating the effectiveness of training and development activities undertaken by its staff; and
 - 34.10.1.6 demonstrating the application of an effective appraisal system linking training and development activity to performance delivery outcomes;
- 34.10.2 set out the Service Provider's approach to offering apprenticeships and traineeships, and in particular, ensuring engagement with young people the unemployed and hard-to-reach groups in any apprenticeship or traineeship schemes; and
- 34.10.3 set out the Service Provider's approach to supporting the Relevant Employees with sufficient management resource, capability and capacity to ensure that all Relevant Employees meet the standards set out in clause 34.1 (*Skills and Competencies*) above.

34.11 Human Resources Policy

The Service Provider's Human Resources Policy shall:

34.11.1 set out the Service Provider's approach to dignity and respect at work, disciplinary, grievance, disputes, appraisals, attendance and capability, work-life balance and managing change, in compliance with all applicable Legislation and any applicable Authority Policies (where appropriate or where required by Legislation, including TUPE); and

34.11.2 set out the Service Provider's approach to recognising and engaging with relevant trade unions and other relevant employees bodies.

34.12 The Service Provider shall provide the following information to the Authority within one (1) Month of the end of every Contract Year:

34.12.1 the training and development plan produced by the Service Provider under clause 34.10.1.2 and 34.10.1.3, and a report containing details of how the Service Provider has implemented its Training and Development Policy throughout the previous Contract Year, including the number of trainees and apprentices engaged by the Service Provider and details of such apprenticeships/traineeships; and

34.12.2 a report containing details of how the Service Provider has implemented its Recruitment and Selection Policy throughout the previous Contract Year.

34.13 Convictions

Notwithstanding any other provision of this clause 34 (*Service Provider's Personnel*), the Service Provider shall, subject to the Rehabilitation of Offenders Act 1974:

34.13.1 procure that all Personnel and potential Personnel (other than Relevant Employees) are required to disclose any Convictions; and

34.13.2 if reasonably requested by the Authority, provide copies of the records of any Convictions of any Personnel.

34.14 Unsuitable Persons not to be engaged in the Services

Where the Authority, in its sole discretion, believes that any Personnel or potential Personnel is or would be an Unsuitable Person, the Authority may serve written notice on the Service Provider requiring the Service Provider to procure (at the Service Provider's own cost and expense) that such Unsuitable Person is not engaged or

employed directly or indirectly in, or in connection with, the provision of the Services or any part of the Services by the Service Provider or any Key Sub-Contractor. For the avoidance of doubt the Service Provider shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this clause 34.13 (*Convictions*).

34.15 Service Provider's Responsibility

Save as expressly provided in this Contract, the Service Provider shall be entirely responsible for the employment and conditions of service of its Personnel and shall procure that any Key Sub-Contractor is likewise responsible for its Personnel. The Service Provider shall carry out such checks as may be required in order to comply with Section 8 of the Asylum and Immigration Act 1996.

35. HEALTH AND SAFETY

35.1 Health and Safety

The Service Provider shall comply with and shall procure that all Service Provider Parties shall comply with:

- 35.1.1 all applicable health and safety precautions necessary (whether required by Legislation, codes of practice or other Guidance or not) for the protection of itself and all Service Provider Parties;
- 35.1.2 all applicable rules, regulations and requirements of statutory or regulatory authorities concerning works and fire prevention;
- 35.1.3 the Service Provider Health and Safety Manual.

35.2 When on a worksite for the purposes of the Services, the Service Provider shall ensure that it and all relevant Service Provider Parties are aware of and comply with the health and safety policy to that site.

35.3 Reporting of Accidents and Unsafe Events

The Service Provider shall:

- 35.3.1 ensure that all accidents to Personnel and/or members of the public which ordinarily require reporting or notification in accordance with the Health and Safety at Work Act 1974 and/or under RIDDOR shall also be reported, as soon as practicable, to the Authority where such relates in any way to the Services or the performance thereof;
- 35.3.2 promptly, upon it becoming so aware, provide the Authority with full details of any significant unsafe event which relates in any way to the Services or the performance thereof, including without limitation any dangerous occurrences to be reported under RIDDOR; and.
- 35.3.3 within ten (10) days of the relevant incident, event, accident, notification or dangerous occurrence, provide to the Authority a copy of any completed RIDDOR notification or report forms that relate to the same and/or a copy of any reports produced by the Service Provider pursuant to the Service Provider Health and Safety Manual from time to time.

35.4 Reasonable Instructions

The Service Provider shall comply with, and shall procure that each Service Provider Party shall comply with:

- 35.4.1 all reasonable instructions given to it by the Authority; and
- 35.4.2 all instructions given to it by police and/or fire officers,

concerning matters arising out of or connected to the Services and representing a danger to persons or property.

35.5 Compliance with Instructions

The Service Provider shall:

- 35.5.1 not be obliged to comply with any instruction of the Authority given pursuant to clause 35.4 (*Reasonable Instructions*), if it is likely, in the reasonable opinion of the Service Provider, to give rise to a breach of this clause 35 (*Health and Safety*); and
- 35.5.2 immediately provide the Authority with full details of why such breach would occur together with details of the Service Provider's proposals for

carrying out the Authority's instruction in an alternative way which, in the Service Provider's reasonable opinion, would not give rise to a breach of this clause 35 (*Health and Safety*).

35.6 Health and Safety Documentation

The Service Provider shall, and shall procure that all sub-contractors shall, retain certificates, approvals, records, performance reports, report systems, controls and/or any other relevant documents relating to health and safety at work relating to or arising from the provision of the Services and in particular the performance of this clause 35 (*Health and Safety*) and any reporting requirements under RIDDOR and shall, if reasonably requested by the Authority, provide copies to the Authority of all such certificates, approvals, records, reports, systems, controls and/or other documents.

35.7 Monitoring Health and Safety Performance

The Service Provider shall, and shall procure that its sub-contractors shall, ensure that its general health and safety performance on all Work Sites is monitored and audited (either using the Service Provider's own resources or an independent third party, at the discretion of the Service Provider) and a report of such monitoring is made available to the Authority on a regular basis in accordance with the provisions of schedule 10 (*Monitoring*).

35.8 Authority's Obligations

The Authority shall be responsible for the observance by itself and all Authority Parties of all applicable health and safety precautions necessary (whether required by Legislation or not) for the protection of the Authority and all Authority Parties.

35.9 Authority

If the Authority is of the opinion that the Service Provider is in breach of the requirements of this clause 35 (*Health and Safety*) it may take such steps as it deems fit, including without limitation, providing information to the Health and Safety Executive.

36. CDM REGULATIONS

36.1 CDM Regulations - Service Provider to act as Client

In respect of the CDM Regulations:

- 36.1.1 the Parties hereby elect that for the purposes of the CDM Regulations the Service Provider shall be treated as the only Client in respect of the Project pursuant to Regulation 8 of the CDM Regulations;
- 36.1.2 the Service Provider shall ensure that all sub-contractors are aware of such election and warrants to the Authority that it is competent and has capacity to perform the duties imposed on a Client by the CDM Regulations and shall not at any time terminate, withdraw or derogate in any manner from its declaration or its acceptance of its responsibilities as Client;
- 36.1.3 the Service Provider shall within five (5) Business Days of receipt from any CDM Co-ordinator appointed pursuant to the CDM Regulations deliver to the Authority the Health and Safety File; and
- 36.1.4 as between the Service Provider and the Authority, the Service Provider shall be entirely responsible for the safety and any design which forms part of the Services and for the adequacy, stability and safety of all site operations and methods of construction.

36.2 Compliance with CDM Regulations

The Service Provider shall observe, perform and discharge or shall procure the observance, performance and discharge of:

- 36.2.1 all the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Project (subject to clause 36.2.3);
- 36.2.2 any obligations incumbent on the Client under any Code of Practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work Act 1974 issued in connection with the CDM Regulations; and
- 36.2.3 notwithstanding the election made under clause 36.1.1, the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 8 of

the CDM Regulations, to remain with the Authority and in particular Regulations 5(i)(b), 10(1), 15 and 17(1).

37. SURVEYS AND INSPECTIONS

- 37.1 Without prejudice to the provisions of clause 38 (*Monitoring of Surveys and Inspections*) and clause 72 (*Step-In*) the Service Provider shall comply with the provisions of PS2.
- 37.2 The Service Provider will for Year 1 of the Contract prepare the following strategies and plans by the dates set out in schedule 21 (*Service Provider Programmes and Quality Plans*) in accordance with the relevant provisions of schedule 2 (*Output Specification*):
- 37.2.1 a Carbon Plan in accordance with Performance Requirement 1.4.8 of Performance Standard 1 (Network Performance);
 - 37.2.2 a Water Plan in accordance with Performance Requirement 1.4.9 of Performance Standard 1 (Network Performance);
 - 37.2.3 a Trimming and Dimming Strategy in accordance with Performance Requirement 1.4.10 of Performance Standard 1 (Network Performance);
 - 37.2.4 not used;
 - 37.2.5 a Demobilisation Plan in accordance with Performance Requirement 1.4.11 of Performance Standard 1 (Network Performance);
 - 37.2.6 a Highway Safety Inspection Strategy in accordance with Performance Requirement 2.4.1 (Surveys and Inspections) of Performance Standard 2;
 - 37.2.7 a Highway Condition Survey Strategy in accordance with Performance Requirement 2.4.2 (Surveys and Inspections) of Performance Standard 2;
 - 37.2.8 a Skid Resistance Survey Strategy in accordance with Performance Requirement 2.4.3 (Surveys and Inspections) of Performance Standard 2;
 - 37.2.9 a Highway Service Inspection Strategy in accordance with Performance Requirement 2.4.4 (Surveys and Inspections) of Performance Standard 2;

