

ISLE OF WIGHT COUNCIL – HIGHWAYS PFI

SCHEDULE 1 – DEFINITIONS

Schedule 1

DEFINITIONS

1. Definitions

1.1 In this Contract, the following words and expressions shall, save where the context or the express provisions of this Contract otherwise require or admits, be deemed to have the following meanings:

"1954 Act" means the Landlord and Tenant Act 1954;

"1994 Act" means the Deregulation and Contracting Out Act 1994;

"1999 Act" means the Local Government Act 1999;

"2005 Regulations" shall have the meaning given to it in clause 64 (*Sub-Contractors in the Construction Industry Scheme*);

"2009 Order" means the Contracting Out (Highway Functions) Order 2009 (SI 2009/721);

"Abnormal Load" means any vehicle that exceeds either the maximum weight, axle weight or dimensions as set in the Road Vehicles (Authorisation of Special Types) (General) Order 2003;

"Abnormal Load Management System" means a process and procedure to manage Abnormal Loads which as a minimum complies with ESDAL and meets the requirements as set out in the Highways Structures Code;

"Abnormal Load Movement" means the movement of an Abnormal Load;

"Acceptance Certificate" means a document that confirms Powered Apparatus meet the required standards;

"Access Cover" means the cover on a manhole or other chamber;

"Accommodation Structures" means those Structures remote from the Highway with loading requirements as detailed in Table 4.8 of part 2 of Appendix PS4 of schedule 2 (*Output Specification*);

"Accrual Adjustment" means the adjustment calculated in accordance with paragraph 4 of schedule 4 (*Payment Mechanism*);

"Accrual Assessment" shall have the meaning given to it in paragraph 2.2 of part 1 of schedule 18 (*Accruals and De-Accruals*);

"Accrual Cap" shall have the meaning given to it in paragraph 5.1.1 of part 1 of schedule 18 (*Accruals and De-Accruals*);

"Accrual Confirmation Notice" shall have the meaning given to it in paragraph 2.1 of part 1 of schedule 18 (*Accruals and De-Accruals*);

"Accrual Date" means the date notified to the Service Provider in respect of any Proposed Project Network Part pursuant to clause 50.2 (*Accrual and De-accrual of Project Network Parts*);

"Accrued" means, when applied to any Project Network Part, a Project Network Part that is the responsibility of the Service Provider pursuant to this Contract by reason of the application of the provisions of schedule 18 (*Accruals and De-Accruals*) and/or a Change under schedule 17 (*Change Protocol*) and "Accrual" and "Accrue" shall be construed accordingly;

"Acknowledgement of Service Commencement" shall have the meaning given to it in clause 8.5.1 (*Mobilisation*);

"Actual Carbon Footprint" means the actual carbon consumption meeting the Forecast Carbon Footprint as agreed for Operational Carbon and Capital Carbon as referred to in paragraph 1.4.8.4 of Performance Standard 1 (*Network Performance*) of schedule 2 (*Output Specification*);

"Actual Electricity Consumption" means the actual electricity consumption of Powered Apparatus as referred to in paragraph 1.4.10.1 of Performance Standard 1 (*Network Performance*) of schedule 2 (*Output Specification*);

"Actual Latent Defect Cost" shall bear the meaning given thereto in clause 13.9.1.1 (*Latent Defect Cap*);

"Actual Liability" means a liability for Tax in consequence of or in respect of a Termination Payment or, where applicable, an Indemnity Payment;

"Actual Monthly Payment Report" means the report the Service Provider shall prepare and deliver to the Authority for each Month containing the information required to enable the calculation of the Monthly Payment, such report to be based on the relevant Draft Monthly Payment Report and to include any amendments agreed by the Parties during or following the Monthly Payment Meeting or to the extent not agreed or determined in accordance with the Dispute Resolution Procedure;

"Actual Relevant Insurance Cost" means the aggregate of the annual insurance premiums reasonably incurred by the Service Provider to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

"Actual Water Footprint" means the Actual Water Footprint as calculated within the Water Calculation Tool or via such other methodology as agreed with the Authority;

"Additional Charge" shall have the meaning given to it in clause 5.18.2.3 (*Specified Licences*);

"Additional Drainage Schemes" means a scheme required as per Performance Standard 3.4.10.2 of Schedule 2 (*Output Specification*);

"Additional Income" shall have the meaning given to it in clause 59.1 (*Additional Income*);

"Additional Permitted Borrowing" means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under clause 3 of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the date of this Contract, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to clause 87.2.1 (*Changes to Financing Agreements, Project Documents and Supplemental Agreements*) shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit" means an amount equal to:

- (a) 10% of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to 50% or less of the Original Senior Commitment and thereafter;
- (b) the higher of:
 - (i) 5% of the Original Senior Commitment; and
 - (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in paragraph (a);

"Additional Scheme" means minor works to enhance the street environment including landscaping and additional street furniture;

"Adjudicator" means an adjudicator selected to consider a Dispute and selected in accordance with clause 83.2 (*Adjudication*);

"Adjusted Estimated Fair Value of the Contract" means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the Service Provider (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under clause 56.13 (*Set-Off*),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Service Provider on the date that the Estimated Fair Value of the Contract is calculated;
- (ii) any insurance proceeds and other amounts owing to the Service Provider (and which the Service Provider is entitled to retain), to the extent not included in paragraph (i); and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (1) paragraphs (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- (2) the Authority has received such amounts in accordance with the Contract or such amounts are standing to the credit of the Joint Insurance Account;

"Adjusted Forecast Electricity Consumption" means the figure for the forecast electricity consumption in kWh for the relevant Contract Year, as set out in schedule 8 (*Forecast Consumption*) as adjusted from time to time to take account of any Accruals and De-Accruals in accordance with paragraph 4 of schedule 4 (*Payment Mechanism*), divided by twelve (12);

"Adjusted Highest Compliant Tender Price" means the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Service Provider to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under clause 80.7.4 (*Set-off on Termination*),

