

entitled to withdraw the cost (as identified in the Final Report) from the Retention Fund.

- 82.5.3.3 If the Service Provider disputes any of the contents of the Final Report, the Service Provider shall be entitled to refer the matter to the Dispute Resolution Procedure.

PART Q - GENERAL PROVISIONS

83. DISPUTE RESOLUTION PROCEDURE

83.1 Consultation

83.1.1 Any Dispute arising in relation to any aspect of the Contract shall be resolved in accordance with this clause 83 (*Dispute Resolution Procedure*).

83.1.2 Subject to clause 83.1.7 below, if a Dispute arises in relation to any aspect of this Contract, the Service Provider and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the Dispute in accordance with the following:

83.1.2.1 in the first instance, the Parties shall seek to resolve such Dispute at a meeting of the Highways PFI Board occurring after such Dispute has arisen;

83.1.2.2 if the Parties are unable to resolve such Dispute at the relevant meeting of the Highways PFI Board or at such other meeting as may be agreed between the Parties, either Party may by written notice refer such Dispute to the Second Management Level for resolution;

83.1.2.3 if the Parties are unable to resolve such Dispute at the Second Management Level within five (5) Business Days of the date of notice pursuant to clause 83.1.2.2, either Party may by written notice refer such Dispute to the Senior Management Level for resolution; and

83.1.2.4 if the Senior Management Level is unable, or fails, to resolve such Dispute within ten (10) Business Days of the date of notice pursuant to clause 83.1.2.3, the provisions of clause 83.1.7 shall apply.

83.1.3 The management levels ("Management Levels") referred to in clause 83.1.2.2 and 83.1.2.3 are as follows:

Party	Second Management Level	Senior Management Level
Authority	Strategic Manager, Procurement and Contract	Director, Economy and Environment
Service Provider	Commercial Manager, Engineering (Quality) Manager and Finance Manager	Project Director

83.1.4 If any Management Level representative of either Party is unable to attend a meeting, a substitute may attend, provided that such substitute has equivalent seniority, is acceptable to both Parties (each acting reasonably) and is authorised to settle the unresolved Dispute.

83.1.5 The specific format to be used for the resolution of any Dispute through consultation will be left to the reasonable discretion of the relevant Management Level, and may include the preparation and submission of statements of fact or position.

83.1.6 Not Used

83.1.7 Without prejudice to clause 83.1.2 above, either Party may give the other notice at any time of intention to refer the Dispute to adjudication and the Adjudicator shall be selected in accordance with clause 83.2 (*Adjudication*) below.

83.2 Adjudication

83.2.1 The Adjudicator nominated to consider a Dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

83.2.1.1 there shall be two panels of experts, one in respect of operational and maintenance matters (the "**Operational Panel**") and one in respect of financial matters (the "**Financial Panel**"). All the experts on each panel shall be wholly independent of the Service Provider, the Authority, the relevant sub-contractor and any of the major competitors of the Service Provider or relevant sub-contractor;

83.2.1.2 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Service Provider and the Authority. Such appointments shall take place within twenty (20) Business Days of the date of this Contract;

83.2.1.3 the Financial Panel shall be comprised of three (3) experts who shall be appointed jointly by the Service Provider and the Authority. Such appointments shall take place within twenty (20) Business Days of the date of this Contract;

83.2.1.4 if any member of a panel resigns, dies, is declared bankrupt or otherwise ceases to be qualified or capable of acting as an expert during the term of this Contract, a replacement expert shall be appointed by the Service Provider and the Authority as soon as practicable;

83.2.1.5 if the Authority and the Service Provider are unable to agree on the identity of the experts to be appointed to the panel, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) Business

Days of any application for such appointment by either Party;

83.2.1.6 the Adjudicator shall confirm his willingness and ability to act within two (2) days of receipt of referral, failing which the Party who referred the Dispute shall invite the person next in line on the panel to act as the Adjudicator. In the event that the second panel member is unwilling, unable or otherwise fails to confirm acceptance of his appointment as Adjudicator within two (2) days, or if the Parties fail to agree within two (2) days who the second panel member to approach should be, then the referring Party may apply to the President for the time being of the Chartered Institute of Arbitrators who shall within three (3) days of any such application appoint an Adjudicator in accordance with the requirements set out in clauses 83.2.1.1 to 83.2.1.3 to determine the issue; and

83.2.1.7 if at any time when a Party gives notice of his intention to refer a Dispute to adjudication there is for the time being no panel of experts, then the referring Party may apply to the President for the time being of the Chartered Institute of Arbitrators who shall within three (3) days of any such application nominate an Adjudicator in accordance with the requirements set out in clauses 83.2.1.1 to 83.2.1.3 to determine the issue.

83.2.2 Within five (5) Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.

83.2.3 In any event, the Adjudicator shall provide to both Parties his written decision on the Dispute, within twenty eight (28) days of reference (or such

longer period as the Parties may agree after the reference, or forty two (42) days from the date of reference if the Party which referred the Dispute agrees). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to that decision subject to clause 83.3.1(*Arbitration*).

83.2.4 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify. The Adjudicator shall determine whether one Party shall bear the whole or part of the reasonable legal and other costs and expenses of the other Party, relating to the Dispute.

83.2.5 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination. The Adjudicator shall state the reasons for his decision.

83.2.6 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract. The Adjudicator shall have the power to correct his decision so as to remove a clerical or typographical error arising by accident or omission.

83.2.7 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 89 (*Confidentiality*), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

83.2.8 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

83.3 Arbitration

83.3.1 If:

83.3.1.1 there is any Dispute in respect of matters referred to in clause 52 (*Changes to the Service*), clause 53 (*Change in Law*), clause 80.1 (*Compensation Following an Authority Default or a Voluntary Termination*), clause 80.2 (*Compensation following a Service Provider Default*), clause 80.4 (*Compensation following a Force Majeure Event or Uninsurability*), clause 80.3 (*Compensation following a Prohibited Act*); or

83.3.1.2 either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 83.2.3; or

83.3.1.3 both Parties agree,

then either Party may (within thirty (30) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other Party of its intention to refer the Dispute to arbitration in which case the provisions of this clause 83.3 (*Arbitration*) shall apply. Such notification of arbitration served in accordance with this clause 83.3.1 shall invite the other Party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten (10) years' standing (the "**Arbitrator**"). If the Parties are unable within ten (10) Business Days to agree the identity of the Arbitrator either Party may request the President or the Vice President of the Chartered Institute of Arbitrators to make the appointment.

83.3.2 The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one Party to the other. The arbitration shall take place in London.

- 83.3.3 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the Parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.
- 83.3.4 The Arbitrator shall deliver his decision on any matter referred to him within twenty (20) Business Days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) Months (or such other period as the Parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the arbitration will be at the discretion of the Arbitrator.
- 83.3.5 Without prejudice to any other provisions of this Contract and notwithstanding the provisions of clause 83.1 (*Consultation*) either Party shall (following notification to the other Party) have the right, at any time prior to the date on which either Party serves notification of arbitration in accordance with clause 83.3.1, to refer a Dispute to the Courts of England and Wales.

83.4 Related Disputes

- 83.4.1 If any Dispute arising under this Contract raises issues which relate to any dispute between the Service Provider and the Key Sub-Contractor arising under the Key Sub-Contract or otherwise affects the relationship or rights of the Service Provider and/or the Key Sub-Contractor under the Key Sub-Contract ("**Key Sub-Contract Dispute**"), then the Service Provider may include as part of its submissions made to the Adjudicator or to the Arbitrator, where the Dispute is referred to arbitration, submissions made by the Key Sub-Contractor.
- 83.4.2 The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Key Sub-Contract Dispute but the decision of the Adjudicator or the Arbitrator shall, subject to clause 83.3.1, be binding on the Service Provider and the Key Sub-Contractor insofar as it determines the issues relating to the Key Sub-Contract Dispute.