- 37.2.10 a Structures Inspection and Monitoring Strategy in accordance with Performance Requirement 2.4.5 of Performance Standard 2 (Surveys and Inspections);
- 37.2.11 a Structures Assessment Strategy in accordance with Performance Requirement 2.4.6 of Performance Standard 2 (Surveys and Inspections);
- 37.2.12 a Scour Assessment and Inspection Strategy in accordance with Performance Requirement 2.4.7 of Performance Standard 2 (Surveys and Inspections);
- 37.2.13 a Further Management Strategy in accordance with the Performance Requirement 2.4.7 of Performance Standard 2 (Surveys and Inspections);
- 37.2.14 a Mechanical and Electrical Inspection Strategy for Yar Bridge in accordance with Performance Requirement 2.4.8 of Performance Standard 2 (Surveys and Inspections);
- 37.2.15 a Road Marking and Road Studs Strategy in accordance with Performance Standard PS 2.4.9 of Performance Standard 2 (Surveys and Inspections);
- 37.2.16 a Geotechnical Inspection and Monitoring Strategy in accordance with Performance Requirement 2.4.10 of Performance Standard 2 (Surveys and Inspections);
- 37.2.17 an Apparatus Structural and Mechanical Inspection Strategy in accordance with Performance Requirement 2.4.11 of Performance Standard 2 (Surveys and Inspections);
- 37.2.18 a Powered Apparatus Inspection Strategy in accordance with Performance Requirement 2.4.12 of Performance Standard 2 (Surveys and Inspections);
- 37.2.19 an Outage Detection Cycle Strategy in accordance with Performance Requirement 2.4.13 of Performance Standard 2 (Surveys and Inspections);
- 37.2.20 a Photometric Performance Inspection Strategy in accordance with Performance Requirement 2.4.14 of Performance Standard 2 (Surveys and Inspections);

- 37.2.21 a Site Specific Traffic Signals Risk Assessment Strategy in accordance with Performance Requirement 2.4.15 of Performance Standard 2 (Surveys and Inspections);
- 37.2.22 a CCTV Points Inspection Strategy in accordance with Performance Requirement 2.4.16 of Performance Standard 2 (Surveys and Inspections);
- 37.2.23 a Protective Paint System Inspection Strategy in accordance with Performance Requirement 2.4.17 of Performance Standard 2 (Surveys and Inspections);
- 37.2.24 a Network Integrity Inspections and Safety Assessment Strategy in accordance with Performance Requirement 2.4.18 of Performance Standard 2 (Surveys and Inspections);
- 37.2.25 a Highway Asset Management Plan in accordance with Performance Requirement 1.4.2 of Performance Standard 1 (Network Performance);
- 37.2.26 an Arboricultural Inspection Strategy in accordance with Performance Requirement 2.4.19 of Performance Standard 2 (Surveys and Inspections);
- 37.2.27 a Mechanical and Electrical Inspection Strategy for Pumping Stations in accordance with Performance Requirement 2.4.20 of Performance Standard 2 (Surveys and Inspections);
- 37.2.28 a Planned Maintenance Strategy for all Powered Apparatus in accordance with Performance Requirement 4.4.9 of Performance Standard 4 (Network Standard);
- 37.2.29 a Traffic Signs Planned Maintenance Strategy in accordance with Performance Requirement 4.4.11 of Performance Standard 4 (Network Standard);
- 37.2.30 a Geotechnical Management Plan in accordance with Performance Requirement 4.4.17 of Performance Standard 4 (Network Standard);
- 37.2.31 an Annual Landscape Action Plan in accordance with Performance Requirement 5.4.1 of Performance Standard 5 (Environment);

- 37.2.32 a Five Year Landscape Management Strategy in accordance with Performance Requirement 5.4.1 of Performance Standard 5 (Environment);
- 37.2.33 an Annual Tree Management Plan in accordance with Performance Requirement 5.4.6 of Performance Standard 5 (Environment);
- 37.2.34 a Street Cleansing Strategy in accordance with Performance Requirement 5.4.13 of Performance Standard 5 (Environment);
- 37.2.35 an Abandoned Vehicles Strategy in accordance with Performance Requirement 5.4.15 of Performance Standard 5 (Environment);
- 37.2.36 a Civil Emergency Plan in accordance with Performance Requirement 6.4.1 of Performance Standard 6 (Emergency and Reactive Response);
- 37.2.37 a Highway Emergency Plan in accordance with Performance Requirement 6.4.2 of Performance Standard 6 (Emergency and Reactive Response);
- 37.2.38 a Flood Response Plan in accordance with Performance Requirement 6.4.6 of Performance Standard 6 (Emergency and Reactive Response);
- 37.2.39 a Yar Bridge Emergency Strategy and Yar Bridge Emergency Plan in accordance with Performance Requirement 6.4.8 of Performance Standard 6 (Emergency and Reactive Response);
- 37.2.40 a Winter Services Plan in accordance with Performance Requirement 7.4 of Performance Standard 7 (Winter Service);
- 37.2.41 a NRSWA Inspection and Management Strategy in accordance with Performance Requirement 9.4.1 of Performance Standard 9 (Network Management);
- 37.2.42 a Specific Licences Management and Inspection Strategy in accordance with Performance Requirement 9.4.8 of Performance Standard 9 (Network Management);
- 37.2.43 a Service Improvement Plan in accordance with Performance Requirement 10.4.8 of Performance Standard 10 (Contract Management and Customer Interface);

- 37.2.44 a Communication Strategy in accordance with Performance Requirement 10.4.15 of Performance Standard 10 (Contract Management and Customer Interface);
- 37.2.45 an Annual Equality Impact Assessment in accordance with Performance Requirement 1.4.12.1 of Performance Standard 1 (Network Performance);
- 37.2.46 Quality Plans in accordance with Appendix PS10, Part 6; and
- 37.2.47 a Five Year Tree Replacement Programme in accordance with Performance Requirement 5.4.6 of Performance Standard 5 (Environment).

38. MONITORING OF SURVEYS AND INSPECTIONS

- 38.1 The Service Provider shall notify the Authority of the date, time and location of all inspections, surveys, tests and assessments that it is obliged to carry out pursuant to Performance Standard 2 together with the likely identity of the relevant inspector or surveyor (as the case may be) no later than two (2) Months prior to the date on which each such inspection, survey, test and/or assessment is to take place in accordance with Performance Standard 2.
- 38.2 The Authority or its representative or advisor shall have a right to attend any inspection, survey, test or assessment notified to the Authority pursuant to Performance Standard 2 and the Service Provider shall procure that the relevant inspector or surveyor (as the case may be) shall provide all reasonable assistance to enable the Authority to satisfy itself that such inspection, survey, test or assessment is being carried out in accordance with Performance Standard 2.
- 38.3 When attending at any inspection, survey, test or assessment pursuant to Performance Standard 2, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider and shall comply with any reasonable instructions of the Service Provider in relation to health and safety matters.

38.4 Without prejudice to clause 72 (*Step-In*), where the Service Provider has:

- 38.4.1 failed to commission and/or carry out the surveys, inspections, tests and assessments required pursuant to Performance Standard 2; and
- 38.4.2 such failure has led to the Service Provider incurring two (2) or more adjustments of the same Adjustment Type in relation to the relevant survey or inspection as identified in Performance Standard 2,

the Authority may carry out (or procure to be carried out) such inspections, surveys, tests and/or assessments as the Service Provider has (in the Authority's reasonable opinion) failed to adequately carry out pursuant to Performance Standard 2, provided that this right may not be exercised more often than the minimum frequency with which the Service Provider is obliged to carry out such inspections, surveys, tests and/or assessments in accordance with Performance Standard 2.

38.5 The Authority shall consider in good faith any reasonable request by the Service Provider for the inspection, survey, test and/or assessment to be carried out on a different date to that notified in accordance with clause 38.1 if such request is made at least fifteen (15) Business Days prior to such notified date.

38.6 If the Authority exercises its rights pursuant to clause 38.4:

- 38.6.1 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, tests and/or assessments; and
- 38.6.2 the Authority shall be entitled to be reimbursed by the Service Provider for the cost of such inspections, surveys, tests and/or assessments as are carried out by or on behalf of the Authority and such reimbursement shall be made by way of adjustment to the Monthly Payment in accordance with the provisions of clause 56 (*Payment and Financial Matters*).

38.7 When carrying out any inspection, survey, test and/or assessment pursuant to clause 38.4, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Service Provider.

- 38.8 Where the Authority carries out any inspection, survey, test and/or assessment pursuant to clause 38.4, it shall provide the Service Provider, as soon as reasonably practicable, with all unprocessed data, reports and results generated following such inspection, survey, test and/or assessment and the Service Provider shall, within twenty (20) Business Days of receipt of such reports and results, prepare and submit to the Authority (at the Service Provider's cost) such revised Service Provider Programmes as it considers necessary (having regard to its obligations in clause 29 (*Obligation to Provide the Service and Performance Standards*)) in accordance with the relevant provisions of clause 21 (*Service Provider Programmes*) and Performance Standard 2 and submit the same to the Authority pursuant to schedule 20 (*Review Procedure*).
- 38.9 In the event that the Service Provider fails to submit revised Service Provider Programmes in accordance with clause 38.8, the Authority may carry out any rectification and/or maintenance work necessary to comply with schedule 2 (*Output Specification*) and may recover the cost of such rectification and maintenance work from the Service Provider by way of an adjustment to the Monthly Payment pursuant to the provisions of clause 56 (*Payment and Financial Matters*) where the adjustments the Authority may be entitled to make in respect of the same are insufficient to cover the cost of such rectification and/or maintenance work.

39. CIVIL EMERGENCIES

- 39.1 The Service Provider shall provide a Civil Emergency Plan to the Authority in compliance with Appendix PS6 of schedule 2 (*Output Specification*) no later than one (1) Month prior to the commencement of each Contract Year following the first Contract Year and such Civil Emergency Plan shall be uploaded to the Management Information System and shall include a copy of any Risk Assessments used in the development of the revised strategy or plan.

39.2 The Service Provider shall participate in and assist the Authority and/or the Emergency Services in the undertaking of any Civil Emergency Exercise.

39.3 In the event of a Civil Emergency the following requirements shall be complied with:

39.3.1 the directions of the relevant Civil Emergency Declaration and the provisions of Appendix PS 6 of schedule 2 (*Output Specification*) within the timescales set out in the plan;

39.3.2 the Service Provider's planning obligations as set out in Appendix PS6 of schedule 2 (*Output Specification*) within the timescales set out in the plan.