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Service Provider on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the Service Provider to the extent not included in paragraph (i); and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) paragraphs (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (B) the Authority has received such amounts in accordance with the Contract;

"Adjustment Period" means the time period relating to each Performance Requirement as set out in Performance Standard 1 to 10 of schedule 2 (*Output*

Specification), which elapses from the end of the Rectification Period and subsequently from the end of each previous Adjustment Period, and during which the Service Provider must rectify fully the failure in order to avoid incurring an additional Performance Adjustment and/or Service Default Termination Point;

"**Adjustment Type**" means in respect of each Performance Requirement the corresponding type of adjustment, taken from Table 3 of schedule 4 (*Payment Mechanism*), to be applied in respect of each failure to comply with such Performance Requirement as set out in Performance Standard 1 to 10 of schedule 2 (*Output Specification*);

"**Adjustment Value**" means the financial value, taken from Table 3 of schedule 4 (*Payment Mechanism*), applied to each Adjustment Type;

"**Administering Authority**" means the Isle of Wight Council acting in its capacity as the Administering Authority for the LGPS, or any successor body;

"**Administering Authority's Actuary**" means the actuary acting on behalf of the Administering Authority;

"**Admission Agreement**" means an admission agreement entered into in accordance with the Pension Regulations by the Authority, the Service Provider and/or the relevant Sub-Contractor and the Administering Authority, in the form set out in Annexure 9 (*Form of Pensions Admission Agreement*);

"**Admission Agreement Cessation Date**" means the date on which the Service Provider or Service Provider Party ceases to be an Admission Body other than as a result of the termination of this Contract or because it ceases to employ any Eligible Employees or New Joiners;

"**Admission Body**" means a body which is admitted to the Isle of Wight Local Government Pension Scheme;

"**Adoption**" means the bringing into the Project Network of a development in accordance with the provisions of clause 49 (*Maintainability Assessment*), PS10 Part 10 of schedule 2 (*Output Specification*), schedule 18 (*Accruals and De-Accruals*) and Annexure 17 (*Planning Protocol*);

"**Advertising**" means publicity or information intended to attract the public attention to goods and services in the form of Hanging Baskets, Banners, posters, boards, signage (whether illuminated or not), electronic display boards and similar as are attached to any Project Network Part;

"**Affected Party**" shall have the meaning given to it in the definition of "Force Majeure Event";

"**Affected Services**" has the meaning given to it in clause 78.7.1 (*Termination following a Force Majeure Event*);

"**Affiliate**" means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company and Holding Company and Subsidiary shall have the meaning given to them in section 1159 of the Companies Act save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"Amber Zone Cap" means the cap applicable to an Amber Zone as listed in Table 2 of part 1 of schedule 9 (*Geotechnical and Geological Zones*);

"Amber Zone Failure" shall bear the meaning given thereto in clause 12.6 (*Amber Zone Failure*);

"Amenity Shelter" means any item of Street Furniture excluding Bus Shelters which is designed for and used for the shelter of persons;

"Animal Carcasses" means the remains of any animal, reptile or bird other than human;

"Annual Debt Service Cover Ratio" has the meaning given to it in the Senior Financing Agreements;

"Annual Highway Emergency Plan" means a document produced by the Service Provider pursuant to PS6 of schedule 2 (*Output Specification*) to identify the processes, procedures and resources intended to deal with a Highway Emergency;

"Annual Landscape Action Plan" means a document identifying the processes, procedures, timings and resources that is intended to be used with regard to all matters related to the flora excluding Weed Control and Highway Trees;

"Annual Programme" means a programme of Services provided by the Service Provider containing the information set out in Performance Standard 1 (Network Performance) Appendix PS 1 Part 1 Programmes of schedule 2 (*Output Specification*) and as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*);

"Annual Service Plan" means the written statement to be produced by the Service Provider to the Authority pursuant to clause 42.7.4 (*Annual Service Report and Annual Service Plan*);

"Annual Service Report" means a report provided by the Service Provider pursuant to Performance Standard 10 (Contract Management and Customer Interface) of schedule 2 (*Output Specification*) containing the information which summarises the performance of the Service Provider and the Project Network each year for the previous twelve (12) Months as set out in Performance Standard 10 Appendix PS10 of schedule 2 (*Output Specification*);

"Annual Street Cleansing Programme" means a programme provided by the Service Provider pursuant to PS5 of schedule 2 (*Output Specification*) giving the extent, resource, and timing of street cleaning operations each Contract Year including resource for non routine cleansing operations and updated in accordance with clause 23 (*Updates and Changes to the Service Provider Programmes*);

"Annual Tree Management Plan" means a document identifying the processes, procedures, timings and resources that is intended to be used with regard to all matters related to the Highway Trees;

"Annual Tree Management Programme" means a programme of Services provided by the Service Provider pursuant to PS5 of schedule 2 (*Output Specification*) and as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*) detailing the extent, resource, and timing of the Service Provider's tree management operations in respect of each Contract Year

including resource, which shall set out all details of the actions to be taken in the forthcoming Contract Year;

"Annual Unitary Charge" means the amount due from the Authority to the Service Provider calculated in accordance with paragraph 2.2.1 of schedule 4 (*Payment Mechanism*) (and, for the avoidance of doubt, the Annual Unitary Charge at the Service Commencement Date shall be [REDACTED] as set out in the Base Case;

"Annual Weed Control Programme" means a programme of Services provided by the Service Provider pursuant to Performance Standard 5 (Environment) and as updates in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*) detailing the extent, resource, and timing of the Service Provider's Weed Control operations in respect of each Contract Year including resource, which shall set out all details of the actions to be taken in the forthcoming Contract Year;

"Annual Winter Services Plan" means a plan of Winter Services provided by the Service Provider pursuant to Performance Standard 7 (Winter Services) of schedule 2 (*Output Specification*) giving details of the Service Provider's procedures, processes, resources and controls required to meet the contract requirements for Winter Service;