- 83.4.3 Any submissions made by the Key Sub-Contractor shall:
- 83.4.3.1 be made within the time limits applicable to the delivery of submissions by the Service Provider; and
 - 83.4.3.2 concern only those matters which relate to the Dispute between the Authority and the Service Provider under this Contract.
- 83.4.4 Where the Key Sub-Contractor makes submissions in any reference before:
- 83.4.4.1 the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third ($\frac{1}{3}$) by the Authority and two-thirds ($\frac{2}{3}$) by the Service Provider; and
 - 83.4.4.2 the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.
- 83.4.5 The Authority shall have no liability to the Key Sub-Contractor arising out of or in connection with any decision of the Adjudicator or Arbitrator or in respect of the costs of the Key Sub-Contractor in participating in the resolution of any Dispute under this Contract.
- 83.4.6 The Service Provider shall not allow the Key Sub-Contractor access to any document relevant to the issues in dispute between the Authority and the Service Provider save where:
- 83.4.6.1 the document is relevant also to the issues relating to the Key Sub-Contract Dispute; and
 - 83.4.6.2 the Service Provider has first delivered to the Authority a written undertaking from the Key Sub-Contractor addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or

Arbitrator or any professional adviser engaged by the Key Sub-Contractor to advise in connection with the Dispute.

83.4.7 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause 83 (*Dispute Resolution Procedure*) and shall give effect forthwith to every decision of the Adjudicator, the Arbitrator and/or Courts of England and Wales delivered under this clause 83 (*Dispute Resolution Procedure*).

84. INTELLECTUAL PROPERTY RIGHTS

84.1 Use of Service Provider Materials

The Service Provider shall make available to the Authority free of charge (and hereby irrevocably and non exclusively licences the Authority to use) all Service Provider Materials that might reasonably be required by the Authority, and the Service Provider shall obtain all necessary licenses, permissions and consents to ensure that the Service Provider Materials can be made available to the Authority on these terms, for the purposes of:

- 84.1.1 the Authority carrying out its obligations under this Contract, receiving the Services and/or for the purposes of complying with any statutory duties which the Authority may have; and
- 84.1.2 following termination of this Contract, or during a Step-In Event, the provision of services the same as, or similar to, the Services, including where required any activities in relation to the appointment of a replacement service provider to carry out the provision of services the same as, or similar to, the Services,

(together the "**Approved Purposes**"), and in this clause "**use**" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

84.2 Grant of Rights to Authority

The Service Provider:

- 84.2.1 hereby grants to the Authority, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Contract or upon or at any time following termination of this Contract) licence (carrying the right to grant sub-licences) to use all the Intellectual Property Rights which are or become vested in the Service Provider; and
- 84.2.2 shall, where any Intellectual Property Rights are or become vested in a third party, use its reasonable endeavours to procure the grant of a like licence to that referred to in clause 84.2 (*Grant of Rights to Authority*) to the Authority,

in both cases, solely for the Approved Purposes.

84.3 Retention of Rights

The Service Provider shall use all reasonable endeavours to ensure that all Intellectual Property Rights created, brought into existence or acquired during the Term remain vested in the Service Provider throughout the Term and the Service Provider shall enter into appropriate agreements with any Service Provider Party (or other Third Parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

84.4 Ownership of Trade Marks and Data

The Service Provider acknowledges that the Authority is or (where such rights have not yet been created) will be the proprietor of:

- 84.4.1 the Data, all copies thereof and all Intellectual Property Rights in, and to, the Data;
- 84.4.2 the Authority Project Intellectual Property; and
- 84.4.3 the Trade Marks and all Intellectual Property Rights in, and to, the Trade Marks.

84.5 Further assurance by the Service Provider

The Service Provider shall, if and when necessary as required by the Authority, at the Authority's expense sign, execute and do and use its reasonable endeavours to procure that any third party properly executes all documents and does all acts and things as the Authority may reasonably require to fully and effectively enable the Authority to obtain the benefit of the licence (including the right to grant sub-licences) granted under clause 84.1 (*Use of Service Provider Materials*) and/or the rights assigned to it pursuant to clause 84.2 (*Grant of Rights to Authority*).

84.6 Computer Data

To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, the Service Provider shall:

- 84.6.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Service Provider may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and
- 84.6.2 where the Service Provider and/or any Service Provider Party owns the Intellectual Property Rights in any relevant software and such software comprises customisations of other software that is generally available to be licensed (a "**Commercially Available Software Package**"), provided the Authority obtains a licence to use such Commercially Available Software Package, the Service Provider shall provide or shall procure that the relevant Service Provider Party shall provide to the Authority a copy of such customisations (in machine-executable and source code forms) together with the relevant version of the Commercially Available Software Package to which the customisations have been applied.

84.7 Storage of Data

The Service Provider shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in clause 84.5 (*Further assurance by the Service*

Provider) in accordance with Good Industry Practice. Without prejudice to this obligation, the Service Provider shall submit to the Authority Representative for approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Service Provider shall comply, and shall cause all Service Provider Parties to comply, with all procedures to which the Authority's Representative has given its approval. The Service Provider may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority Representative, who shall be entitled to object on the basis set out above.

84.8 Claims Against Authority

Where a Claim or proceedings is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights (other than any Disclosed Information) or because the use of any materials, plant, machinery or equipment in connection with the Works or the Project infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights granted to the Service Provider by or on behalf of the Authority and such use is otherwise than in accordance with the terms of this Contract, the Service Provider shall indemnify the Authority at all times from and against all such Claims and proceedings and the provisions of clause 67 (*Indemnity*) shall apply.

84.9 Licence to use Trade Marks and Data

The Authority hereby grants to the Service Provider a non-exclusive, non-transferable, royalty free licence for the Term to use and copy:

- 84.9.1 (subject to clause 84.10 (*Directions of Authority*)), the Trade Marks;
- 84.9.2 the Data;
- 84.9.3 the Pavement Management System;
- 84.9.4 the Isle of Wight Traffic Model;
- 84.9.4A the Stakeholder Management Tool; and
- 84.9.5 any other Authority Project Intellectual Property,

solely for the purpose of carrying out the Services and/or the Service Provider's obligations pursuant to this Contract in connection with the Project (the "**Permitted Purposes**") and only to the extent necessary for the Permitted Purposes. The licence granted to the Service Provider under this clause 84.9 (*Licence to use Trade Marks and Data*) shall include the right for the Service Provider to grant a sub-licence to any Service Provider Party for the Permitted Purposes (but only to the extent necessary for the Permitted Purposes) on terms no less onerous than those set out in this Contract. The Service Provider shall procure that each such Service Provider Party shall only use and copy such items as permitted by the licence set out in this clause 84.9 (*Licence to use Trade Marks and Data*).

84.10 Directions of Authority

The Service Provider shall observe, and shall procure that all Service Provider Parties observe, all reasonable directions given by the Authority from time to time in relation to the permitted form and manner of use and representation of the Trade Marks.

84.11 Indemnity in favour of the Authority

The Service Provider shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all costs, Claims, Losses, liabilities and expenses which the Authority may sustain or incur, or which may be brought or established against the Authority or by any of its permitted sub-licensees, and which in any case arise out of or in relation to or by reason of any Claim or allegation that:

- 84.11.1 the use or reproduction, modification, merger and adaptation by the Authority or by its permitted sub-licensees of the Service Provider Materials, in accordance with the terms of the licence granted under clause 84.1 (*Use of Service Provider Materials*), infringes any Intellectual Property Rights of any third party; and/or
- 84.11.2 the maintenance, management, provision, carrying out, replacement and operation of the Project Network and/or the Services in accordance with the terms of the licence granted under clause 84.1 (*Use of Service Provider Materials*) and/or 84.2 (*Grant of Rights to Authority*), infringes any Intellectual Property Rights of any Third Party; and/or

84.11.3 the maintenance, management, provision, carrying out, replacement and operation of services analogous to the Services but provided by a third party in accordance with the terms of the licence granted under clause 84.1 (*Use of Service Provider Materials*) and/or 84.2 (*Grant of Rights to Authority*), infringes any Intellectual Property Rights of any Third Party; and/or

84.11.4 the receipt of the Services and/or any services analogous to the Services but provided by a third party infringes any Intellectual Property Rights of any third party,

whether, in each case, such costs, Claim, liabilities and expenses are incurred directly by the Authority or as a result, without limitation, of any indemnity given at any time by the Authority to any sub-licensee upon the same terms mutatis mutandis as this clause 84.11 (*Indemnity in favour of the Authority*).