39.4 Where the Service Provider is required to provide Civil Emergency Services in accordance with the provisions of clause 39.3, the Service Provider shall include in the following Draft Monthly Payment Report all amounts for such Civil Emergency Services which shall be calculated in accordance with the relevant rates set out in the Catalogue at Appendix 4 to schedule 17 (*Change Protocol*).

40. THIRD PARTY AGREEMENTS

40.1 Authority sub-contracts Third Party Agreements to Service Provider

With effect from the Service Commencement Date, the Authority hereby sub-contracts to the Service Provider the obligation to observe and perform all obligations of the Authority under the Third Party Agreements (other than the Retained Obligations) arising after the Service Commencement Date and the Service Provider shall observe and perform the same and indemnify and (subject to clause 67.2 (*Limitation of Liability*)) hold the Authority harmless from and against:

40.1.1 all Indemnified Liabilities arising out of or in relation to the Delegated Obligations or the performance, defective performance or failure to perform the Delegated Obligations to the extent due for performance after the Service Commencement Date; and

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

40.1.2.1 the defective performance of the Service Provider or the failure of the Service Provider to observe or perform the Delegated Obligations including the Authority's internal costs of satisfying the Delegated Obligations in place of the Service Provider (where, following such failure or defective performance and in its absolute discretion it elects to do so) and a fair apportionment of the cost of any employees or other resources committed to so doing; and

40.1.2.2 the inability of the Authority to observe or perform the Retained Obligations or to exercise the Retained Rights, or any increase in the costs or expenses incurred in observing or performing the Retained Obligations, to the extent arising from the failure of the Service Provider to observe and perform the Delegated Obligations in accordance with their terms.

40.2 Assignment of benefit of Delegated Rights to the Service Provider

The Authority hereby assigns to the Service Provider the benefit of the Delegated Rights, and the Service Provider shall, if requested by the Authority perform the Delegated Rights, and the Service Provider shall observe the proper exercise of the same and indemnify and, subject to clause 67.2 (*Limitation of Liability*) hold the Authority harmless from and against:

40.2.1 all Indemnified Liabilities arising out of or in relation to improper exercise or a failure to exercise the Delegated Rights; and

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

40.2.2.1 the exercise by the Service Provider of the Delegated Rights; and

40.2.2.2 the inability of the Authority to observe or perform the Retained Obligations or to exercise the Retained Rights, or any increase in the costs or expenses incurred in observing or performing the Retained Obligations, to the extent arising from the failure of the Service Provider to exercise the Delegated Obligations in accordance with their terms and having due regard to the respective rights and obligations of the Parties under this Contract.

40.3 Retained Obligations and Retained Rights

The Authority shall observe and perform the Retained Obligations and shall properly exercise the Retained Rights and nothing in this Contract shall have the effect of removing or otherwise prejudicing the exercise of the Retained Rights.

40.4 Informing other parties

The Authority shall, within fifteen (15) Business Days of the Service Commencement Date, inform each of the other parties to the Third Party Agreements that the Service Provider is the assignee of the Delegated Rights and is to perform the Delegated Obligations on behalf of the Authority.

40.5 Performance of Delegated Obligations

The Service Provider may observe and perform the Delegated Obligations through such employees, agents or sub-contractors as it reasonably considers appropriate to secure the observance and performance of the same but shall not thereby be released from any obligation to the Authority under this clause 40 (*Third Party Agreements*) or to any other party to the Third Party Agreements.

40.6 Consistency of exercise

Each Party shall exercise all of its rights and obligations under this Contract, whether related to the Delegated Obligations, the Delegated Rights, the Retained Obligations, the Retained Rights or otherwise, in a manner consistent with the observance and performance of the Delegated Obligations and the Retained Obligations (as appropriate) and so as to avoid putting the other Party in breach of either of the same.

40.7 Termination, release, variation etc of Third Party Agreements

Neither Party shall without the other Party's prior written approval (such approval not to be unreasonably withheld or delayed):

- 40.7.1 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;
- 40.7.2 release, waive, settle, compromise or otherwise prejudice or vary any rights or claims which the other Party may have under any of the Third Party Agreements; or
- 40.7.3 vary or agree or purport to vary the terms of any of the Third Party Agreements.

40.8 New Third Party agreements

The Service Provider shall not, without the prior written consent of the Authority, enter into with any Third Party any commitment to provide or procure for the benefit of land or buildings or for such Third Party, the provision or procurement of any works relating to the Project Network.

40.9 Enforcement of Authority's rights and dispute resolution

The Authority shall:

- 40.9.1 subject to clause 40.9.3, at the request of the Service Provider take such steps as the Service Provider may reasonably request to enforce the Authority's rights and powers under the Third Party Agreements to the extent reasonably required by the Service Provider to perform its obligations under this Contract;
- 40.9.2 subject to clause 40.8 (*New Third Party agreements*), permit the Service Provider to engage in such negotiations and conduct such disputes with any other party to the Third Party Agreements as the Service Provider reasonably requires to perform its obligations under this Contract including by conducting such court, arbitration or other proceedings as the Service Provider may reasonably consider necessary for such purpose; and

40.9.3 be indemnified and secured to its reasonable satisfaction by the Service Provider against all Indemnified Liabilities incurred by virtue of or in relation to such matters as are referred to in clauses 40.9.1 and 40.9.2 above, and the Service Provider shall keep the Authority informed of the progress of any such enforcement action, negotiations, disputes or proceedings as are referred to in clause 40.9.2.

41. CALL-OFF SERVICES

The Service Provider shall carry out the Call-Off Services in accordance with the provisions of schedule 13 (*Call-Off Services*) and schedule 2 (*Output Specification*).

42. BEST VALUE AND CONTINUOUS VALUE FOR MONEY

42.1 The Service Provider acknowledges that:

42.1.1 the Authority is subject to the Best Value Duty;

42.1.2 the provisions of this clause 42 (*Best Value and Continuous Value for Money*) are intended to assist the Authority in discharging its Best Value Duty in relation to the Services; and

42.1.3 the provisions of this clause 42 (*Best Value and Continuous Value for Money*) shall apply in respect of the obligations of the Service Provider and the Authority concerning the Best Value Duty and the 1999 Act generally.

42.2 The Service Provider shall, throughout the Term, in fulfilling its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

42.3 The Service Provider shall undertake or refrain from undertaking such actions as the Authority shall request (acting reasonably) to enable the Authority to comply with Part 1 of the 1999 Act, including:

42.3.1 complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including:

- 42.3.1.1 facilitating any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services and/or other provisions of this Contract including any inspection undertaken with a view to verifying the Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
- 42.3.1.2 facilitating the Authority in preparing any statement, in response to an Authority's auditor's request or report;
- 42.3.1.3 assisting the Authority in relation to any action taken by the Secretary of State;
- 42.3.1.4 assisting the Authority to comply with any direction given by any Relevant Authority; and
- 42.3.2 enabling the Authority to report on the National Indicators;
- 42.3.3 co-operating in audits and other Best Value Inspections; and
- 42.3.4 permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - 42.3.4.1 the Project Network for the purpose of observing the provision of the Services;
 - 42.3.4.2 any document or data relating to the Services; and
 - 42.3.4.3 any Service Provider Party.
- 42.4 complying with all requests by the Authority to procure the attendance of specific officers or employees of the Service Provider or any sub-contractor (or any of its or their sub-contractors) at any meetings of the Authority at which the Services are to be discussed (but not, otherwise in exceptional circumstances, more than twelve (12) times in any one (1) Contract Year), in addition to any other

meetings which are held pursuant to other requirements contained within this Contract.

42.5 permitting the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with Part 1 of the 1999 Act, in connection with the exercise of its statutory powers and duties, at all reasonable times and upon reasonable notice, access to:

- 42.5.1 the Project Network;
- 42.5.2 any document or data relating to the Services; and
- 42.5.3 any Service Provider Party.

42.6 Customer Satisfaction Survey

- 42.6.1 The Service Provider shall, not less than four (4) months prior to the end of each Contract Year undertake (or procure the undertaking of) a customer satisfaction survey ("**Customer Satisfaction Survey**") which shall include the assessment of the level of satisfaction among members of the public (to be chosen via a method agreed with the Authority) with the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services.
- 42.6.2 The Service Provider shall include the summary of the results of the Customer Satisfaction Survey in the Annual Service Report and shall take into account the results of the Customer Satisfaction Survey in developing the Annual Service Plan.
- 42.6.3 The Customer Satisfaction Survey shall be undertaken by means of distributing to members of the public within ten (10) Business Days of each Customer Satisfaction Survey Date a questionnaire (or such other survey method as is agreed between the Parties) in a form and with such content to be agreed with the Authority (acting reasonably).
- 42.6.4 The content of the questionnaire referred to in clause 42.6.3 (or other material to be used for any other survey method as is agreed pursuant to clause 42.6.3)

and the method of undertaking the Customer Satisfaction Survey shall comply with all applicable Legislation and Guidance.

- 42.6.5 The Authority shall provide reasonable assistance and information (subject to compliance with all Legislation) to the Service Provider to enable the Service Provider to undertake the Customer Satisfaction Survey.
- 42.6.6 Within forty (40) Business Days of each Customer Satisfaction Survey Date, the Service Provider shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Service Provider) as the Authority shall require.
- 42.6.7 Notwithstanding the above obligations, the Service Provider shall use all reasonable endeavours, to assist the Authority in discharging its statutory duty under section 3A of the 1999 Act to involve local persons in the exercise of its functions as a Best Value Authority.

42.7 Annual Service Report and Annual Service Plan

- 42.7.1 Without prejudice to any other provision in this Contract the Service Provider shall, no later than the date specified in Performance Standard 10, provide to the Authority a written report ("**Annual Service Report**") in accordance with the requirements of schedule 2 (*Output Specification*).
- 42.7.2 The Service Provider shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may require (acting reasonably) in order to verify and audit the information and other material contained in the Annual Service Report.
- 42.7.3 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services and/or other provisions of this Contract may be provided, performed or delivered more effectively, efficiently and economically having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve a written notice upon the Service Provider (a "**Best Value Notice**") stating the nature and timing of the changes to the

provision, performance or delivery of the Services (or the relevant part thereof) which the Authority may require.