"Annual Winter Services Report" means a report containing the information set out in Performance Standard 7 Appendix PS 07 of schedule 2 (*Output Specification*) which provides details of the history of the previous season's actions, materials used and relevant information;

"Anti-Climbing Measures" means such measures taken to protect the security of premises and Project Network Parts from persons who may wish to gain illegal access to those premises or Project Network Parts by climbing on adjacent Project Network Parts;

"Anti-Skid Treatment" means treatment to the surface of a Carriageway Monitoring Length, Footway Monitoring Length, Verge Monitoring Length or Cycleway Monitoring Length or part thereof, in order to improve its skid resistance;

"APB Distribution" means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

"Apparatus" means plant/equipment listed below together with all materials and equipment used in or relating to the installation of the same:

(a) Powered Apparatus; and

(b) Non-Powered Apparatus;

"Apparatus Structural and Mechanical Inspection" means an inspection required by a relevant standard to check on the structural integrity, mechanical soundness of Apparatus and report on such condition for the assessment of maintenance works or renewal;

"Apparatus Structural and Mechanical Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all Apparatus Structural and Mechanical Inspections, and in respect of

Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"**Appeals**" shall mean any appeal to a decision in respect of a Planning Application raised by a third party against the Authority;

"**Appropriate Limit**" shall have the meaning given to it in clause 90.7 (*Cost of Compliance*);

"**Approval Criteria**" means the criteria against which any Service Provider Stage 2 Response will be evaluated by the Authority as specified by the Authority in the Authority Change Notice and which shall be based on;

- (a) compliance with the Authority's specifications for the Change;
- (b) evidencing value for money;
- (c) affordability to the Authority (in terms of developing a final price within the Service Provider Stage 2 Response); and
- (d) compliance with all relevant Legislation, Guidance and Necessary Consents

and such Approval Criteria shall be reasonable taking into account Good Industry Practice and the scope and price of the required High Value Change;

"**Approval in Principle**" shall have the meaning given to it in BD 2/05 Technical Approval of Highway Structures;

"**Approved Purposes**" shall have the meaning given to it in clause 84.1 (*Use of Service Provider Materials*);

"**APW Assumptions**" means the Service Provider assumptions set out at schedule 32 (*Authority Predicted Works*);

"**Arbitrator**" has the meaning given to it in clause 83.3.1 (*Arbitration*);

"**Arboricultural Inspection**" means an inspection required by a relevant standard to check on the condition of Highway Trees and report on such condition for the assessment of maintenance works or renewal;

"**Arboricultural Inspection Strategy**" means the Service Provider's procedures, processes, timings, resources, treatments and controls relating to the execution of all Arboricultural Inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"**Area of Outstanding Natural Beauty**" or "**AONB**" means those areas of the Isle of Wight designated on the plan contained in schedule 30 (*Project Network/Technical Information*) as Areas of Outstanding Natural Beauty;

"**Ascertained Land Right**" means a Land Right in respect of which:

- (a) the Authority has disclosed to the Service Provider, prior to the date of this Contract, the existence of such Land Rights (whether by its inclusion in the schedule 30 (*Project Network/Technical Information*) or otherwise in writing); or

- (b) the Service Provider is otherwise aware of such Land Rights, at the date of this Contract or should have been aware of such Land Rights had the Service Provider carried out the due diligence reasonably expected of a competent contractor proposing to enter into this Contract;

"**Aspect Lamp**" means any light-emitting device for the control of movement by vehicles and pedestrians used in a Traffic Signal or pedestrian signal;

"**Assessment Live Loading**" shall have the meaning given to it in BD 21/01 in Volume 3 of the DMRB;

"**Assets**" means all assets and rights to enable the Authority or a successor service provider to operate and maintain the Project Network in accordance with this Contract, including:

- (a) any land or buildings;
- (b) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (c) in the event of a Termination of the Contract prior to the Expiry Date any equipment, Transfer Resources, materials, spare parts, tools, consumables and other assets (together with any warranties in respect of assets being transferred) as specified in the Demobilisation Plan;
- (d) any Transfer Resource Leases;
- (e) any Transfer Resource Warranties;
- (f) any revenues and any other contractual rights; and
- (g) any intellectual property rights,

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

"**Assigned Employees**" shall have the meaning given to it in clause 70.22.1 (*Retendering*);

"**Associated Company**" means in respect of a relevant company, a company which is a Subsidiary, a Holding Company or a company that is a Subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Service Provider shall include Holdco and each of the Shareholders, save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"**Attachment**" means all or any Authority Attachments, Project Network Attachments and Third Party Attachments;

"**Audit Commission**" means the body defined by Section 1 of the Audit Commission Act 1998 or such successor body or bodies who may be established by the government;

"**Authorisation Term**" has the meaning given to it in clause 5.3.1.3 (*Scope of Authorisation*);

"Authorised Functions" means the statutory functions set out in part 1 of schedule 23 (*Statutory Functions*);

"Authorised Service Provider Party" shall have the meaning given to it in clause 5.1.2 (*General Delegation*);

"Authority Administered Highway Claims" shall have the meaning given to it in paragraph 1 of schedule 26 (*Administration of Highway Claims*);

"Authority" means the Isle of Wight Council;

"Authority Attachments" means any Authority owned notices or other equipment and items authorised by the Authority to be attached to Project Network Parts, including but not limited to:

- (a) dog fouling notices;
- (b) litter prevention notices;
- (c) notices required by Legislation;
- (d) any environmental monitoring equipment the Authority considers is necessary or desirable;
- (e) alcohol prohibition and other by-law signs;
- (f) privilege direction signs;
- (g) general and local political signage;
- (h) signs and/or notices associated with local or national elections;
- (i) Hanging Baskets
- (j) Advertising;
- (k) crime prevention equipment or items (including, without limitation, CCTV cameras);
- (l) pennants;
- (m) authority festive decorations;
- (n) other information (including notices or signs) which the Authority wishes to attach pursuant to its statutory powers; and
- (o) Banners,

but shall not include Project Network Attachments or Traffic Signs;