84.12 Materials which come into being in the future

Where any of the Service Provider Materials referred to in this clause 84 (*Intellectual Property Rights*) has yet to come into existence, the provisions of this clause 84 (*Intellectual Property Rights*) shall apply to such Service Provider Materials immediately upon the same coming into existence.

84.13 Consequences of Termination/Expiry

Upon expiry or earlier termination of this Contract (howsoever caused):

84.13.1 the licence granted by the Authority to the Service Provider pursuant to clause 84.9 (*Licence to use Trade Marks and Data*) shall cease to have effect; and

84.13.2 the Service Provider shall cease use of the Data, the Trade Marks, and all other Authority Project Intellectual Property and return to the Authority or, at the Authority's request, destroy all copies (whether hard copy or electronic) of or embodying any of the Data and/or the Authority Project Intellectual Property (the "**Authority Materials**") in the power, possession or control of the Service Provider or any Service Provider Party and shall, at the request of the Authority, remove all references to the Trade Marks from any items, livery, cars, buildings, letterhead, systems or documents in the power, possession or control of the Service Provider or any Service Provider Party. For this purpose,

the Parties shall (acting reasonably) agree the time and manner of any required action and (in default of such agreement within twenty (20) Business Days after the Expiry Date or the Termination Date (as the case may be)), the Service Provider shall permit the Authority to enter on to the premises at any reasonable time or times, (save in an Emergency), where the Authority Materials are held to identify and remove the Authority Materials.

85. ASSIGNMENT AND SUB-CONTRACTING

85.1 Binding on successors and assigns of the Service Provider and the Authority

This Contract, the Project Documents and the Supplemental Documents shall be binding on, and shall enure to the benefit of, the Service Provider and the Authority and their respective successors and permitted assigns.

85.2 Assignment and Sub-Contracting by Service Provider

Subject to the provisions of clause 85.4 (*Exceptions*) and the provisions of the Sub-Contractor Direct Agreement, the Service Provider shall not, without the prior consent of the Authority, sub-contract, assign, under let, charge, sell, bargain or otherwise deal in anyway with this Contract or any Project Document or any Supplemental Documents, or any part thereof or any benefit or interest therein or thereunder provided that the Service Provider may assign or otherwise dispose of the benefit of this Contract or any Project Document or any Supplemental Documents by way of charge or security (in a form previously approved by the Authority, such approval not to be unreasonably withheld or delayed) for the purposes of raising and/or securing finance for this Project and within ten (10) Business Days of any such assignment or disposal, the Service Provider shall deliver to the Authority a certified copy of the assignment or disposal document.

85.3 Assignment by the Authority

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

- 85.3.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 85.3.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract; or
- 85.3.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Service Provider) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

85.4 Exceptions

The Parties agree that:

- 85.4.1 the provisions of clause 85.2 (*Assignment and Sub-Contracting by Service Provider*) do not apply to the grant of any security for any loan made to the Service Provider under the Financing Agreements; and
- 85.4.2 nothing in this Contract shall prohibit the Service Provider from providing or procuring the provision of the Services from a Key Sub-Contractor whose identity has been notified to the Authority (and who the Authority has approved, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Business Days of notice) prior to the appointment of such replacement Key Sub-Contractor,
- 85.4.3 provided that the Service Provider shall remain primarily and directly liable for the Service Provider's obligations under this Contract;
- 85.4.4 by entering into this Contract, the Authority approves the Sub-Contractor appointed by the Service Provider as at the date of this Contract.

85.5 Refusal of Consent

The Authority shall be entitled to refuse to give consent pursuant to clause 85.4.2 (*Exceptions*) where, in the Authority's reasonable opinion:

- 85.5.1 the replacement Key Sub-Contract does not include provisions acceptable to the Authority (acting reasonably) in respect of the assignment of the

replacement Key Sub-Contract. Provided that reasonable provisions allowing an assignment for the purposes of a bona fide internal restructuring within the proposed replacement Key Sub-Contractor's group of companies shall be deemed to be acceptable to the Authority where the assignee remains within the proposed replacement Key Sub-Contractor's group of companies and that if it ceases to be such a group company there are appropriate obligations requiring the assignee to assign the Key Sub-Contract to a company within the proposed replacement Key Sub-Contractor's group of companies;

- 85.5.2 the replacement Key Sub-Contract contains terms materially less advantageous to the Authority than the Key Sub-Contract;
- 85.5.3 the proposed replacement Key Sub-Contract does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out the Services proposing to be sub-let or sub-contracted to it;
- 85.5.4 the proposed replacement Key Sub-Contractor will not fully and properly perform all the duties, obligations or responsibilities of the Service Provider to be sub-contracted to it;
- 85.5.5 the proposed replacement Key Sub-Contractor is not (so far as applicable to the proposed replacement Key Sub-Contractor's obligations under the replacement Key Sub-Contract) subject to provisions equivalent to those set out in schedule 4 (*Payment Mechanism*);
- 85.5.6 the proposed replacement Key Sub-Contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice;
- 85.5.7 the proposed replacement Key Sub-Contractor does not have the legal capacity, power or authority to become a party to the replacement Key Sub-Contract;
- 85.5.8 the proposed replacement Key Sub-Contract refuses to enter into the Admission Agreement (if applicable); and
- 85.5.9 the proposed replacement Key Sub-Contractor is, or is likely to become, unable to comply with applicable Authority Policies.

85.6 Liability

The sub-contracting by the Service Provider of any of the Services shall not relieve the Service Provider of any liability under this Contract for any breach of the obligations arising under this Contract, or for the actions, negligence and/or defaults by any Service Provider Party. The Service Provider shall not be released from any of its obligations under this Contract as a result of the termination of the appointment of a Key Sub-Contractor for any reason.

85.7 Prohibition

The Service Provider shall procure that no Key Sub-Contractor will sub-contract to any person any of its duties, obligations or responsibilities where one or more of the grounds set out in clause 85.5 (*Refusal of Consent*) apply to the person to whom the work is proposing to be sub-contracted.

85.8 Sub-Contractor Direct Agreement

The Service Provider shall procure that prior to commencement of a replacement Sub-Contract the replacement Sub-Contractor enters into and delivers to the Authority a duly executed replacement Sub-Contractor Direct Agreement in the Agreed Form.

85.9 Key Sub-Contractor Collateral Warranties

The Service Provider shall:

85.9.1 within ten (10) Business Days of the appointment of any Key Sub-Contractor (other than OpCo) deliver Key Sub-Contractor Collateral Warranties from each of its Key Sub-Contractors (other than OpCo) to the Authority; and

85.9.2 in the event that any new or replacement Key Sub-Contractor (other than OpCo) is appointed by the Service Provider during the Term deliver to the Authority (upon such appointment) an agreement in the Agreed Form,

and each such Key Sub-Contractor Collateral Warranty shall be deemed to become a Project Document.

86. CHANGE IN OWNERSHIP OF THE SERVICE PROVIDER AND HOLDCO

86.1 Limitation on Transfers of Shares in the Service Provider

Subject to clause 86.4 (*Share Transfers to be Disregarded*), from the date of this Contract until the expiry of the Core Investment Period (the "Lock-in Period"), the Service Provider shall procure that no Change of Ownership or Shareholder Loan Transfer shall occur.

[REDACTED]



[Redacted text block]

[REDACTED]

86.3 Ownership

The Service Provider represents and warrants to the Authority that at the date of this Contract the legal and beneficial ownership of the Service Provider and Holdco is as set out in schedule 25 (*Service Provider Details*) and that other than Shareholder pre-emption rights no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Service Provider or Holdco.