42.7.4 The Service Provider shall, within fifteen (15) Business Days of the date of receipt of the Best Value Notice, provide the Authority at its own cost with a written statement ("**Annual Service Plan**") containing the Service Provider's proposals for achieving the change to the Services (or the relevant part thereof) in accordance with the Best Value Notice and detailing the increase or decrease of costs of the Service Provider.

42.7.5 As soon as practicable after the Authority receives the Annual Service Plan, the Parties shall discuss and seek to agree (acting reasonably) the issues set out in the Annual Service Plan. In such discussions the Authority may update the Best Value Notice and issue the updated Best Value Notice to the Service Provider, in which case the Service Provider shall, as soon as practicable, and in any event not more than fifteen (15) Business Days after the receipt of such updated Best Value Notice, notify the Authority of any consequential changes to the Annual Service Plan.

42.7.6 If the Parties cannot agree on the contents of the Annual Service Plan then either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.

42.7.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the Dispute Resolution Procedure the Authority shall:

42.7.7.1 confirm in writing the Annual Service Plan; or

42.7.7.2 withdraw in writing the Best Value Notice,

provided that the Authority may (at its discretion) choose to confirm part only of the Annual Service Plan to be implemented and to withdraw the Best Value Notice in respect of the other aspects of the Annual Service Plan.

42.7.8 If the Authority either withdraws the Best Value Notice or does not confirm the Annual Service Plan in writing within thirty (30) Business Days of the Annual Service Plan having been agreed or otherwise determined pursuant to

the Dispute Resolution Procedure then the Annual Service Plan and the Best Value Notice shall be deemed to have been withdrawn.

42.7.9 If the Authority confirms the Best Value Notice (or any part thereof) pursuant to clause 42.7.7 the Service Provider shall promptly implement the proposals contained in the Best Value Notice and to the extent that the implementation of such proposals results in an increase or a decrease in the costs of the Service Provider there shall be a deemed Authority Change and the Unitary Charge shall thereafter be adjusted in accordance with clause 65 (*Financial Adjustments*).

42.7.10 Within 10 Business Days of the Authority confirming the Best Value Notice pursuant to clause 42.7.7:

42.7.10.1 the Authority shall send to the Service Provider the written amendments to schedule 2 (*Output Specification*) and the other provisions of the Contract (which shall be in accordance with Good Industry Practice); and

42.7.10.2 notwithstanding clause 51 (*Amendments to Method Statements*), the Service Provider shall send to the Authority the written amendments to the Method Statements,

to reflect the contents of the Best Value Notice.

42.7.11 The Parties shall meet within twenty (20) Business Days of the Authority confirming the Best Value Notice pursuant to clause 42.7.7 and endeavour to agree (acting reasonably) the amendments to schedule 2 (*Output Specification*), Method Statements and any other provisions of the Contract in order to reflect the contents of the Best Value Notice. If the Parties fail to agree any such amendments, either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.

42.7.12 The Parties shall comply with the agreed or determined amendments to schedule 2 (*Output Specification*), Method Statements and other provisions of the Contract from the date on which they are agreed or determined.

42.8 Performance Requirement Benchmarking

- 42.8.1 Not less than three (3) months before each Annual Service Report is due under the provisions of schedule 2 (*Output Specification*) the Authority may (at its discretion) notify the Service Provider that it is instigating a Performance Requirement Benchmarking Exercise in relation to schedule 2 (*Output Specification*), and thereafter the Service Provider shall assist the Authority in the Performance Requirement Benchmarking Exercise and clauses 42.8.2 to 42.8.12 shall apply.
- 42.8.2 The Parties agree that any Performance Requirement Benchmarking Exercise shall be carried out in good faith and each Party shall act reasonably in relation to any such Performance Requirement Benchmarking Exercise.
- 42.8.3 If, in the Authority's reasonable opinion, the results of the Performance Requirement Benchmarking Exercise disclose that any relevant Performance Requirement may be improved having regard to the Best Value Duty then the Authority may serve a Best Value Notice on the Service Provider stating the nature of the change to the provision of the Performance Requirement (or the relevant part thereof) which the Authority requires.
- 42.8.4 The Service Provider shall, within twenty (20) Business Days of the date of receipt of a Best Value Notice, provide the Authority with a written statement (the "**Performance Requirement Quality Plan**") containing the Service Provider's proposals to achieve the change to the Services and/or other provisions of this Contract (or the relevant part) including such (if any) amendments to schedule 2 (*Output Specification*) as may be required (if any) in accordance with the Best Value Notice and detailing the increase or decrease of costs of the Service Provider.
- 42.8.5 As soon as practicable after the Authority receives the Performance Requirement Quality Plan the Parties shall meet to discuss and endeavour (each acting reasonably) to agree the issues set out in the Performance Requirement Quality Plan. In such discussions the Authority may modify the Best Value Notice, in which case the Service Provider shall, as soon as practicable, and in any event not more than ten (10) Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Performance Requirement Quality Plan.

42.8.6 If the Parties cannot agree on the contents of the Performance Requirement Quality Plan (in whole or in part) then either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.

42.8.7 As soon as practicable after the content (as applicable) of the whole of the Performance Requirement Quality Plan has been agreed or determined pursuant to clauses 42.8.5 or 42.8.6 (as applicable) the Authority shall:

42.8.7.1 confirm in writing the Performance Requirement Quality Plan; or

42.8.7.2 withdraw in writing the Best Value Notice,

provided that the Authority may (at its discretion) choose to confirm part only of the Performance Requirement Quality Plan to be implemented and to withdraw the Best Value Notice in respect of the other aspects of the Performance Requirement Quality Plan.

42.8.8 If the Authority does not confirm the Performance Requirement Quality Plan within one (1) Month of the Performance Requirement Quality Plan having been agreed or determined pursuant to clauses 42.8.5 or 42.8.6 (as applicable) then the Best Value Notice and the Performance Requirement Quality Plan shall be deemed to have been withdrawn.

42.8.9 If the Authority confirms the Performance Requirement Quality Plan (or any part thereof) pursuant to clause 42.8.7.1 the Service Provider shall promptly implement the proposals contained in the Performance Requirement Quality Plan and to the extent that the implementation of such proposals results in an increase or a decrease in the costs of the Service Provider there shall be a deemed Authority Change and the Unitary Charge shall thereafter be adjusted in accordance with clause 65 (*Financial Adjustments*).

42.8.10 Within 10 Business Days of the Authority confirming the Performance Requirement Quality Plan pursuant to clause 42.8.7:

42.8.10.1 the Authority shall send to the Service Provider the written amendments to schedule 2 (*Output Specification*) and the other provisions of the

Contract (which shall be in accordance with Good Industry Practice); and

42.8.10.2 notwithstanding clause 51 (*Amendments to the method statements*), the Service Provider shall send to the Authority the written amendments to the Method Statements,

to reflect the contents of the Performance Requirement Quality Plan.

42.8.11 The Parties shall meet within 20 Business Days of the Authority confirming the Performance Requirement Quality Plan pursuant to clause 42.8.7 and endeavour to agree (acting reasonably) the amendments to schedule 2 (*Output Specification*), Method Statements and any other provisions of the Contract in order to reflect the contents of the Performance Requirement Quality Plan. If the Parties fail to agree any such amendments, either Party may refer the matter for determination in accordance with the Dispute Resolution Procedure.

42.8.12 The Parties shall comply with the agreed or determined amendments to schedule 2 (*Output Specification*), Method Statements and other provisions of the Contract from the date on which they are agreed or determined.

PART I - MONITORING AND REPORTING

43. OBLIGATION TO MONITOR AND REPORT

43.1 Compliance with schedule 10 (*Monitoring*)

The Services shall be monitored in accordance with the provisions of schedule 10 (*Monitoring*).

43.2 Rights of Access

The Authority or a representative of the Authority may:

43.2.1 enter upon any property used by the Service Provider and any Service Provider Party to perform the Services, to inspect the construction, operation and maintenance of the Project and to monitor compliance by the Service Provider with its obligations and the Service Provider shall procure that the Authority is able to exercise such rights of entry, inspection and monitoring;

43.2.2 at all times enter upon any property used by the Service Provider as training or workshop facilities and places where work is being prepared or materials being obtained for the Project, and

43.2.3 the Authority and its representatives shall at all times comply with any health and safety requirements and/or any other reasonable requests of the Service Provider when exercising its rights under this clause 43.2 (*Rights of Access*).

43.3 Service Provider Co-Operation

43.3.1 The Service Provider shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of clause 43.2 (*Rights of Access*) above, subject to the Service Provider's and any relevant Sub-Contractor not being adversely affected and to reimbursement of any reasonable costs or expenses of the Service Provider or Sub Contractor.

43.3.2 If the Authority or its representative causes material damage to any Asset in exercising any right under clauses 43.2 (*Rights of Access*) or 43.3 (*Service Provider Co-Operation*), then the Authority shall be liable to the Service Provider for the reasonable costs directly caused by such damage.

43.4 The Service Provider shall procure that:

43.4.1 the Authority's Representative shall have five (5) Business Days written notice of the time, date and location of and have the right to attend Monthly site and other similar progress meetings held by the Service Provider and/or any Service Provider Party;

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

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

- 43.4.3.1 to perform any obligations or exercise any rights of the Authority under this Contract; or
- 43.4.3.2 to fulfil any statutory functions of the Authority; or
- 43.4.3.3 without limitation to clauses 43.4.3.1 and 43.4.3.2, to conduct any study or trial for the purposes of research initiated by the Authority, provided that any such study or trial shall be conducted in accordance with the provisions of clause 15.1 (*Trials*).