"Authority Change" means a Change that is initiated by the Authority by submitting an Authority Change Notice to the Service Provider;

"Authority Change Notice" means a written notice submitted by the Authority requiring a Change and setting out the information specified in the relevant paragraph of schedule 17 (*Change Protocol*);

"Authority Default" means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Service Provider by the Authority or other Relevant Authority;
- (b) a failure by the Authority to make payment of any amount of money equal to or exceeding one (1) month's Monthly Unitary Charge that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by the Service Provider, where that amount fell due and payable two (or more) Months prior to the date of service of the written demand;
- (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Service Provider to perform its obligations under this Contract for a continuous period of two (2) Months; or
- (d) a breach by the Authority of clause 85.3 (*Assignment by the Authority*) occurs;

"Authority Default Termination Sum" shall have the meaning given to it in clause 80.1 (*Compensation Following an Authority Default or a Voluntary Termination*);

[REDACTED]

"Authority Excess Share Price Share" shall have the meaning given to it in clause 86.2.4 (*Freedom to Transfer Shares*);

"Authority Existing Employee" means in relation to any service equivalent to any of the Service (or any part of the Service) all those persons employed by the Authority under a contract of employment (excluding to avoid doubt (without limitation) any person employed by the Authority as an independent contractor or persons employed by any sub-contractor engaged by the Authority) who are wholly or substantially engaged in the provision of that service immediately before the Service Commencement Date;

"Authority First Alternate Representative" shall have the meaning given to it in clause 31.7.1 (*Authority's Alternate Representatives*);

"Authority Highways Works Structural Works Response" shall have the meaning given to it in clause 48.2.5 (*AHW Structural Works*);

"Authority Highway Works Response" shall have the meaning given to it in clause 48.1.5 (*Major AHW Works, Standard AHW Works and Small AHW Works*);

"Authority Indemnity Sum" shall have the meaning given to it in clause 61.1.3 (*Adjustment of payments after taking a Relevant Tax Liability into account*);

"Authority Initial Confirmation" has the meaning given in paragraph 2.4 of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Authority Letter of Acknowledgement" shall have the meaning given to it in paragraph 2.11 of schedule 26 (*Administration of Highway Claims*);

"Authority Materials" shall have the meaning given to it in clause 84.13.2 (*Consequence of Termination/Expiry*);

"Authority Notice of Accrual" shall have the meaning given to it in clause 50.2 (*Accrual and De-Accrual of Project Network Parts*);

"Authority Party" means any officer, agent or employee of the Authority (in its capacity as counterparty to this Contract) including the Authority Representative, acting in the course of office of his employment, and any subcontractor and its employees employed by the Authority (in its capacity as counterparty to this Contract) but excluding in each case the Independent Certifier, the Service Provider and any Service Provider Party;

"Authority Policies" means those policies of the Authority as are listed at schedule 27 (*Authority Policies*) and in Performance Standard 8 (*Authority Policies*) of schedule 2 (*Output Specification*) (and any changes notified by the Authority to the Service Provider from time to time);

"Authority Programmed Maintenance" means the Programmed Maintenance scheduled to be carried out or procured to be carried out by the Authority between the Pre-Commencement Survey Date and the Planned Service Commencement Date as set out in part 1 of schedule 32 (*Authority Predicted Works*);

"Authority Project Intellectual Property" means Intellectual Property Rights subsisting in the Disclosed Information, the Trade Marks and/or any other materials or know how in each case provided by the Authority to the Service Provider at any time during the Term;

"Authority Property" means any property which belongs to or is otherwise the responsibility of the Authority, but not including the Project Network or any Project Network Parts;

"Authority Representative" means the PFI Programme Director or such other person as the Authority shall from time to time appoint and notify to the Service Provider in writing in accordance with clause 31.5 (*Authority Representative*);

"Authority Retained Services" means those works and services undertaken by the Authority in relation to the Project Network in its capacity as a highway authority by virtue of, inter alia the Highways Act 1980 which the Service Provider will not be performing under this Contract and shall not include any of the Authority's obligations under this Contract;

"Authority Revenue Share" shall have the meaning given to it in clause 58.1 (*Revenue Sharing*);

"Authority Routine Maintenance" means:

- (a) the Authority's obligations set out in clause 11 (*Changes to Project Network from Pre-Commencement Survey Date*) for maintaining the

Project Network between the Pre-Commencement Survey Date and the Service Commencement Date;

- (b) cleansing and minor repair of Drainage Structures and Gullies;
- (c) vegetation management;
- (d) maintaining and repairing Pumping Stations;
- (e) repairs and replacements after accidents and/or vandalism on/of all Project Network Parts;
- (f) maintaining, cleaning and replacing Aspect Lamps, Traffic Signal Heads and Traffic Signs including poles and Traffic Signal control system cabinets;
- (g) graffiti removal from any Project Network Part;
- (h) minor repairs of Structures;
- (i) arboricultural maintenance;
- (j) Luminaire maintenance and cleaning;
- (k) photocell/timing mechanism adjustment and cleaning of Lighting Columns;
- (l) minor repairs to electrical equipment and wiring in Lighting Columns;
- (m) mechanical maintenance including door security on Lighting Columns;
- (n) minor patching and works on Project Roads;
- (o) Street Cleansing
- (p) replacement of missing road markings and Road Studs; and
- (q) replacement of Street Name Plates;

"Authority Second Alternate Representative" shall have the meaning given to it in clause 31.7.1 (*Authority's Alternate Representatives*);

"Authority Stage 1 Confirmation" has the meaning given in paragraph 4 of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Authority Stage 2 Confirmation" has the meaning given in paragraph 7 of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Authority Working Practices" means those working practices and procedures of the Authority as amended from time to time and carried out by the Authority in accordance with but not limited to the Authority Policies;

"Authority Works End Date" has the meaning given to it in clause 48.1.9 (*Major AHW Works, Standard AHW Works and Small AHW Works*);

"Authority Works Start Date" has the meaning given to it in clause 48.1.1; (*Major AHW Works, Standard AHW Works and Small AHW Works*);