86.4 Share Transfers to be Disregarded

Any Change of Ownership, whether during or after the Lock-in Period, arising as a consequence of:

- 86.4.1 the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Service Provider or Holdco, provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed); or
- 86.4.2 any change in beneficial or legal ownership of any shares that are listed on a recognised investment exchange (as defined in section 285 of the Financial Services and Markets Act 2000);
- 86.4.3 any transfer of shares in the Service Provider or Holdco by:
 - 86.4.3.1 ParentCo 1 and/or an Affiliate of ParentCo 1 to ParentCo 1 and/or an Affiliate of ParentCo 1; and/or
 - 86.4.3.2 ParentCo 2 and/or an Affiliate of ParentCo 2 to ParentCo 2 and/or an Affiliate of ParentCo 2;

shall be disregarded for the purpose of clause 86.1 (*Limitation on Transfers of Shares in the Service Provider*) and clause 86.2 (*Freedom to Transfer Shares and Shareholder Loan Transfers*). Where, during the Lock-in Period, the holder of any share in the Service Provider or Holdco is an Affiliate of ParentCo 1 or ParentCo 2 and that holder ceases to be an Affiliate of ParentCo 1 or ParentCo 2 it shall be a breach of this clause 86.4 if the shares held by that holder are not within twenty (20) Business Days of that holder ceasing to be an Affiliate of ParentCo 1 or ParentCo 2 transferred to ParentCo 1 or ParentCo 2 or an Affiliate of ParentCo 1 or ParentCo 2.

86.5 Transfer of Shares by way of Security

- 86.5.1 The Service Provider shall inform the Authority as soon as reasonably practicable (and in event, within twenty (20) Business Days) of any Change of Ownership occurring.

86.5.2 The Authority may request that the Service Provider inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority's request for details, of any Change of Ownership.

86.5.3 The Service Provider's obligations under clauses 86.5.1 and 86.5.2 shall, except where a legal transfer of shares has occurred, be limited to the extent of the Service Provider's awareness having made all reasonable enquiries.

87. CHANGES TO FINANCING AGREEMENTS, PROJECT DOCUMENTS AND SUPPLEMENTAL DOCUMENTS

87.1 The Service Provider has provided to the Authority copies of:

87.1.1 the Project Documents as listed in annexure 2 (*Project Documents*),

87.1.2 the Supplemental Documents as listed in annexure 3 (*Supplemental Documents*); and

87.1.3 the Initial Financing Agreements as listed in annexure 4 (*Financing Agreements*).

87.2 No amendment, waiver or exercise of a right under any Financing Agreement, Project Document to which the Authority is not a party or Supplemental Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless:

87.2.1 the Service Provider has obtained the prior written consent of the Authority to such increased liability for the purpose of this clause 87.2; or

87.2.2 it is Permitted Borrowing,

in the event of any conflict between the provisions of this clause 87.2 and any other provision of this Contract the provisions of this clause 87.2 shall prevail.

87.3 The Service Provider shall perform its obligations under, and observe all of the provisions of, the Project Documents and the Supplemental Documents (to the extent that such provisions do not conflict with the terms of this Contract) and shall not:

87.3.1 terminate, agree to the termination of, give notice to terminate or otherwise take action to terminate, repudiate or discharge or secure the termination of any

Project Documents or Supplemental Documents or treat the same as having been terminated, repudiated or discharged;

87.3.2 make or agree to or purport to make any material variation of any Project Document or Supplemental Document;

87.3.3 in any material respect depart from its obligations (or waive, release, settle, compromise, allow to lapse or otherwise prejudice or vary any rights or claims it may have in a material respect), or procure that any counterparty to a Project Document or a Supplemental Document in any material respect departs from its obligations (or waives, releases, settles, compromises, allows to lapse or otherwise prejudice or vary any rights or claims they may have in a material respect), under any Project Document or any Supplemental Document; or

87.3.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document or Supplemental Document,

unless in the case of clause 87.3.1 to 87.3.4 the proposed course of action (and any relevant documentation) has been submitted to the Authority for review and there has been no objection made by the Authority within fifteen (15) Business Days of receipt by the Authority of such submission, or such shorter period as may be agreed by the parties, and provided, in the circumstances specified in clause 87.3.1 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*) that the Service Provider has complied with the provisions of this clause 87 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*). The Authority may only make objection on reasonable grounds.

87.4 All additions, amendments, modifications and/or waivers to this Contract or any other Project Document to which the Authority is a party and notwithstanding any provision to the contrary in any Project Document, shall be binding only if made in writing and signed by a duly authorised representative of each of the parties to this Contract or to the relevant Project Document (as the case may be). All such additions, amendments and/or modifications shall be

dated, numbered and attached or appended to this Contract or, as the case may be, the relevant Project Document.

87.5 Without prejudice to the provisions of this clause 87 (*Changes to financing agreements, project documents and supplemental documents*) and clause 105 (*Refinancing*) the Service Provider shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Service Provider to perform its obligations under the Project Documents or this Contract.

87.6 Without prejudice to this clause 87 (*Changes to financing agreements, project documents and supplemental documents*), if at any time an amendment is made to any Project Document, Financing Agreement or Supplemental Document, or the Service Provider enters into a new Project Document, Financing Agreement or Supplemental Document (or any agreement which affects the interpretation or application of any Project Document, Financing Agreement or Supplemental Document), the Service Provider shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Service Provider.

88. COMPLIANCE WITH LEGISLATION

88.1 Legislation

The Service Provider shall perform its obligations under this Contract and any Project Document, Supplemental Document and Financing Agreement in accordance with all applicable Legislation from time to time in force subject to any consequential effect or otherwise referred to in clause 53 (*Change in Law*).

88.2 Duty to Comply with Legislation

Without prejudice to the generality of clause 53 (*Change in Law*) and clause 88.1 (*Legislation*), the Service Provider shall:

- 88.2.1 give all notices;
- 88.2.2 obtain and maintain in full force and effect; and
- 88.2.3 pay all fees required to be paid or given,

by any Legislation and/or Guidance and/or in relation to all Necessary Consents relevant to the provision of the Services and as required for the proper performance of the Service Provider's duties and obligations under this Contract and any Project Document, Supplemental Document or Financing Agreement.

88.3 Public Health Act

The Service Provider shall be fully responsible for ensuring that the obligations of the Service Provider and the Authority (to the extent that the Service Provider is carrying out such obligations on the Authority's behalf or is acting in accordance with the Authority's reasonable instructions pursuant to this Contract) under the Public Health Act and all other applicable Legislation are complied with insofar as they apply to the performance of the Services and for taking all necessary or appropriate action in relation to the same.

89. CONFIDENTIALITY

89.1 The Parties agree that the provisions of this Contract and each Project Document and Supplemental Document shall, subject to clause 89.2, not be treated as Confidential Information and may be disclosed without restriction and the Service Provider acknowledges that the Authority intends to publish, subject to clause 89.2 below, the Contract and the Project Documents to which the Authority is a party on a website.

89.2 Clause 89.1 shall not apply to provisions of this Contract or a Project Document designated as Commercially Sensitive Information and listed in part 1 of schedule 28 (*Commercially Sensitive Information*) which shall, subject to clause 89.4 (*Excluded Matters*) and

clause 90.6 (*Disclosure of Indicative Lists*), be kept confidential for the periods specified in part 1 of schedule 28 (*Commercially Sensitive Information*).