44. HIGHWAYS PFI BOARD

44.1 Objectives of the Highways PFI Board

44.1.1 The overall objectives of the Parties in establishing the Highways PFI Board ("**Highways PFI Board's Objectives**") are as follows:

- 44.1.1.1 to secure a working relationship between those involved in meeting or contributing to the Authority's objectives;
- 44.1.1.2 to assist in effective communications between the Parties, those involved in meeting or contributing to the Authority's objectives and Interested Parties;
- 44.1.1.3 to provide leadership, commitment and motivation;
- 44.1.1.4 to create and maintain a partnering process and team culture as referred to in clause 44.3 (*Partnering*) below, including the establishment of joint working structures pursuant to clause 44.2.1.7 as appropriate;
- 44.1.1.5 to achieve mutually beneficial outcomes for the Parties;
- 44.1.1.6 to assist in giving strategic direction to the management of the Project Facilities and ensure that longer term issues are properly considered; and

44.1.1.7 to ensure that all decisions support the Authority's compliance with its Best Value Duty.

44.1.2 The role of the Highways PFI Board shall be to prepare and agree joint proposals setting out how the Highways PFI Board's objectives are to be achieved, including a consideration of the following matters:

44.1.2.1 facilitate the achievement of the Highways PFI Board's Objectives;

44.1.2.2 promote best whole life cost and optimise network investment decisions;

44.1.2.3 reduce bureaucracy and duplication of effort and enhance efficiency and economy;

44.1.2.4 set optimum targets for year-on-year improvements;

44.1.2.5 have regard to such Liaison Procedures that the Parties may establish from time to time; and

44.1.2.6 review such proposals as determined by the Highways PFI Board but in any event no less than annually.

44.2 Terms of reference of the Highways PFI Board

44.2.1 General

Subject to any financial or contractual limits of delegation disclosed by the representatives of one Party to the other Party, the Highways PFI Board may discuss any matter of relevance to the Project Facilities, this Contract or the Services, including:

44.2.1.1 without prejudice to clause 30 (Inconsistencies relating to the Provision of the Services), considering and producing recommendations to resolve any ambiguities or discrepancies in this Contract;

- 44.2.1.2 making proposals to remove requirements on the Parties or others which are illegal, impossible or both;
- 44.2.1.3 considering and subsequently recommending changes to this Contract and considering any implications (financial or otherwise) which flow from such changes;
- 44.2.1.4 considering all issues related to innovation and agreeing recommendations regarding the implementation and monitoring of any innovation;
- 44.2.1.5 convening and organising workshops and seminars for attendance by the Parties and Interested Parties on issues relevant to the performance of the Services;
- 44.2.1.6 considering the appropriateness of Service Point awards and levels; and
- 44.2.1.7 considering, organising and approving such joint working structures and arrangements as are appropriate and are agreed between the Parties to facilitate the operation of the Services.
- 44.2.1.8 considering the Authority's assessment of the Service Provider's readiness to mobilise and that the Mobilisation Requirements and the Mobilisation Plan have been met and issuing or declining to issue the Acknowledgement of Service.
- 44.2.1.9 considering, approving or rejecting the De-mobilisation Plan.

44.2.2 Specific issues

The Highways PFI Board may review and consider matters in addition to those matters listed in clause 44.2.1 (*General*):

- 44.2.2.1 a Change in Law or in Good Industry Practice which has occurred or is likely to occur and its impact upon the performance of the Services;
- 44.2.2.2 changes in the Authorised Functions;
- 44.2.2.3 proposed Service Provider Programmes;
- 44.2.2.4 the operation of the Service Provider's quality management systems under clause 33 (*Quality Management*);
- 44.2.2.5 the Service Provider's progress in achieving the Milestones;
- 44.2.2.6 health and safety;
- 44.2.2.7 the interface of the Project with the Authority's capital works contracts for new schemes affecting or likely to affect the Project Network; and
- 44.2.2.8 the interface of the Project with the new roads constructed by private developers affecting or likely to affect the Project Network.

44.2.3 Disputes

The Parties may pursuant to clause 83.1 (*Consultation*) refer a Dispute to the Highways PFI Board for discussion and, if possible, resolution.

44.3 Partnering

44.3.1 The Parties agree and acknowledge that the Contract will be best achieved if:

- 44.3.1.1 it is carried out in the spirit of partnership and collaboration; and
- 44.3.1.2 a collaborative working environment is established and maintained for the Term.

44.3.2 The Parties agree and acknowledge that they will in respect of all dealings and communications passing between the Parties in connection with the Contract, use reasonable endeavours to act in such a manner consistent with the Office of Government Commerce's definition of "partnering".

44.3.3 The Parties further agree and acknowledge that they will use reasonable endeavours to act:

44.3.3.1 in good faith;

44.3.3.2 in an open and trusting manner;

44.3.3.3 in a co-operative way;

44.3.3.4 in a way to avoid Disputes by adopting a no blame culture;

44.3.3.5 fairly towards each other;

44.3.3.6 evaluating the skills and respecting the responsibilities of each other; and

44.3.3.7 constructively to resolve any Dispute or difference in a speedy and positive manner.

in carrying out the Services to achieve the objectives referred to in clause 44.3.4 below.

44.3.4 The Parties agree and acknowledge that they will use reasonable endeavours to work together to achieve the following objectives:

44.3.4.1 in connection with the delivery of Services;

(a) to seek excellence;

(b) to adopt a continuous improvement culture;

(c) to encourage innovation and the efficient use of resources;

(d) to maximise the efficiency of their contributions; and

(e) to utilise best and safest practice;

44.3.4.2 in connection with people:

(a) to have consideration for all persons affected by the Services;

(b) to respect all persons;

(c) to promote an enjoyable and healthy working environment;

(d) to provide training and staff development;

(e) to foster tolerance; and

(f) to facilitate openness in dealings;

44.3.4.3 in connection with team working:

(a) to plan and promote clear and effective communication;

(b) to engender a working environment that is conducive to shared problem solving;

(c) to provide mutual support;

(d) to share information where possible and practicable; and

(e) to involve all members of the supply chain including sub-contractors in the partnering concept; and

44.3.4.4 in connection with commercial issues:

(a) to add value and enhance reputations;

(b) to create incentives for maximising the rewards of all Parties;

(c) to provide transparency and certainty of information;

(d) to provide feedback;

- (e) to share opportunities and risk; and
- (f) to maximise employment and training opportunities for the local community, wherever possible.

44.4 Highways PFI Board governance

- 44.4.1 The Highways PFI Board shall comprise two (2) representatives ("**Board Members**") of each of the Parties and shall operate by consensus. If a Board Member shall be unable to attend a meeting he/she shall be able to co-opt a representative to attend the meeting to act in his/her place.
- 44.4.2 At each meeting of the Highways PFI Board one (1) of the Authority's representatives shall act as chair.
- 44.4.3 Locations and timings of meetings shall be decided by the Highways PFI Board (such meetings shall not be less frequent than quarterly but may be more frequent if the Highways PFI Board so agrees).
- 44.4.4 The agenda at each meeting of the Highways PFI Board shall be agreed by Board Members who will be present at the Highways PFI Board meeting.
- 44.4.5 The Highways PFI Board may set up working groups, sub-groups or special interest groups as it agrees.
- 44.4.6 All Board Members shall act in a spirit of mutual trust and co-operation when dealing with matters within the remit of the Highways PFI Board.
- 44.4.7 The Highways PFI Board is not empowered to give instructions or directions to either of the Parties nor to amend the terms of this Contract.

44.5 Monthly Project Meetings

- 44.5.1 A meeting ("**Monthly Project Meeting**") shall occur monthly (or at more frequent intervals as may be required by either Party acting reasonably) throughout the Term attended by the Service Provider Representative and the Authority Representative. The purpose of the Monthly Project Meeting shall be to (without limitation):

- 44.5.1.1 review all Monthly Service Reports produced and submitted in accordance with part 2 of PS10;
- 44.5.1.2 record and review any delays, claims, incidents or issues arising in relation to Relief Events, Compensation Events, Force Majeure Events and Excusing Causes;
- 44.5.1.3 consider and respond to requests for extension of time;
- 44.5.1.4 consider and report on the effect of any Change or Change in Law or discuss the effect of any proposed Change or anticipated Change in Law;
- 44.5.1.5 identify and/or provide any outstanding information required from the Authority and/or the Service Provider in accordance with the provisions of this Contract;
- 44.5.1.6 review the progress of any matters which are (at the time) subject to schedule 20 (*Review Procedure*);
- 44.5.1.7 review conflicts (if any) between and/or in any Project Documents;
- 44.5.1.8 review any matters arising from the Monthly Service Report submitted in accordance with the requirements of this Contract; and
- 44.5.1.9 review and consider any other relevant matter in relation to the Project.

44.5.2 The Authority Representative and the Service Provider Representative may invite attendees who are appropriate in relation to the agenda of the meeting, but having due regard to facilitating good and efficient management of the Monthly Project Meeting and preserving confidentiality in accordance with clauses 89 (*Confidentiality*) and 90 (*Freedom of Information*). The Service Provider Representative will minute the meetings and use reasonable

endeavours to distribute the minutes within five (5) Business Days of the relevant Monthly Project Meeting to the Authority Representative, and any other person agreed between the Parties (but in any event distribute the minutes no later than within ten (10) Business Days of the relevant Monthly Project Meeting).

PART J - SUPERVENING EVENTS

45. RELIEF EVENTS

45.1 Relief Events

If and to the extent that a Relief Event:

- 45.1.1 is the direct cause of a delay in Service Commencement or the completion of a Milestone; and/or
- 45.1.2 adversely affects the ability of the Service Provider to perform any of its obligations under this Contract,

then the Service Provider is entitled to apply for relief from any rights of the Authority arising under clause 75 (*Service Provider Default*).

45.2 Procedure - Relief Events

To obtain relief, the Service Provider must:

- 45.2.1 as soon as practicable, and in any event within ten (10) Business Days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its other obligations give to the Authority a notice of its Claim for relief from its obligations under the Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- 45.2.2 within five (5) Business Days of receipt by the Authority of the notice referred to in clause 45.2.1 above, give full details of the relief claimed; and
- 45.2.3 demonstrate to the reasonable satisfaction of the Authority that:
 - 45.2.3.1 the Service Provider and its Key Sub-Contractors could not have avoided such occurrence or

consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

45.2.3.2 the Relief Event directly caused the delay to the achievement of Service Commencement by the Planned Service Commencement Date or a delay to the achievement of the Service Commencement by the Long Stop Date or a delay to the achievement of any Milestone by the relevant Planned Milestone Completion Date or following such date, a delay to the achievement of that Milestone.