"Authority's Annual Festive Decorations Programme" means the programme setting out those Festive Decorations that are authorised each year by the Authority to be put up in areas on the Project Network;

"Authority's Depots" means the Stag Lane Depot and the Smallbrook Depot;

"Authority's Emergency Response Team" means the persons responsible for the control and handling of emergencies in the area for which the Authority has responsibility;

"Authority's Planning Policies" means those policies which make up the local plan for the Island. These include all development plan documents (for the Island these come under an umbrella title of Island Plan) and supplementary planning documents (SPDs) and neighbourhood plans where they are adopted;

"Authority's Winter Maintenance Policy" means the Authority's policy pursuant to Performance Standard 7 of schedule 2 (*Output Specification*);

"Auxiliary Carriageway Lengths" means those Monitoring Lengths not indicated as Priority Snow Zone Lengths;

"Availability Adjustment" means the adjustment calculated in accordance with paragraph 7 of attachment 2 to schedule 4 (*Payment Mechanism*);

"Availability Deduction" means any deductions incurred under the Availability Matrix and dealt with in accordance with the Base Case Summer Deduction Matrix, the Base Case Winter Deduction Matrix, the Traffic Sensitive Deduction Matrix and the Category A Special Events Deduction Matrix contained at paragraphs 6 and 7 of attachment 2 to schedule 4 (*Payment Mechanism*);

"Availability Matrix" means the requirements of Attachment 2 (Availability Matrix) to schedule 4 (*Payment Mechanism*);

"Availability Period" has the meaning given to such term in the Senior Financing Agreements;

"Balancing and Settlement Code Procedure 520" means the balancing and settlement code procedure 520 for unmetered supplies of electricity set out in the balancing and settlement code as published by Elexon Limited and amended from time to time;

"Banner" means a fabric membrane suspended from a pole or poles;

"Bare Patches" means a small section within a Grassed Area where there is no grass;

"Base Annual Unitary Charge" means the annual unindexed total amount being [REDACTED] from the Base Case;

"Base Case" means the financial model agreed between the Parties (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Annual Unitary Charge;

"Base Case Change Effective Date" shall have the meaning given to it in clause 65.5.2 (*Revisions to the Base Case*);

[REDACTED]

"Base Case Summer Deduction Matrix" shall have the meaning as ascribed in provision 7.1 of Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Base Case Winter Deduction Matrix" shall have the meaning as ascribed in provision 7.1 of Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Base Relevant Insurance Cost" means the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPI from the Bid Date up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

"Base Relevant Insurance Reduction" means, the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or
- (b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:
 - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");
 - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and
 - (iii) the effects of RPI since the Bid Date;

"Base Senior Debt Termination Amount" means, subject to clause 87 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Service Provider to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Service Provider to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Service Provider and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Service Provider on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Service Provider as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Service Provider as a result of enforcing any other rights they may have;

"BA 74 Assessments of Scour at Highway Bridges" means the so titled volume of the DMRB and is the Code of Practice for assessment of scour on Bridges;

"BD 2/05 Technical Approval of Highway Structures" shall mean the volume of the DMRB entitled "BD 2/05 Technical Approval of Highways Structures";

"Belisha Beacon" means the posts, galleries, orange flexi globes, lighting units, Lamps, electrical circuits and components, control devices, wiring brackets, cut out and electricity connection and numbering found on either side of a pedestrian crossing as set out in schedule 30 (*Project Network/Technical Information*);

"Benchmark Testing" means skid resistance testing in both directions of a three (3) kilometre run of Carriageway within the Project Network pursuant to Performance Standard 2 (Surveys and Inspections);

"Benchmarking Process" means the process set out in paragraph 9 (*Benchmarking Process*) of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"**Benchmarking Report**" means the report produced by the Service Provider in accordance with the requirements of paragraph 9 (*Benchmarking Process*) of part 4 (*High Value Changes*) (which shall, for the avoidance of doubt, include the information required by paragraph 9.2 of part 4 (*High Value Changes*)) of schedule 17 (*Change Protocol*);

"**Beneficiary**" shall have the meaning given to it in clause 67.4 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*);

"**Bestival**" means the annual Bestival music festival which is classified under this Contract as a Category A Special Event;

"**Best Value**" shall mean the state of being in or ensuring compliance with the Authority's Best Value Duty;

"**Best Value Authority**" means an authority which is subject to the Best Value Duty in accordance with Section 1 of the 1999 Act;

"**Best Value Change**" means a Change required by the provisions of clause 42 (*Best Value and Continuous Value for Money*);

"**Best Value Duty**" means the duty imposed on the Authority by Section 3 of the 1999 Act or any subsequent Legislation or Guidance which places an obligation on the Authority to show it is obtaining value for money in provision or procurement of a service;

"**Best Value Inspector**" means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with the Best Value Duty in accordance with Sections 10 and 11 of the 1999 Act and part 8 of the Local Government and Public Involvement in Health Act 2007 (*Local Services: Inspection and Audit*) and "**Best Value Inspection**" shall be interpreted accordingly;

"**Best Value Notice**" means the notice to be served by the Authority upon the Service Provider pursuant to clause 42.7 (*Annual Service Report and Annual Service Plan*);

"**Bid Date**" means 30 April 2012;

"**Bill**" means a legislative proposal for an enactment of a Law;

"**Board Members**" has the meaning given to it in clause 44.4.1 (*Highways PFI Board Governance*);

"**Bollard**" means:

- (a) Illuminated Bollards; and
- (b) Non-Illuminated Bollards,

on the Project Network;

"**Boxes and Planters**" means those containers movable or fixed located on the Project Network for the presentation of flowers, shrubs and roses in uncut condition;

"Bridge" means any structure on the Project Network (including Footbridges) over or under a Project Road, necessary to allow the Project Road to cross an obstruction or a significant change in level including all superstructures and substructures thereof (but excluding any other Project Network Parts which are attached to or are placed on the relevant bridge) as set out in schedule 30 (*Project Network/Technical Information*);