89.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and the Project Documents and the Supplemental Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

89.4 Excluded Matters

Clauses 89.2 and 89.3 (*Confidentiality*), shall not apply to:

- 89.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;
- 89.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 89 (*Confidentiality*);
- 89.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a Dispute between the Service Provider and any of its sub-contractors;
- 89.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of Law or if not having the force of Law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 89.4.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 89.4.6 any provision of information to:

- 89.4.6.1 the Parties' own professional advisers or insurance advisers; or
 - 89.4.6.2 to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers; or
 - 89.4.6.3 where it is proposed that a person should, or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Service Provider to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Service Provider and/or Holdco in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- 89.4.7 any disclosure by the Authority of information relating to the design, installation, operation and maintenance of the Apparatus and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:
- 89.4.7.1 any proposed New Service Provider, its advisers and lenders, should the Authority decide to retender this Contract; or
 - 89.4.7.2 any person in connection with clause 57 (*Electricity Procurement*) and schedule 16 (*Original Non-Contestable Works Prices*);
- 89.4.8 any registration or recording of the Necessary Consents and property registration required;
- 89.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or

89.4.10 any disclosure for the purpose of:

- 89.4.10.1 the examination and certification of the Authority's or the Service Provider's accounts;
- 89.4.10.2 any examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 89.4.10.3 complying with a proper request from either Party's insurance adviser or insurer on placing or renewing any insurance policies; or
- 89.4.10.4 (without prejudice to the generality of clause 89.4.4 (*Excluded Matters*)) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither clause 89.4.4 (*Excluded Matters*) nor clause 89.4.10.4 (*Excluded Matters*) shall permit disclosure of Confidential Information otherwise prohibited by clause 89.3 (*Confidentiality*) where that information is exempt from disclosure under Section 41 of the FOIA.

89.5 Duties on the recipient

Where disclosure is permitted under clause 89.4 (other than clauses 89.4.2, 89.4.4, 89.4.5, 89.4.8 and 89.4.10), the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

89.6 Audit

For the purposes of:

- 89.6.1 the Audit Commission Act 1998 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts);
- 89.6.2 the examination and certification of the Authority's accounts;

89.6.3 an examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has performed its function,

the External Auditor and the Audit Commission (or succeeding body) may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Service Provider and any Sub-Contractor and may require the Service Provider and any Sub-Contractor to produce such oral or written explanations as he considers necessary, and the Service Provider hereby agrees to co-operate with and procure the co-operation of all Service Provider Parties with, the requirement of the External Auditor and Audit Commission as contemplated by this clause 89.6 (*Audit*).

89.7 Authority Consent

The Service Provider shall not make use of the Contract or any information issued or provided by or on behalf of, the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.

89.8 Audit Commission

The Parties acknowledge that the Audit Commission has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

89.9 Official Secrets Act

The provisions of this clause 89 (*Confidentiality*) are without prejudice to the application of the Official Secrets Act.

90. FREEDOM OF INFORMATION

90.1 Authority Obligations

The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 90.2 (*Delivery to the Authority*) to 90.7 (*Cost of Compliance*) (inclusive) below.

90.2 Delivery to the Authority

Where the Authority receives a Request for Information in relation to Information that the Service Provider is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Service Provider such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Service Provider shall:

- 90.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within five (5) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- 90.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

90.3 Representations to the Authority

Following notification under clause 90.2 (*Delivery to the Authority*), and up until such time as the Service Provider has provided the Authority with all the Information specified in clause 90.2.1 (*Delivery to the Authority*), the Service Provider may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

- 90.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- 90.3.2 whether Information is to be disclosed in response to a Request for Information,

and in no event shall the Service Provider respond directly, or allow any Sub-Contractor to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

90.4 Retention of Information

The Service Provider shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

90.5 Transfer of Requests for Information

The Service Provider shall transfer to the Authority any Request for Information received by the Service Provider as soon as practicable and in any event within two (2) Business Days of receiving it.

90.6 Disclosure of Indicative Lists

The Service Provider acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

90.7 Cost of Compliance

In the event of a request from the Authority pursuant to clause 90.2 (*Delivery to the Authority*) above, the Service Provider shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Service Provider whether or not it still requires the Service Provider to comply with the request and where it does require the Service Provider to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the

request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.

90.8 FOIA Code

The Service Provider acknowledges that (notwithstanding the provisions of this clause 90 (*Freedom of Information*)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**FOIA Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Project:

90.8.1 in certain circumstances without consulting with the Service Provider; or

90.8.2 following consultation with the Service Provider and having taken its views into account,

provided always that where clause 90.8 (*FOIA Code*) above applies, the Authority shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Service Provider prior to any disclosure.

91. DATA PROTECTION ACT

91.1 Compliance with the Data Protection Act

In relation to all Personal Data, the Service Provider shall at all times comply with the Data Protection Act as a data controller if necessary, including maintaining a valid and up-to-date registration or notification under the Data Protection Act covering the data processing to be performed in connection with the Services.

91.2 No Transfer outside European Economic Area

The Service Provider and any Key Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

91.3 Restrictions on Disclosure

The Service Provider shall not disclose Personal Data to any third parties other than:

91.3.1 to employees, Key Sub-Contractors to whom such disclosure is reasonably necessary in order for the Service Provider to carry out the Services; or

91.3.2 to the extent required under a court order,

provided that disclosure under clause 91.3.1 (*Restrictions on Disclosure*) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 91.3 (*Restrictions on Disclosure*) and that the Service Provider shall give notice to the Authority of any disclosure of Personal Data it or a Key Sub-Contractor is required to make under clause 91.3.2 (*Restrictions on Disclosure*) immediately it is aware of such a requirement.

91.4 Prevention of unlawful processing

The Service Provider shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including reasonable steps to ensure the reliability of staff having access to the Personal Data.

91.5 Provision of Information

The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Service Provider and/or the Key Sub-Contractors referred to in clause 91.4 (*Prevention of unlawful processing*). Within twenty (20) Business Days of such request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Act.

91.6 Prior Consent

Where the Service Provider, in carrying out its obligations under this Contract, is provided with Personal Data relating to a member of the public, the Service Provider shall not disclose or make use of any such Personal Data otherwise than for the

purpose for which it was provided, unless the Service Provider has obtained the prior written consent of such person and the Authority. The Service Provider shall, in carrying out any processing of Personal Data relating to a member of the public, do so in accordance with the Data Protection Act and this clause 91 (*Data Protection Act*).

91.7 Delivery to the Authority

On or before the Expiry Date, the Service Provider shall ensure that all documents or computer records in its possession, custody or control, which contain Personal Data relating to a member of the public (including any documents in the possession, custody or control of a Key Sub-Contractor) are delivered up to the Authority.

92. CONSENTS AND APPROVALS

92.1 Good Faith and Diligent Pursuance of Obligations

Without prejudice to clause 31 (*Representatives*), each Party shall and shall procure that any representative(s) appointed upon its behalf pursuant to this Contract shall deal in a timely and diligent manner in relation to the carrying of any service, duty or obligation under this Contract, any Project Document and any Supplemental Document.

92.2 Service Provider's Obligations

Neither the giving of any approval, inspection, knowledge of the terms of any contract or document nor the review of any document or course of action by, or on behalf of, the Authority or any person authorised by the Authority pursuant to this Contract, any Project Document and any Supplemental Document shall relieve the Service Provider of any of its obligations under this Contract, any Project Document or any Supplemental Document.

92.3 Examination by the Authority or its Representatives

Without limitation to clause 92.2 (*Service Provider's Obligations*), no examination or lack of examination by the Authority or any person authorised on its behalf, of the Service Provider's drawings, documents, calculations or details relating to the design, construction, completion, commissioning and testing of the Apparatus or the management or provision of the Services or otherwise nor any comment, rejection or approval expressed by such person in regard thereto, either with or without

modifications, shall in any respect relieve or absolve the Service Provider from any obligations or liability under or in connection with this Contract and any Project Document and any Supplemental Document.

93. CONTINUING OBLIGATIONS

Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract and notwithstanding the provisions of clause 107 (*Sole Remedy*):

93.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and

93.2 termination of this Contract shall not affect the continuing rights of the Authority and the Service Provider under clause 56 (*Payment and Financial Matters*), clause 66.1 (*Service Provider's Warranties*), clause 79 (*Other Consequences of Termination or Expiry*), clause 83 (*Dispute Resolution Procedure*), clause 84 (*Intellectual Property Rights*), clause 85 (*Assignment and Sub-Contracting*), clause 89 (*Confidentiality*), clause 90 (*Freedom of Information*), clause 91 (*Data Protection Act*), clause 101 (*Notices*), clause 103 (*Public Relations and Publicity*), clause 104 (*Service Provider Records*), clause 112 (*Law of the Contract and Jurisdiction*), schedule 4 (*Payment Mechanism*), schedule 6 (*Insurance*) or any other provision of this Contract which is expressed to survive termination or which it is required to give effect to such termination or the consequences of such termination,

and such provisions shall survive the termination of this Contract and continue in full force and effect, along with any other clauses or schedules of this Contract necessary to give effect to them. In addition, any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination shall survive termination or expiry as aforesaid.