45.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice, without incurring material expenditure; and

45.2.3.4 the Service Provider is using reasonable endeavours to perform its obligations under the Contract.

45.3 Effect of a Relief Event

In the event that the Service Provider has complied with its obligations under clause 45.2 (*Procedure - Relief Events*) above, then:

45.3.1 the Planned Service Commencement Date and/or the relevant Planned Milestone Completion Date or following the Planned Service Commencement Date, the Long Stop Date and/or Planned Core Investment Period Completion Date and/or the Core Investment Period Longstop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

45.3.2 the Authority shall not be entitled to exercise its rights to terminate the Contract under clause 75 (*Service Provider Default*);

45.3.3 nothing in these clauses 45.1 (*Relief Events*) to 45.3 (*Effect of a Relief Event*) shall affect any entitlement of the Authority to make a Performance

Adjustment in accordance with schedule 4 (*Payment Mechanism*) during the period in which the Relief Event is subsisting;

45.3.4 in the event that information required by clause 45.2.1 is provided after the dates referred to in that clause, then the Service Provider shall not be entitled to any relief during the period for which the information is delayed;

45.3.5 the Service Provider shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading;

45.3.6 if the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Service Provider is entitled to any extension to the Planned Service Commencement Date or a Planned Milestone Completion Date or the Long Stop Date or the Planned Core Investment Period Completion Date or the Core Investment Period Longstop Date the Parties shall resolve the matter pursuant to the Dispute Resolution Procedure.

46. COMPENSATION EVENTS

46.1 Compensation Events

If, as a direct result of the occurrence of a Compensation Event:

46.1.1 the Service Provider is unable to achieve Service Commencement by the Planned Service Commencement Date or completion of a Milestone by the relevant Planned Milestone Completion Date or following the Planned Service Commencement Date, the achievement of Service Commencement by the Long Stop Date or completion of the Core Investment Period by the Planned Core Investment Period Completion Date or completion of the Core Investment Period by the Core Investment Period Longstop Date;

46.1.2 the Service Provider is unable to comply with its obligations under this Contract; and/or

46.1.3 the Service Provider incurs costs or loses revenue,

then the Service Provider is entitled to apply for relief from its obligations and/or claim compensation under this Contract.

46.2 Procedure - Compensation Events

Subject to clause 46.3.4, to obtain relief and/or claim compensation the Service Provider must:

46.2.1 as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Service Provider to incur costs or lose revenue, give to the Authority a notice of its Claim:

46.2.1.1 for an extension of time to the Planned Service Commencement Date and/or a Planned Milestone Completion Date and/or the Long Stop Date and/or the Planned Core Investment Period Completion Date and/or the Core Investment Period Longstop Date; and/or

46.2.1.2 payment of compensation; and/or

46.2.1.3 relief from its obligations under the Contract;

46.2.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in clause 46.2.1, give full details of the Compensation Event and the extension of time and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and

46.2.3 demonstrate to the reasonable satisfaction of the Authority that:

46.2.3.1 the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in the achievement of the Planned Service Commencement Date or the relevant Planned Milestone Completion Date and/or breach of the Service Provider's obligations under this Contract or, following the Planned Service

Commencement Date, delay in achieving the Service Commencement Date before the Long Stop Date or delay in the completion of the Core Investment Period by the Planned Core Investment Period Completion Date or a delay in achieving the Core Investment Period before the Core Investment Period Longstop Date; and

46.2.3.2 the Estimated Change in Project Costs and/or loss of revenue, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice.

46.3 Effect of Compensation Event

In the event that the Service Provider has complied with its obligations under clause 46.2 (*Procedure - Compensation Events*):

46.3.1 in the case of a delay, the Planned Service Commencement Date or the relevant Planned Milestone Completion Date or, following the Planned Service Commencement Date, the Long Stop Date and/or the Planned Core Investment Period Completion Date and/or the Core Investment Period Longstop Date shall be postponed by such time as is reasonable for such a Compensation Event, taking into account the likely effect of the delay;

46.3.2 in the case of an additional cost being incurred or revenue being lost by the Service Provider as a result of Capital Expenditure being incurred by the Service Provider at any time the Authority shall compensate the Service Provider for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) in accordance with clause 56 (*Payment and Financial Matters*);

46.3.2A in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue that does not result in Capital Expenditure being incurred by the Service Provider but

which reflects a change in the costs being incurred by the Service Provider after the Service Commencement Date or relevant Planned Milestone Completion Date, the Authority shall compensate the Service Provider in accordance with clause 46.3.7 below by an adjustment to the Annual Unitary Charge;

46.3.3 subject to clause 46.3.3A the Authority shall give the Service Provider such relief from its obligations under this Contract as is reasonable for such a Compensation Event;

46.3.3A in the event that the circumstances arise that render it impossible for the Service Provider (having used its best endeavours) to perform its obligations in respect of:

- 46.3.3A.1 traffic management;
- 46.3.3A.2 Category 1 Defects;
- 46.3.3A.3 Emergency Faults/Highway Emergencies;
- 46.3.3A.4 Civil Emergencies; and
- 46.3.3A.5 the Winter Services,

the Service Provider shall be entitled to relief from such obligations provided that in exercising "best endeavours" the Service Provider shall not be required to do or not to do anything that would place it in breach of its other obligations under the Project Documents.

46.3.4 in the event that information is provided after the dates referred to in clause 46.2.2, then the Service Provider shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the information is delayed;

46.3.5 if the Parties cannot agree the extent of any compensation, delay incurred, relief from the Service Provider's obligations under this Contract or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Service Provider is entitled to any relief under this clause 46.3 (*Effect of Compensation Event*), the Parties shall resolve the matter pursuant to the Dispute Resolution Procedure;

46.3.6 without prejudice to clause 68 (*Insurance*), the Service Provider shall not be entitled to any payment which would not have been due under this Contract but for this clause 46 (*Compensation Events*) to the extent that the Service Provider has not used all reasonable endeavours to recover or has received payment under any policy of insurance required to be maintained by the Service Provider or any Service Provider Party in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Service Provider (or any Service Provider Party) including non-disclosure or under-insurance) or any policy of insurance which the Service Provider has taken out and maintained;

46.3.7 any payment of compensation referred to in clause 46.3.2 above shall be calculated in accordance with clause 65 (*Financial Adjustments*).

47. EXCUSING CAUSES

47.1 Excusing Causes

47.1.1 If as a direct result of an Excusing Cause:

47.1.1.1 the Service Provider is unable to achieve Service Commencement by the Planned Service Commencement Date or the completion of a Milestone by the relevant Planned Milestone Completion Date or following the Planned Service Commencement Date, the achievement of Service Commencement by the Long Stop Date or completion of the Core Investment Period by the Planned Core Investment Period Completion Date or the completion of the Core Investment Period by the Core Investment Period Longstop Date; and/or

47.1.1.2 the Service Provider is unable to comply with its obligations under this Contract, the Service Provider shall be entitled, save where the Excusing Cause has been caused by any act or omission of the Service Provider or any Service Provider Party, to apply for relief from:

- (a) its obligations and from Availability Adjustments and Performance Adjustments being made to the Annual Unitary Charge under this Contract.
- (b) Performance Adjustments and Availability Adjustments being made to the Annual Unitary Charge, to the extent that the Authority would otherwise have been entitled to make such Performance Adjustments and/or Availability Adjustments in respect of a failure by the Service Provider to comply with any of those of its obligations from which the Service Provider is never entitled to be relieved.

47.1.2 In the event that the Service Provider or a Service Provider Party has contributed to the Excusing Cause, the Service Provider's entitlement to relief shall be reduced by an amount proportional to such contribution to the Excusing Cause.

47.2 Procedure - Excusing Causes

Subject to clause 47.3 (*Effect of Excusing Cause*), to obtain relief the Service Provider shall:

47.2.1 as soon as practicable, and in any event not later than ten (10) Business Days after it became aware that the Excusing Cause has caused or is likely to cause delay and/or adversely affect the ability of the Service Provider to perform its obligations under this Contract, give to the Authority a notice of its Claim for relief against Performance Adjustments and Availability Adjustments as appropriate, any extension of time and/or relief from its obligations under this Contract;

47.2.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in clause 47.2.1, give full details of:

47.2.2.1 the Excusing Cause;

47.2.2.2 any extension of time; and

47.2.2.3 any relief against Performance Adjustments and/or Availability Adjustments claimed or other relief claimed; and

47.2.3 demonstrate to the reasonable satisfaction of the Authority that:

47.2.3.1 the Service Provider or any Service Provider Party could not have avoided such occurrence or consequences by steps which they must reasonably be expected to have taken without incurring material additional cost; and

47.2.3.2 the Excusing Cause was the direct cause of the Service Provider being unable to perform the Services or any of its other obligations under this Contract without incurring material additional cost; and

47.2.3.3 the time lost and/or relief from the obligations under this Contract claimed sought could not reasonably be expected to be mitigated or recovered by the Service Provider acting in accordance with Good Industry Practice; and

47.2.3.4 the Service Provider is using reasonable endeavours to perform its obligations under this Contract.