"Bridge Authority" has the meaning given in Section 88(1)(b) of NRSWA;

"Bridge Condition Index" or "BCI" means the assessment of the condition of Structures in accordance with the County Surveyors Society document Guidance Note on Bridge Condition Indicators Volumes 2 and 3 as amended August 2004;

"British Standards" or "BS" means those standards published by the British Standards Institution as updated or amended from time to time;

"Brown Tail Moth" means a moth of the genus *Euproctis Chrysoorrhoea*;

[REDACTED]

"Bus Shelter" means any item of Street Furniture designed for use and used by persons waiting for buses and/or coaches;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the city of London;

"Call-Off Services" means those works or services to be provided by the Service Provider pursuant to the provisions of schedule 13 (*Call-off Services*);

"Call-Off Services Payment" means the payment for Call-Off Services made in accordance with paragraph 3.1 of schedule 4 (*Payment Mechanism*);

"Cap Expiry Date" shall have the meaning given to it in clause 13.10.1 (*Cap Expiry*);

"Capital Carbon" means the carbon associated with the capital elements of the Services;

"Capital Change in Highways Standards" shall have the meaning given to it in clause 54.4 (*Change in Highway Standards*);

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Capital Embedded Water" means the water used in relation to the capital elements of the provision of the Services;

"Capital Expenditure" means expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time provided that any expenditure that falls (in accordance with such principles) to be treated as either capital expenditure or revenue expenditure shall be treated as revenue expenditure for the purposes of this Contract;

"Capital Schemes" means the LTS Schemes and STS Schemes to be carried out by the Service Provider;

"CAR Insurance" shall have the meaning given in paragraph 1 of Part 1 of schedule 6 (*Insurance*);

"CAR Proceeds" shall have the meaning given in clause 68.11A.1 (*Insurance*);

"Car Parking Tariff Board" means the sign located in or adjacent to a car parking area indicating the fee payable for the right to leave a vehicle stationary in a prescribed location for a stated period as set out in schedule 30 (*Project Network/Technical Information*);

"Car Parking Ticket Machine" means any machine designed to provide tickets to regulate vehicular parking in a car park as set out in schedule 30 (*Project Network/Technical Information*);

"Carbon Adjustment" means the Carbon Adjustment calculated in accordance with paragraph 6 of schedule 4 (*Payment Mechanism*);

"Carbon Calculation Tool" means the tool provided to calculate the Carbon Footprint;

"Carbon Footprint" means a measurement of the impact of activities on the environment and is related to the amount of greenhouse gases produced in the day to day operations using units of tonnes of carbon dioxide equivalent;

"Carbon Management Programme Strategy and Implementation Plan" means the document referred to in schedule 27 (*Authority Policies*);

"Carbon Plan" means the Service Provider's plan for minimising the Carbon Footprint of the Services;

"Carbon Report" means the report produced by the Service Provider detailing the results of the Carbon Plan;

"Carriageway" means that part of the Project Road (including the constituent construction materials, any Road Markings, Road Studs, Anti-Skid Treatments and any other treatments to the surface) laid out for the use by motor vehicles (including Cyclelanes and lay-bys but excluding Footways, Cycleways, Cyclepaths and Paved Verges);

"CAT Check Certificate" shall have the relevant category check certificate for a structure as described in BD 2/05 Technical Approval of Highway Structures;

"Catalogue" means the catalogue of prices and (where relevant) time periods for Low Value Changes set out in Appendix 4 to schedule 17 (*Change Protocol*), as amended from time to time in accordance with paragraph 6 (Updating the Catalogue) of part 2 (*Low Value Changes*) of schedule 17 (*Change Protocol*);

"Catalogue Order Form" means a request for a Low Value Change in the form set out in Appendix 3 to schedule 17 (*Change Protocol*);

"Catchpit" means a covered or uncovered pit constructed in a Drainage System including a pit at the head of a Culvert designed to intercept waterborne solids and so prevent blockage;

"Category 1 Defects" means those defects in or on the Project Network that require prompt attention because they represent an immediate or imminent hazard or because there is a risk of short term structural deterioration;

"Category A Routes" means those Priority Snow Zone Lengths indicated as Category A Routes in the plan contained in Schedule 30 (*Project Network/Technical Information*);

"Category A Special Event" means:

- (a) the Isle of Wight Festival;
- (b) Cowes Week; and
- (c) Bestival;

"Category A Special Events GIS Layer" shall have the meaning given to it in provision 7.1 of Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Category A Special Events Matrix" shall have the meaning given to it in provision 7.1 of Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Category A Special Event Notification" shall have the meaning given to it in clause 26.3.4 (*Category A and Category B Special Events*);

"Category B Routes" means those Priority Snow Zone Lengths which are not indicated as Category A Routes in the plan contained in Schedule 30 (*Project Network/Technical Information*);

"Category B Special Event" means those special events listed in annexure 16 (*Category A Special Events and Category B Special Events*) or as varied pursuant to clause 26.1 (*Category B Special Events*);

"Category B Special Event Notification" shall have the meaning given to it in clause 26.3.4 (*Category A and Category B Special Events*);

"Category C Special Event" means any event that is not a Category B Special Event for which the Authority requires the Service Provider to provide services pursuant to paragraphs 1.6 and/or 1.9 of part 3 of schedule 13 (*Call-Off Services*);

"Category C Special Event Meeting" shall have the meaning given to it in paragraph 1.6 of part 3 of schedule 13 (*Call-Off Services*);

"Category C Special Event Notification" shall have the meaning given to it in paragraph 1.3 of part 3 of schedule 13 (*Call-Off Services*);

"Cattle Creep" means a structure that allows animals to cross beneath highways, railways or other obstructions to gain access from one side to another;

"CCTV Point" means powered apparatus incorporating an external CCTV camera(s) including the CCTV camera, housing, brackets, cabling, associated mechanical mechanisms, associated support structure and relevant network connectivity to the Control Room as set out in schedule 30 (*Project Network/Technical Information*);