94. COSTS AND EXPENSES

Each Party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Contract and the Project Documents and the Supplemental Documents.

95. COUNTERPARTS

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

96. LOCAL GOVERNMENT OMBUDSMAN

The Local Government Ombudsman may investigate complaints of injustice in consequence of maladministration against the Authority under the Local Government Act 1974 which can include complaints relating to the Project. If such a complaint is made the Service Provider shall:

96.1 fully and promptly answer whether oral or written communications from the Local Government Ombudsman and send to the Authority Representative a copy of any communication to the Local Government Ombudsman at the same time as it is sent to the Local Government Ombudsman;

96.2 co-operate fully and courteously in any investigation by the Local Government Ombudsman, including any requests to view documents or premises or to interview the Service Provider's employees; and

96.3 fully and promptly respond to any communication from the Authority Representative concerning the complaint so that the Authority may answer any issue raised by the Local Government Ombudsman directly with the Authority.

96.4 In the event of:

96.4.1 a Local Government Ombudsman reporting that injustice has been caused to a person aggrieved in consequence of maladministration; and

96.4.2 such maladministration having been caused or contributed to by the Service Provider; and

96.4.3 the Authority deciding, on having such report laid before it, to make such payment or provide some other benefit (as the case may be) to such person,

96.4.4 the Service Provider shall reimburse the Authority the amount of such payment or pay to the Authority the reasonable cost of such benefit (as the case may be).

97. NON-DISCRIMINATION

97.1 Non-Discrimination

The Service Provider shall, and shall procure that all Key Sub-Contractors shall comply with all requirements of all Law relating to equalities and human rights, and shall not unlawfully discriminate against any employee or member of the public or subject them to any unlawful detriment on the grounds of, without limitation:

97.1.1 age;

97.1.2 disability;

97.1.3 gender reassignment;

97.1.4 marriage and civil partnership;

97.1.5 pregnancy and maternity;

97.1.6 race (as defined in the Equality Act 2010);

97.1.7 religion/belief (as defined in the Equality Act 2010);

97.1.8 sex (as in male/female);

97.1.9 sexuality (including sexual orientation);

97.1.10 fixed-term employment status or part-time employment or worker status;

97.1.11 trade union membership or activity; and

97.1.12 responsibility for dependants, where a relevant employee or member of the public has sole or substantial responsibility for familial or non-familial dependants,

and in particular, but without limitation, the Service Provider and each Key Sub-Contractor shall not unlawfully discriminate on the grounds of nationality in the selection of sub-contractors. If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Service Provider or any Key Sub-Contractor, then the Service Provider shall take all necessary steps to prevent recurrence of such unlawful discrimination and shall deliver to the Authority fully details of the steps taken to prevent such recurrence.

97.2 Statutory Provisions under the Equality Act 2010

The Service Provider shall, and shall ensure that each Sub-Contractor and other Key Sub-Contractor shall, comply with any requirements and instructions which the Authority reasonably imposes in connection with the statutory equality and race relations obligations imposed on any public sector body including without limitation the duties introduced by the Equality Acts 2006 and 2010 (and any guidance and/or codes issued thereunder applying to public authorities or other public bodies), and the statutory codes of practice in force from time to time including without limitation the Statutory Code of Practice on the Duty to Promote Disability Equality which entered into force in December 2006 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) and any relevant codes of practice issued by the Equality and Human Rights Commission ("EHRC") including without limitation the EHRC Employment Statutory Code of Practice, or in relation to any provision listed in this clause 97.2 (*Statutory Provisions under the Equality Act 2010*) any substitute or amended legislation or Guidance or code of practice of a similar nature which imposes requirements and/or gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment and service provision. The Service Provider shall provide such reasonable information as the Authority may reasonably require upon reasonable notice to enable it to assess the Service Provider Parties' continuing compliance with this clause 97.2 (*Statutory Provisions under the Equality Act 2010*).

97.3 Sub-Contractor Requirements

The Service Provider shall procure that the provisions of this clause 97 (*NON-Discrimination*) shall (*mutatis mutandis*) be incorporated within its contractual arrangements with each Sub-Contractor and other Key Sub-Contractor.

98. ECONOMIC AND MONETARY UNION

98.1 Continuity of Contracts

Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 15 June 1997 of the Authority of Ministers of the European Union, the introduction of the euro shall not, of itself:

- 98.1.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Contract, any Project Document or any Supplemental Document; or
- 98.1.2 give any Party to this Contract, any Project Document or any Supplemental Document the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Contract or any Project Document or any Supplemental Document.

98.2 Sterling References

If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Contract and any Project Document and any Supplemental Document to Sterling or £ shall be construed as references to euro or € (as the case may be), at the agreed Sterling-euro conversion rate on the date of that substitution. Provided that the provisions of this clause 98 (*Economic and Monetary Union*) shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the Parties otherwise agree.

98.3 Consequential Changes

Without prejudice to clauses 98.1 (*Continuity of Contracts*) and 98.2 (*Sterling References*), the Parties shall negotiate in good faith in order to agree any amendments to this Contract and/or any Project Document and/or any Supplemental Document which the Authority determines to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Contract, any Project Document and any Supplemental Document reflect then current market practices and conventions relating to the introduction of the euro).

99. ENTIRE AGREEMENT

99.1 Entire Agreement

This Contract, the Project Documents, the Supplemental Documents and any other contracts referred to therein constitute the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations, understandings, agreements or arrangements between the Parties concerning the subject matter of this Contract.

99.2 No Representation

Each of the Parties acknowledge that:

99.2.1 subject to clause 66 (*Warranties and Undertakings*) it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

99.2.2 this clause 99.2 (*No Representation*) shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which was induced by fraud.

100. LANGUAGE - ENGLISH TO BE LANGUAGE OF PROJECT DOCUMENTS

English shall be the language of this Contract, the Project Documents and Supplemental Documents and all documentation or information required or produced in the course of or in connection with the Service Provider's performance of the Services shall be in English.

101. NOTICES

101.1 Service Requirements

101.1.1 The Parties agree and acknowledge that any notice, information, instructions or public communication to be given or served by one Party to the other Party under this Contract shall be given in writing and if given to:

101.1.1.1 the Service Provider Representative, shall be deemed to have been given to the Service Provider; and

101.1.1.2 the Authority Representative, shall be deemed to have been given to the Authority.

101.1.2 Where the Authority has notified the Service Provider that there are exemptions to the Authority Representative's authority under clause 31.6 (Authority of Authority Representative), notices, information, instructions or public communication shall be valid if given by the Monitoring Officer of the Authority.

101.1.3 The Authority shall not be responsible for and the Service Provider shall not be entitled to rely on and shall not do so or claim relief, additional time, Losses, expenses, damages, costs or other liabilities should the Service Provider act on or fail to act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person was the Authority Representative or as specified in clause 101.1.2 above.

101.2 Delivery

101.2.1 All notices shall either be delivered personally or by first class pre-paid post or by email to the relevant address or email address as set out in clauses 101.2.2 or 101.2.3 (as the case may be) or to such other address or email address as a Party may have notified to the other Party by not less than five (5) Business Days prior notice. Services shall be deemed to have been effected as follows:

101.2.1.1 if personally delivered, at the time of delivery to the addressee;

101.2.1.2 if sent by first class pre-paid post on the second (2nd) Business Day after it is put in the post; and

101.2.1.3 in the case of email, subject to clause 101.4;

- (a) on the day of transmission provided that a read receipt is duly requested and a delivery confirmation receipt and/or such other evidence of delivery is received between the hours of midnight and 17:00 hours; or
- (b) by 09:00 hours on the next following Business Day if the relevant delivery confirmation receipt or such other evidence of delivery is received after 17:00 hours but before midnight on a Business Day; or
- (c) by 09:00 hours on the next following Business Day if the relevant delivery confirmation receipt or such other evidence of delivery is received on a day which is not a Business Day; and

provided that a confirmatory copy is on the same day that the e-mail is transmitted:

- (a) personally delivered;
- (b) sent by pre-paid first class post; or
- (c) sent by facsimile transmission,

each in the manner provided for in this clause 101.2.