47.3 Effect of Excusing Cause

In the event that the Service Provider has complied with its obligations under clause 47.2 (*Procedure - Excusing Causes*):

47.3.1 the Planned Service Commencement Date or the relevant Planned Milestone Completion Date or, following the Planned Service Commencement Date, the Long Stop Date, the Planned Core Investment Period Completion Date or the Core Investment Period Longstop Date shall be postponed by such time as is reasonable for such an Excusing Cause, taking into account the likely effect of the delay;

47.3.2 the Authority shall not be entitled to exercise its rights to terminate this Contract under clause 75 (*Service Provider Default*);

47.3.3 the Authority shall not be entitled to make Availability Adjustments or Performance Adjustments under schedule 4 (*Payment Mechanism*) arising as a result of the Excusing Cause for the period during which the Excusing Cause is subsisting;

47.3.4 subject to clause 47.3.4A, the Authority shall give the Service Provider such relief as is reasonable for the relevant Excusing Cause

47.3.4A in the event that the circumstances arise that render it impossible for the Service Provider (having used its best endeavours) to perform its obligations in respect of:

- 47.3.4A.1 traffic management;
- 47.3.4A.2 Category 1 Defects;
- 47.3.4A.3 Urgent Defects/Highway Emergencies;
- 47.3.4A.4 Civil Emergencies; and
- 47.3.4A.5 the Winter Services,

the Service Provider shall be entitled to relief from such obligations provided that in exercising "best endeavours" the Service Provider shall not be required to do or not to do anything that would place it in breach of its other obligations under the Project Documents.

47.3.5 Availability Adjustments and Performance Adjustments being made to the Annual Unitary Charge to the extent that the Authority would otherwise have been entitled to make such Availability Adjustments or Performance Adjustments in respect of a failure by the Service Provider to comply with any of those of its obligations from which the Service Provider is never entitled to be relieved;

47.3.6 in the event that information is provided after the dates required by clause 47.2 (*Procedure - Excusing Causes*), then the Service Provider shall not be entitled to any extension of time or relief from its obligations or Availability

Adjustments or Performance Adjustments in respect of the period for which the information is delayed;

47.3.7 if the Parties cannot agree:

47.3.7.1 the extent of any delay incurred;

47.3.7.2 the relief from the Service Provider's obligations under this Contract;

47.3.7.3 the relief from any Availability Adjustments and/or Performance Adjustments which should be made under schedule 4 (*Payment Mechanism*);

47.3.7.4 whether an Excusing Cause has occurred; or

47.3.7.5 that the Service Provider is entitled to any relief under this clause 47.3 (*Effect of Excusing Cause*), the matter shall be determined pursuant to the Dispute Resolution Procedure.

47.3.8 Without prejudice to clause 68 (*Insurance*) and notwithstanding the provisions of clause 47.3 (*Effect of Excusing Cause*) the Authority shall be entitled to:

47.3.8.1 grant no relief to the Service Provider pursuant to clause 47.3 (*Effect of Excusing Cause*) (other than relief granted to the Service Provider pursuant to clause 47.3.2); and/or

47.3.8.2 make Availability Adjustments or Performance Adjustments under schedule 4 (*Payment Mechanism*) arising as a result of the Excusing Cause,

where and to the extent that the Service Provider has not used all reasonable endeavours to recover the loss occasioned to it by such failure to grant relief and/or such Availability Adjustments or Performance Adjustment (as the case may be) or has received payment under any policy of insurance required to be

maintained by the Service Provider or any Service Provider Party in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Service Provider (or any Service Provider Party), including non-disclosure or under-insurance) or any other policy of insurance which the Service Provider has taken out and maintained.

48. AUTHORITY HIGHWAY WORKS

48.1 Major AHW Works, Standard AHW Works and Small AHW Works

48.1.1 Subject to clause 48.2.1, the Authority shall, when proposing to undertake or procure the undertaking of any works and/or management on or about the Project Network, and the Authority does not (in its discretion) require those Project Network Parts to be De-Accrued pursuant to clause 50 (*Accrual and De-Accrual of Project Network Parts*) and schedule 18 (*Accruals and De-Accruals*), register all relevant particulars on the Street Works Register as amended by the Traffic Management Act 2004 with the information prescribed in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007, in accordance with the following timescales:

48.1.1.1 Small AHW Works, at least three (3) Business Days;

48.1.1.2 Standard AHW Works, at least ten (10) Business Days; or

48.1.1.3 Major AHW Works, at least three (3) Months;

prior to the date on which the Authority commences the works described in this clause 48 (*Authority Highway Works*) ("**Authority Work Start Date**").

48.1.2 Where the Service Provider receives notices of any Small AHW Work, Standard AHW Works or Major AHW Works (as the case may be) pursuant to clause 48.1.1, the provisions of clause 49 (*Maintainability Assessment*) shall apply to the Service Provider as if a New Works Notice had been issued pursuant to clause 49.3 (*Maintainability Assessment*) and the Service Provider shall issue a request to the Authority to provide information which the

Authority would provide to the Service Provider pursuant to clauses 49.4.4 to 49.4.6 (*Maintainability Assessment*).

48.1.3 The Authority shall use reasonable endeavours to ensure the information set out at clauses 49.4.4 to 49.4.6 (*Maintainability Assessment*) is made available to the Service Provider as soon as reasonably practicable after it is made available to the Authority.

48.1.4 The Authority shall as soon as practicable after the date on which the relevant works are noted in the Street Works Register and in any event at least:

48.1.4.1 two (2) Business Days in respect of Small AHW Works;

48.1.4.2 five (5) Business Days in respect of Standard AHW Works; and

48.1.4.3 one (1) Month in respect of Major AHW Works,

prior to the Authority Work Start Date notify the Service Provider of the details of any paragraphs of any parts of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract with which the Service Provider shall be deemed to comply in respect of the Project Network Parts within and/or adjacent to the Work Sites in the Project Area for the duration of any Small AHW Works, Standard AHW Works or Major AHW Works (as the case may be) (and in the event of any dispute the relevant Project Network Parts shall be deemed to comply from the date on which the relevant Small AHW Works, Standard AHW Works or Major AHW Works (as the case may be) commence).

48.1.5 The Service Provider shall respond in writing to the Authority to any entry in the Street Works Register registered pursuant to clause 48.1.1, respond to the Authority where such notice is in respect of:

48.1.5.1 Small AHW Works, within at least one (1) Business Day;

48.1.5.2 Standard AHW Works, within at least three (3) Business Days;
or

48.1.5.3 Major AHW Works, within at least ten (10) Business Days,

prior to the Authority Work Start Date ("**Authority Highway Works Response**") setting out:

- 48.1.5.4 any matters which the Authority should have regard to in order to minimise disruption to the Services, provided that the Authority shall not be bound to have regard to such matters;
 - 48.1.5.5 if applicable, any other relevant paragraphs of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract it considers should have been referred to in the notice issued pursuant to clause 48.1.4; and
 - 48.1.5.6 any other matters which the Service Provider is aware of (or should have been aware of had the Service Provider been complying with the other provisions of the Contract) on the Project Network which may impact on the Small AHW Works or the Standard AHW Works or the Major AHW Works (as the case may be).
- 48.1.6 Where the Authority receives a response from the Service Provider pursuant to clause 48.1.5 the Authority shall, as soon as reasonably practicable, and in any event within ten (10) Business Days of the notice received pursuant to clause 48.1.5 notify the Service Provider of whether the Authority considers that the Service Provider shall be deemed to have complied with any other relevant paragraphs of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract (other than those notified pursuant to clause 48.1.4) and notification of such provisions shall apply retrospectively from the date on which the relevant Small AHW Works, Standard AHW Works or Major AHW Works (as the case may be) have prevented compliance with any paragraphs of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract.
- 48.1.7 The Service Provider shall notify the Authority as soon as reasonably practicable, and in any event, within ten (10) Business Days of receipt of the notice issued by the Authority pursuant to clause 48.1.6, if it disagrees with the contents of such notice providing details of the parts of the notice with which it disagrees. The Parties shall meet within a further ten (10) Business Days and shall each use its reasonable endeavours to come to an agreement at that

meeting. If no agreement is reached at the meeting, either Party may refer the matter to the Dispute Resolution Procedure.

48.1.8 The Service Provider shall, subject to clause 48.1.4, be obliged to continue to comply with the provisions of this Contract for the duration of the Small AHW Works or Standard AHW Works or Major AHW Works (as the case may be) until such time as an alternative agreement is reached or determined.

48.1.9 The Authority shall notify the Service Provider within ten (10) Business Days of the date on which the Small AHW Works or Standard AHW Works or Major AHW Works (as the case may be) have been completed ("**Authority Works End Date**"), and from the Authority Works End Date:

48.1.9.1 the provisions of clause 48.1.2 (or as otherwise agreed or determined in accordance with clause 48.1.7) shall cease to apply;

48.1.9.2 the Service Provider shall provide the Services to all Project Network Parts arising from or subject to the Small AHW Works, Standard AHW Works or Major AHW Works (as the case may be); and

48.1.9.3 the provisions of clause 49.23 to 49.34 (*Completion of New Works*) shall apply, as applicable, as if a Works Completion Notice had been issued.

48.1.10 The Authority shall provide the Service Provider with any relevant information set out at clauses 49.23.1 and 49.23.2 (*Completion of New Works*) as soon as reasonably practicable.

Rectification Works

48.1.11 Where it is agreed or determined that any Project Network Parts which form part of the Small AHW Works, Standard AHW Works or Major AHW Works (as the case may be) do not comply with schedule 2 (*Output Specification*), the Authority shall:

48.1.11.1 undertake (or shall procure the undertaking of) the necessary works to the Proposed Project Network Part or Proposed Project

Network Parts so that they meet the requirements of schedule 2 (*Output Specification*) and when the Authority is satisfied that any failures have been rectified, inform the Service Provider of compliance with the requirements of schedule 2 (*Output Specification*);

48.1.11.2 provide a notice requiring the Service Provider to rectify the failure to meet the requirements of schedule 2 (*Output Specification*) and a reasonable timeframe for undertaking such works; or

48.1.11.3 require such Proposed Project Network Part or Proposed Project Network Parts to be deemed to comply with specific paragraphs of schedule 2 (*Output Specification*) for the remainder of the Term or until such time that works are carried out to the Proposed Project Network Part or Proposed Project Network Parts so that they comply with the requirements of schedule 2 (*Output Specification*).