"CCTV Points Inspection" means an inspection required by a relevant standards to check on the condition of CCTV Points and report on such condition for the assessment of maintenance works or renewal;

"CCTV Points Inspection Strategy" means the Service Provider's procedures, processes, timings, resources, and controls relating to the execution of all CCTV Point Inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"CCTV System" means the CCTV Points complete with cabling, controls viewing and recording facilities;

"CDM Co-ordinator" shall have the meaning given to it in the CDM Regulations;

"CDM Regulations" means the Construction (Design and Management) Regulations 2007 together with any Approved Code of Practice issued in connection therewith;

"Certificate of Completion" means a certificate issued by the Independent Certifier pursuant certifying for each District that, in respect of the Milestone in question, it is satisfied that the Service Provider has achieved Milestone Completion in that District;

"Certificate of Compliance" means, where permitted by clause 28.7 (*Inspections in relation to Powered Apparatus*) the document signed by the Service Provider to certify that new Powered Apparatus has been installed;

"Certificate of Non-Completion" means a certificate issued by the Independent Certifier pursuant to clause 28 (*Certification*) certifying that, in respect of the Milestone in question, it is not satisfied that Milestone Completion has been achieved in any PFI District;

"Certification Requirements" means the requirements that must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;

"Certified" means ensuring the Project Network meets the required standard with the issue of a certificate and/or licence as required;

"Certified Milestone Factor" means the factor taken from Table 2 of schedule 4 (*Payment Mechanism*) for the last Milestone for which a Certificate of Completion has been issued in accordance with clause 27.2 (*Unitary Charge Adjustment - Certificate of Completion*);

"Cessation Date" shall have the meaning given to it in clause 71.5.1 (*Alternative Pension Scheme*);

"Change" means any change, variation, extension or reduction in the Services and shall include High Value Changes, Medium Value Changes, Call-Off Services, and Accruals and De-Accruals pursuant to schedule 18 (*Accrual and De-Accrual*);

"Change in Highway Standards" means a change in any Highway Standard which occurs after the date of this Contract;

"Change in Law" means the coming into effect after the date of this Contract of:

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

"Change in Project Costs" means a fixed and final price for carrying out the relevant Change;

"Change Notice" means an Authority Change Notice and/or Service Provider Change Notice (as the context shall require);

"Change of Ownership" means

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Service Provider and/or Holdco (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the right to dividends); and/or
- (b) any arrangements which have or may have the effect of a sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Service Provider and/or Holdco (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the right to dividends); and/or
- (c) any other arrangements that have or may have or which result in the same effect as paragraphs (a) and (b) above;

"Channel Block" means a natural or artificial segmental unit placed in front of a Kerb to assist the passage of runoff from the Carriageway flowing into a Drainage System;

"Characteristic Scrim Co-efficient" means A SCRIM coefficient derived by correcting values within and between year through the use of early, mid and late survey periods in different years as defined in HD28;

"Chief Land Registrar" means the Chief Land Registrar of HM Land Registry;

"CIS Scheme" shall have the meaning given to it in clause 64.1 (*Sub-Contractors in the Construction Industry Scheme*);

"Civic Building" means the public buildings of a town, including recreational facilities and offices of local administration;

"Civil Emergency" has the meaning given to "Emergency" in Section 1 of the Civil Contingencies Act 2004;

"Civil Emergency Declaration" means a declaration by the Authority of a Civil Emergency;

"Civil Emergency Exercise" means any planning or practice exercise for a Civil Emergency;

"Civil Emergency Plan" means the plan to be developed by the Service Provider to demonstrate the Service Provider's ability and plan to comply with the Service Provider's obligations under Performance Standard 6 (Emergencies and Reactive Response) together with such other specific requirements as may be notified by the Authority from time to time;

"Civil Emergency Services" means those services set out in Appendix PS6 of schedule 2 (*Output Specification*);

"Civil Procedure Rules" means the Civil Procedure Rules 1998 (SI 1998/2132);

"Claim" means any claim, demand, proceedings or liability;

"Claimant" shall mean any person bringing a Highway Claim;

"Claims Meeting" shall have the meaning given to it in paragraph 3.2 of schedule 26 (*Administration of Highway Claims*);

"Claims Report" shall have the meaning given to it in paragraph 3.1 of schedule 26 (*Administration of Highway Claims*);

"Clean and Tidy" means the condition of any part of the Project Network such that all rubbish, Debris, arisings, and Litter are removed, any materials stored are safe and do not cause an obstruction and danger to the users of the Project Network, any Temporary Traffic Management is placed and maintained as designed;

"Client" shall have the meaning given to it in the CDM Regulations;

"Code of Practice" means all relevant codes of practice, regulations, guidance, directions, British Standards and European Standards and Authority Policies but excluding Legislation and Guidance;

"Commercially Available Software Package" shall have the meaning given to it in clause 84.6 (*Computer Data*);

"Commercially Sensitive Information" means the sub-set of Confidential Information listed in column 1 of part 1 (*Commercially Sensitive Contractual Provisions*) and part 2 (*Commercially Sensitive Material*) of schedule 28 (*Commercially Sensitive Information*) for the period specified in column 2 of parts 1 and 2 of schedule 28 (*Commercially Sensitive Information*);

[REDACTED]

"Committed Standby Facility" means a standby facility committed by the Senior Lenders at or at a date later than the date of this Contract or, without prejudice to clause 87.2.1 (*Changes to Finance Agreements, Project Documents and Supplemental Documents*), as the same may be amended as allowed by clause 87.5 (*Changes to Finance Agreements, Project Documents and Supplemental Documents*) for the purposes of funding any unforeseen cost overrun, increased expenses or loss of revenues to be incurred by the Contractor;

"Committee Briefings" means any briefings in advance of Planning Committee meetings;

"Communication Register" means the database which holds all details regarding communication as required by Performance Standard 10 (Contract management and Customer Interface);

"Companies Act" means the Companies Act 2006;