101.2.2 For the purposes of this clause 101 (*Notices*), the Service Provider's details are:

Position: [REDACTED]

Address: [REDACTED]

Email Address: [REDACTED]

Attention: [REDACTED]

101.2.3 For the purposes of this clause 101 (*Notices*), the Authority's details are:

Position: [REDACTED]

Address: [REDACTED]

Email Address: [REDACTED]

Attention: [REDACTED]

101.3 Proof of Service

In proving service under this clause 101 (*Notices*) it shall be sufficient to prove that personal delivery was made, or as the case may be, that the letter was properly addressed and posted or, as the case may be, the email read receipt was received within twenty four hours (24) of transmission.

101.4 Service by E-mail

101.4.1 In the event that:

101.4.1.1 an automatic electronic notification is received by the sender within 24 hours after sending the e-mail informing the sender that:

- (a) the e-mail has not been delivered to the recipient; or
- (b) that the recipient is out of the office; or

101.4.1.2 no read receipt or other evidence of receipt has been duly received,

that e-mail shall be deemed not to have been served by e-mail and shall instead only be deemed served two (2) Business Days after being sent by first class pre-paid post in accordance with clause 101.2.1.2.

101.4.2 Clause 101.2.1.3 shall not apply to the service of notices served pursuant to:

101.4.2.1 clause 5.6 (*Amendment, Revocation, Suspension or Withdrawal of Authorisation by the Authority*), clause 5.7 (*Effect of Revocation*), clause 5.8 (*Total cessation of Orders*), clause 12 (*Geotechnical and*

Geological Zones), clause 13 (*Latent Defects*), clause 31 (*Representatives*), clause 40 (*Third Party Agreements*), clause 67.4 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*), clause 72 (*Step-In*), clause 74 (*Voluntary Termination by the Authority*), clause 75 (*Service Provider Default*), clause 76 (*Termination by the Service Provider*), clause 77 (*Termination for Corrupt Gifts and Fraud*), clause 78 (*Termination following a Force Majeure Event*), clause 79.7 (*Retendering the Service on Expiry*), clause 80 (*Compensation on Termination*), clause 83 (*Dispute Resolution Procedure*), clause 86 (*Change in ownership of the Service Provider and Holdco*), clause 105 (*Refinancing*), clause 111 (*Waiver*), Schedule 9 (*Geotechnical and Geological Zones*), Schedule 17 (*Change Protocol*), and Schedule 18 (*Accruals and De-Accruals*);

101.4.2.2 the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

102. PARTNERSHIP - NO PARTNERSHIP BETWEEN THE PARTIES

Nothing in this Contract or any Project Document or any Supplemental Document shall be construed as establishing or implying a partnership or joint venture between the Parties or shall be deemed to constitute any of the Parties as the agent of any of the others or to allow any Party to hold itself out as acting on behalf of the other.

103. PUBLIC RELATIONS AND PUBLICITY

103.1 No Communication with Media

103.1.1 The Service Provider shall not by itself, its employees or agents (and shall procure that any Service Provider Party shall not) communicate with any member of the print, broadcast, internal Authority media or other communications media on any matter concerning this Contract or the Project without the prior written approval of the Authority.

103.1.2 Subject to clause 84.9 (Licence to use Trade Marks and Data) the Service Provider shall, and shall procure that any Service Provider Parties shall not use any crest, logo, livery or trademark of the Authority without the prior written approval of the Authority (which may be withheld or given subject to conditions at the Authority's absolute discretion).

103.2 No photographs/film

No facilities to photograph or film within or upon any Authority Property used in relation to the Project shall be given or permitted by the Service Provider unless the Authority has given its prior written approval.

103.3 Employee Identification and Communications

The Service Provider shall produce the following in accordance with the provisions of this clause 103.3:

- 103.3.1 a logo to be used by the Service Provider on all communications, vehicles, identification cards, livery and all other materials to be used by the Service Provider in relation to the operation of the Services, which must be consistently used on all materials;
- 103.3.2 a strap line to be used by the Service Provider in conjunction with the logo produced pursuant to clause 103.3.1;
- 103.3.3 details of the livery to be used by the Service Provider on all vehicles, including incorporation of the logo and strap line, to be consistent with the logos and strap lines used on other materials produced pursuant to this clause 103.3;
- 103.3.4 details of the uniform to be worn by all Personnel, ensuring that such uniforms could not be construed as indicating support for any political parties and such uniforms shall incorporate the Service Provider's logo and strap line as appropriate; and
- 103.3.5 a proforma for an identification card to be used for all Personnel, incorporating the logo and strap line, as well as the name of the Service Provider (or any Sub-Contractor employing such Personnel as appropriate), a

contact number for verification of the Personnel and a photo along with the name of the Personnel.

104. SERVICE PROVIDER RECORDS

104.1 General Records and Open Book Accounting

The Service Provider shall:

- 104.1.1 at all times maintain a full record of particulars of the costs of performing the Services, including those relating to the design, installation, maintenance, operation and finance;
- 104.1.2 when requested by the Authority, provide a summary of any of the costs referred to in clause 104.1.1, including details of any funds held by the Service Provider specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Service Provider of its obligations under this Contract;
- 104.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 104 (*Service Provider Records*).

104.2 Books of Accounts

Compliance with clause 104.1 (*General Records and Open Book Accounting*) shall require the Service Provider to keep (and where appropriate shall procure that each Key Sub-Contractor shall keep) books of account in accordance with best accountancy practice with respect to this Contract showing in detail:

- 104.2.1 administrative overheads;
- 104.2.2 payments made to the Sub-Contractor;
- 104.2.3 capital and revenue expenditure;
- 104.2.4 such other items as the Authority may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of clause 45 (*Relief Events*), clause 46 (*Compensation Events*),

clause 47 (*Excusing Causes*), clause 52 (*Changes to the Services*), clause 53 (*Change in Law*) and clause 57 (*Electricity Procurement*),

and the Service Provider shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items listed in clauses 104.2.1 to 104.2.4 (*Books of Accounts*) available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.

104.3 Maintenance of Records

The Service Provider shall maintain or procure that the following are maintained:

104.3.1 a full record of all incidents relating to health, safety and security which occur during the Term; and

104.3.2 full records of all maintenance procedures carried out during the Term,

and the Service Provider shall have the items referred to in clauses 104.3.1 and 104.3.2 (*Maintenance of Records*) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority, as and when requested.

104.4 Examination by Auditor

The Service Provider shall permit records referred to in this clause 104 (*Service Provider Records*) to be examined and copied from time to time by the Authority's auditor, any other representatives of the Authority, the External Auditor and Audit Commission (or such successor body) and his or their representatives.

104.5 Retention of Records

The records referred to in this clause 104 (*Service Provider Records*) shall be retained for a period of at least twelve (12) years after the Service Provider's obligations under this Contract have come to an end.

104.6 Records on Termination or Expiry

Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project, the Service

Provider shall (and shall ensure that the Key Sub-Contractors shall) comply with all reasonable requests of the Authority to provide information relating to the Service Provider's costs of operating and maintaining the Project.

104.7 The Service Provider shall:

104.7.1 provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three Month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the Term and any other information relating to the Project that the Authority may reasonably require;

104.7.2 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication;

104.7.3 provide to the Authority a copy of the Senior Lender's financial model as at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto;

104.7.4 promptly upon the occurrence of a Financing Default notify the Authority of such Financing Default; and

104.7.5 use all reasonable endeavours to assist the Authority in its preparation of any report required by the Government from time to time.