48.1.12 If clauses 48.1.11.1 or 48.1.11.2 apply, the Authority shall (acting reasonably) specify to the Service Provider which paragraphs of schedule 2 (*Output Specification*) the Proposed Project Network Part or Proposed Project Network Parts shall be deemed to comply with and whether any relief should be provided from any other obligations on the Service Provider pursuant to this Contract until:

48.1.12.1 in respect of works carried out pursuant to clause 48.1.11.1, until the date on which the Authority informs the Service Provider that works are completed; or

48.1.12.2 in respect of works carried pursuant to clause 48.1.11.2, until the date by which such works are due to be completed.

48.1.13 The Authority shall pay the Service Provider for the works referred to in clause 48.1.11.2 in accordance with the rates set out in the Catalogue and where no applicable rates are included in the Catalogue, paragraph 2.2 of part 2 of schedule 17 (*Change Protocol*) shall apply (irrespective of whether such payment exceeds the amounts specified in the definition of Low Value

Change). The Service Provider shall, following completion of such works, notify the Authority of the amount calculated in accordance with this clause 48.1.13. The Service Provider shall include such amount in the next Monthly Payment following completion of such works.

Adjustment to the Unitary Charge

48.1.14 With effect from the Authority Works End Date, the Authority shall adjust the Annual Unitary Charge and the Authority shall take into account the following in determining such adjustment, where applicable:

48.1.14.1 the maintenance cost agreed or determined pursuant to clause 49 (*Maintainability Assessment*); or

48.1.14.2 the net effect of any maintenance costs resulting from any Standard AHW Works or Major AHW Works which replace or improve existing Project Network Parts, taking into account:

(a) any analogous Y Values listed in part 2 of schedule 18 (*Accruals and De-Accruals*) or as otherwise agreed pursuant to schedule 18 (*Accruals and De-Accruals*) in respect of the relevant Project Network Part or Project Network Parts in existence immediately prior to the Standard AHW Works or Major AHW Works;

(b) any analogous Y Values in part 2 of schedule 18 (*Accruals and De-Accruals*) or as otherwise agreed pursuant to schedule 18 (*Accruals and De-Accruals*) in respect of the relevant Project Network Part or Project Network Parts in existence immediately following the Standard AHW Works or Major AHW Works; and

(c) any financial savings made by the Service Provider and/or Service Provider Parties for the remainder of the Term arising from works carried out by or on behalf of the Authority which are required in order for the Service Provider to comply with schedule 2 (*Output Specification*),

in respect of Standard AHW Works and Major AHW Works (as the case may be).

- 48.1.15 Any adjustments to the Annual Unitary Charge arising from Small AHW Works shall be dealt with pursuant to clause 65 (*Financial Adjustments*).
- 48.1.16 The definitions of Project Network or Project Network Part (or any relevant element thereof) shall be amended from time to time to the extent necessary as a consequence of the operation of this clause 48 (*Authority Highway Works*).

48.2 AHW Structural Works

- 48.2.1 Where any AHW Works involve a Bridge, Retaining Wall or Subway ("AHW Structural Works"), the provisions of this clause 48.2 shall apply. The Authority shall, when proposing to undertake or procure the undertaking of any AHW Structural Works, and the Authority does not (in its discretion) require those Project Network Parts to cease to be Project Network Parts by means of an Authority Change pursuant to schedule 17 (*Change Protocol*), register all relevant particulars on the Street Works Register, as required by section 53 of NRSWA as amended by the Traffic Management Act 2004 with the information prescribed in The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007, at least three (3) Months prior to the Authority Work Start Date.
- 48.2.2 The Authority shall (acting reasonably) as soon as practicable after the date on which the Structural AHW Works were noted in the Street Works Register, and in any event at least forty (40) Business Days prior to the Authority Work Start Date notify the Service Provider of the details of any paragraphs of any parts of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract with which the Service Provider shall be deemed to have complied in respect of the Project Network Parts within and/or adjacent to the Work Sites in the Project Area for the duration of the AHW Structural Works (and in the event of any dispute such parts of schedule 2 (*Output Specification*) or other provisions of this Contract shall apply from the date on which the relevant works commence).

48.2.3 The Authority shall:

48.2.3.1 notify the Service Provider as soon as reasonably practicable of the date on which the AHW Structural Works are due to commence and provide the Service Provider with a copy of the programme for the AHW Structural Works; and

48.2.3.2 provide the Service Provider with a copy of the Approval in Principle process and use reasonable endeavours to procure that the Service Provider may attend any inspection necessary to enable the Service Provider to satisfy itself as to the future maintenance costs in relation to the AHW Structural Works.

48.2.4 Following registration in the Street Works Register of the AHW Structural Works pursuant to clause 48.2.1, the Service Provider shall submit any revisions required to the Annual Programme pursuant to schedule 20 (*Review Procedure*).

48.2.5 The Service Provider shall, in response to any entry in the Street Works Register registered pursuant to clause 48.2.1, respond to the Authority within at least ten (10) Business Days prior to the Authority Work Start Date with a written response ("**Authority Highway Works Structural Works Response**") setting out:

48.2.5.1 any matters which the Authority should have regard to in order to minimise disruption to the Services, provided that the Authority shall not be bound to have regard to such matters;

48.2.5.2 if applicable, any other relevant paragraphs of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract it considers should have been referred to in the entry in the notice issued pursuant to clause 48.2.1; and

48.2.5.3 any other matters which the Service Provider is aware of on the Project Network which may impact on the AHW Structural Works.

- 48.2.6 Where the Authority receives a response from the Service Provider pursuant to clause 48.2.5 the Authority shall, as soon as reasonably practicable, notify the Service Provider of whether the Authority considers that the Service Provider shall be deemed to have complied with any other relevant paragraphs of schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract (other than those provided pursuant to clause 48.2.2).
- 48.2.7 The Service Provider shall notify the Authority in writing, as soon as reasonably practicable, and in any event, within ten (10) Business Days of receipt of the notice issued pursuant to clause 48.2.6, if it disagrees with the contents of the notice, providing details of the parts of the notice with which it disagrees. The Parties shall meet within a further ten (10) Business Days and use reasonable endeavours to come to an agreement at that meeting. If no agreement is reached at the meeting, either Party may refer such matter to the Dispute Resolution Procedure.
- 48.2.8 The Service Provider shall, subject to clauses 48.2.2 be obliged to continue to comply with the provisions of this Contract for the duration of the AHW Structural Works and may attend any pre-start meetings to familiarise itself with the details and issues concerning the AHW Structural Works (including the materials and methods of construction to be used) and the Authority shall, if the Service Provider requests, procure access for the Service Provider to attend such pre-start meetings. The Service Provider may inspect the AHW Structural Works or any part thereof in order to satisfy itself of the effect of such works on future maintenance costs, and the Authority shall, if the Service Provider so requests, procure timely access for the Service Provider to undertake such inspection (but taking into account the need to avoid any delay in such works). The Service Provider shall notify the Authority in writing as soon as reasonably practicable after the Service Provider discovers upon any inspection made pursuant to this clause 48.2.8 (or otherwise) that the AHW Structural Works will either increase or decrease the net future maintenance costs of the relevant Bridge, Retaining Wall or Subway.
- 48.2.9 The Authority shall notify the Service Provider within thirty (30) Business Days after the date on which the AHW Structural Works have been completed ("**AHW Structural Works End Date**").

48.2.10 From the AHW Structural Works End Date the provisions of clause 48.2.2 (or as otherwise agreed or determined in accordance with clause 48.2.7) shall cease to apply in respect of the AHW Structural Works.

48.2.11 The Service Provider shall use all reasonable endeavours to procure from the relevant contractors as soon as reasonably practicable following completion of the AHW Structural Works:

48.2.11.1 the signed assessment certificate;

48.2.11.2 the relevant CAT Check Certificate in accordance with BD 2/05 Technical Approval of Highways Structures;

48.2.11.3 the signed design certificate;

48.2.11.4 the signed construction certificate;

48.2.11.5 collateral warranties from the contractor who has carried out the strengthening works in favour of the Service Provider;

48.2.11.6 the assignment of the guarantee period from the strengthening contract to the Service Provider;

48.2.11.7 that the relevant contractor updates the relevant Health and Safety Files to comply with CDM Regulations;

48.2.11.8 the return of the Health and Safety File;

48.2.11.9 any as built drawings and design drawings; and

48.2.11.10 design calculations.

48.2.12 The Service Provider shall (acting reasonably), within twenty (20) Business Days of the date of receipt by the Service Provider of the notice referred to in clause 48.2.9, notify the Authority in writing of:

48.2.12.1 whether, as a result of the AHW Structural Works, the Monthly Unitary Charge should be adjusted so as to ensure that the Service Provider is left in no better and no worse position (as that term is defined in clause 65.6.3), the extent of any adjustment,

and detailed reasons as to why the AHW Structural Works will cause a change in future maintenance costs and taking into account, where relevant, any notification given by, or any information arising from any inspection carried out by, the Service Provider pursuant to clause 48.2.8 and comments provided by the Service Provider in any relevant Maintainability Assessment; and

48.2.12.2 whether the Service Provider considers (acting reasonably) that the Project Network Part or Project Network Parts within or adjacent to the Work Site in respect of AHW Structural Works comply with schedule 2 (*Output Specification*) and/or any other relevant provisions of this Contract on the AHW Structural Works End Date, in each case taking into account the condition of such Project Network Part prior to the carrying out of the AHW Structural Works.

48.2.13 If the Authority agrees with the contents of the notification provided by the Service Provider pursuant to clause 48.2.12.1 and/or 48.2.12.2, the Monthly Unitary Charge shall be revised in accordance with clause 65 (*Financial Adjustments*) with effect from the AHW Structural Works End Date.

48.2.14 If the Authority does not agree with the contents of the notification provided by the Service Provider pursuant to clause 48.2.12.1 and/or clause 48.2.12.2, the Authority shall, as soon as reasonably practicable, and in any event, within ten (10) Business Days, notify the Service Provider that it does not agree with the relevant contents of the notification, specifying the reasons. The Parties shall use reasonable endeavours to meet within a further ten (10) Business Days to come to an agreement. If no agreement is reached at that meeting, either Party may refer the matter (including the consequences for the performance by the Service Provider of its obligations under the Project Documents) to the Dispute Resolution Procedure.