104.8 Interim Project Report

The Authority may in the circumstances referred to in clause 104.7.4 above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Service Provider to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.

104A. AUTHORITY ACCOUNTS

104A.1 The Authority agrees to provide its most recent published budget and annual accounts within three (3) Business Days upon request from the Service Provider.

105. REFINANCING

105.1 The Service Provider shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Service Provider shall at all times act in good faith with respect to (a) any Refinancing or (b) any potential or proposed Refinancing under clause 105.9 (Authority right to request refinancing).

105.2 The Authority shall be entitled to receive:

105.2.1 where there is a reduction in the Margin from the Margin as shown in the Senior Financing Agreements as at Financial Close arising from a Qualifying Refinancing (or, in the case of a second or subsequent Qualifying Refinancing, from the Margin as shown in the immediately preceding Qualifying Refinancing) a 90% share of the Margin Gain arising from the Qualifying Refinancing; and

105.2.2 a share of any further Refinancing Gain (arising otherwise than from a reduction in Margin) from a Qualifying Refinancing, in respect of any Refinancing Gain (when considered in aggregate with all previous Qualifying Refinancings) as follows:

105.2.2.1 for a Refinancing Gain from £1 to £1 million, a 50% share;

105.2.2.2 for a Refinancing Gain of £1 million up to £3 million, a 60% share; and

105.2.2.3 for a Refinancing Gain in excess of £3 million a 70% share.

105.3 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in clause 105.2.

105.4 The Service Provider shall promptly provide the Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for

the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

105.5 The Authority shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:

- 105.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
- 105.5.2 a reduction in the Annual Unitary Charge over the remainder of the Term; or
- 105.5.3 a combination of any of the above.

105.6 The Authority and the Service Provider will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under clause 105.5 above). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the Dispute shall be determined in accordance with the Dispute Resolution Procedure.

105.7 The Refinancing Gain shall be calculated (including any Margin Gain) after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by the Service Provider within twenty eight (28) Business Days of any Qualifying Refinancing. Such costs shall be allocated as between the Margin Gain (if any) and the remaining Refinancing Gain (if any) pro rata,

105.8 Without prejudice to the other provisions of this clause 105 (Refinancing), the Service Provider shall (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same and (b) include a provision in the Financing Agreements (other than Subordinated Financing Agreements) whereby the Service Provider is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than Subordinated Financing Agreements).

105.9 Authority right to request refinancing

105.9.1 If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements, (other than Subordinated Financing Agreements) the Authority may, by notice to the Service Provider, require the Service Provider to request potential funders to provide terms for a potential Refinancing (a "**Refinancing Notice**").

105.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Service Provider and Authority shall meet to discuss the Refinancing Notice within twenty eight (28) days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) days following the meeting.

105.9.3 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to clause 105.9.2, then the Service Provider shall:

105.9.3.1 act promptly, diligently and in good faith with respect to the potential Refinancing;

105.9.3.2 use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Service Provider shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same

business in the United Kingdom to that operated by the Service Provider, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of clause 105.7; and

105.9.3.3 either:

- (a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in clause 105.9.3.2 above and (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (b) if the Service Provider (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements) in accordance with the requirements of clause 105.9.3.2, provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Service Provider has complied with its obligations in clauses 105.9.3.1 and 105.9.3.2.

105.9.4 Following receipt of the information referred to in clause 105.9.3.3(a), the Authority shall (in its absolute discretion) either:

105.9.4.1 instruct the Service Provider to implement the proposed Refinancing; or

105.9.4.2 instruct the Service Provider to discontinue the proposed Refinancing,

provided that if the Authority reasonably considers that the requirements of clause 105.9.3.3(a) have not been satisfied, the Authority may require the Service Provider to satisfy its obligations under clause 105.9.3.3(a) whereupon the provisions of clauses 105.9.3 and 105.9.4 shall apply as if the Authority had served a Refinancing Notice.

105.9.5 If the Authority instructs the Service Provider to implement the proposed Refinancing:

105.9.5.1 the Service Provider shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

105.9.5.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

105.9.5.3 the provisions of clauses 105.1 to 105.8 shall apply.

105.9.6 If:

105.9.6.1 the Authority instructs the Service Provider to discontinue the potential Refinancing pursuant to clause 105.9.4.2; or

105.9.6.2 the requirements of clause 105.9.3.3(b) are satisfied,

then, the Authority shall reimburse the Service Provider for the reasonable and proper professional costs incurred by the Service Provider in relation to the potential Refinancing, such costs to be paid to the Service Provider by the Authority within twenty eight (28) days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Service Provider except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (b) the Authority has, by prior written agreement, approved the use of such internal management resource.

105.9.7 The Authority shall be entitled to issue a Refinancing Notice under clause 105.9.1 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under clause 105.9.2 has been issued for the purpose of this clause 105.9.7.

106. SEVERABILITY

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

107. SOLE REMEDY

107.1 Common Law Rights for the Authority

Subject to:

107.1.1 any other express right of the Authority pursuant to this Contract; and

107.1.2 the Authority's right to Claim, on or after termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of schedule 2 (*Output Specification*) by the Service Provider, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to clause 80 (*Compensation on Termination*),

the sole financial remedy of the Authority in respect of a failure to provide the Services in accordance with clause 13.12.3, clause 14 (*Deemed to Comply Project Network Parts*), clause 17 (*Necessary Consents*), clause 19 (*Use and Disposal of the Project Network*), clause 20 (*Security of Project Network*), clauses 21.1.1.1(b) and 21.1.1.1(h), clause 22 (*Liaison with Stakeholders*), clause 24 (*Road Closures*), clause 27 (*Milestones*), clauses 29.1.1, 29.1.3, 29.2.1, 29.2.2 and 29.2.3, clause 32 (*Design*), clause 33 (*Quality Management*), clause 37 (*Surveys and Inspections*) and schedule 2 (*Output Specification*) shall be the operation of schedule 4 (*Payment Mechanism*).

107.2 Common Law Rights for the Service Provider

Without prejudice to any entitlement of the Service Provider:

107.2.1 to specific performance of any obligation under this Contract; or

107.2.2 to injunctive relief; or

107.2.3 to enforce any payment obligation under or in relation to or for breach of this Contract subject to any Dispute having been resolved in accordance with the Dispute Resolution Procedure,

the Service Provider shall not be entitled to any common law or equitable rights including rights to damages or to any other rights under contract, tort or otherwise in relation to any breach of this Contract to the extent that this Contract provides an express remedy in relation to the breach.

107.3 Nothing in clause 107.1 (*Common Law Rights for the Authority*) or clause 107.2 (*Common Law Rights for the Service Provider*) shall prevent or restrict the right of the Authority or the Service Provider (as appropriate) to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

108. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation or make a Claim under this Contract in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss pursuant to this Contract.

109. MITIGATION

Each of the Parties shall at all times take all reasonable steps to mitigate and loss and/or costs incurred in accordance with the provisions of this Contract.

110. THIRD PARTY RIGHTS

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract.

111. WAIVER

111.1 Waiver in Writing

No term or provision of this Contract shall be considered as waived by any Party to this Contract unless a waiver is given in writing by that Party.

111.2 No Waiver in Writing

No waiver under clause 111.1 (*Waiver in Writing*) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

112. LAW OF THE CONTRACT AND JURISDICTION

112.1 Dispute Resolution Procedure

Any Dispute arising in relation to any aspect of this Contract shall be resolved in accordance with the Dispute Resolution Procedure.

112.2 English Law

This Contract, and any non-contractual obligation arising out of or in connection with this Contract, shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof this document is executed as a deed by the Parties or their duly authorised representatives on the date of this Contract.

The Common Seal of ISLE OF)
WIGHT COUNCIL was hereunto)
affixed to this deed in the presence of:)

Authorised Signatory



EXECUTED as a DEED by)
ISLAND ROADS SERVICES)
LIMITED acting by a Director/its)
duly appointed attorney)



Director/Attorney

Witness 

Name of Witness 

Address 

Occupation 