"Comparable Market" means local authority highways maintenance projects operated under PFI or other forms of PPP including Private Finance Transactions as defined in Regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 (as amended) provided that where there are less than five (5) such highways maintenance projects of similar content or less than three (3) contractors operating such contracts the "Comparable Market" shall be the market for the maintenance of highways networks by a private sector operator;

"Compensating Sum" shall have the meaning given to it in clause 61.1 (*Tax*);

"Compensation Date" means either:

- (a) if clause 80.2.2 (*Retendering Procedure*) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Service Provider; or

- (b) if clause 80.2.3 (*No Retendering Procedure*) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

"Compensation Event" means:

- (a) any breach by the Authority of any of its obligations under this Contract (with the exception of non-payment of the Annual Unitary Charge), from the date of this Contract until the expiry of the Core Investment Period;
- (b) the following breaches where they occur at any time following the expiry of the Core Investment Period,
- (i) where the Authority has failed to licence the Existing Apparatus or New Apparatus to the Service Provider in accordance with clause 16.4 (*Licence*);
 - (ii) where the Authority fails to undertake the Required Action in accordance with Good Industry Practice pursuant to clause 72.6 (*Step-In*);
 - (iii) any breach by the Authority of its obligations under clause 40.3 (*Retained Obligations and Retained Rights*);
 - (iv) where the Authority has breached its obligations under clause 56.2 (*Payment*);
 - (v) any breach by the Authority of its obligations under paragraph 1.2 Schedule 7 (*Attachments*) which occurs after the expiry of the Core Investment Period; and
 - (vi) where the Authority has breached any of its obligations under paragraph 6 of part 1 of schedule 17 (*Change Protocol*);
- (c) where clause 17.9 (*Smallbrook Depot and Stag Lane Depot*) applies; and
- (d) a breach of clause 18.5.2 (*Third Party Railway Agreements and Railway Access Compensation Event*) or where clause 18.5.5 (*Third Party Railway Agreements and Railway Access Compensation Event*) applies;

"Compensation Regulations" means the Local Government (Early Termination of Employment) Discretionary Compensation (England and Wales) Regulations 2006;

"Competitive Tendering Process" means the process set out in paragraph 8 (*Competitive Tendering*) of Part 4 (*High Value Changes*) of Schedule 17 (*Change Protocol*);

"Compliant Tender" means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under clause 80.2.2.1(c) (*Retendering Procedure*);

"Compliant Tenderer" means a tenderer who is a Suitable Substitute Service Provider;

"Conditions to Service Commencement" means the Mobilisation Requirements set out in schedule 11 (*Mobilisation*);

"Confidential Information" means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act; and
- (b) Commercially Sensitive Information;

"Confirmation Notice" means a written notice issued by the Authority pursuant to the relevant provision of schedule 17 (*Change Protocol*) setting out the agreed details of the Change, including the agreed cost, method of payment and the times of its implementation which shall be in the form set out in appendix 2 to schedule 17 (*Change Protocol*);

"Connection" means a connection to the distribution system of a DNO;

"Connections Review" shall have the meaning given to it in paragraph 1.1 of schedule 16 (*Original Non-Contestable Works Prices*);

"Conservation Area" means an area designated by the local planning authority under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to be of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance;

"Contestable Works" means the works upon or connections to the distribution system of a DNO which the DNO allows a Third Party to undertake by reason of its standard licence conditions issued to it by virtue of the Electricity Act 1989 and the Utilities Act 2000 or by any other reason at law;

"Contingent Funding Liabilities" means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of:

- (a) the Shareholders; and/or
- (b) the Subordinated Lenders; and/or
- (c) any other parties providing equity or subordinated debt,

owed under the Financing Agreements to the Service Provider, Holdco and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

"Contract" has the meaning given to it in clause 1 (*Interpretation, Construction and Priority of Documents*);

"Contract Identification Protocol" means the agreed branding strategy which will apply to the Service Provider's operations as a means of presentation to the Project Network Users, Third Parties and others, as required pursuant to Performance Standard 10 Appendix PS 10 Part 11 The Contract Identification Protocol;

"Contract Period" means the period commencing on the date of this Contract and ending on the earlier of:

- (a) the Expiry Date; and
- (b) the Termination Date;

"Contract Year" means a year commencing on 1 April in each calendar year and expiring on 31 March in the succeeding year provided that the first Contract Year shall commence on the Service Commencement Date and shall expire on the following 31 March and the last Contract Year shall commence on the final 1 April of the Term and shall expire on the earlier of the Expiry Date or Termination Date;

"Contract Year 1" means a year commencing on the Service Commencement Date;

"Contractors' All Risks" means contractors' all risks insurance that the Service Provider is obliged to take out on the terms set out in Schedule 6 (*Insurance*);

"Control Room" means the area within a building designated as the centre of non face to face communication for all matters related to the Services other than email and postal services, to include communication systems with Emergency Services, control and monitoring of all Street Lighting, Traffic Signals, and CCTV Points on the Project Network and viewing of the output from CCTV Points;

"Convictions" means, other than in relation to minor road traffic offences, any previous prosecutions, convictions, cautions and binding-over orders which are unspent under the provisions of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975;

"Core Investment Period" or "CIP" means the period of time commencing on the Service Commencement Date and ending on the date on which a certificate of completion in respect of the final Milestone is issued;

"Core Investment Period Longstop Date" means one hundred and two (102) months after the Service Commencement Date as may be amended from time to time in accordance with the provisions of this Contract;

"Core Investment Period Programme" or "CIPP" means a programme of Services containing the information set out in Performance Standard 1 Appendix PS 1 Part 1 Programmes and as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*);

"Core Investment Works" means those works and/or services to be carried out (or procured to be carried out) by the Service Provider in order to meet the requirements of Performance Standard 3 of schedule 2 (*Output Specification*) during the Core Investment Period;

"County Court" means a County Court as defined in the County Courts Act 1984 and situated in England and Wales;

"Cowes Week" means the annual Cowes sailing regatta which is classified under this Contract as a Category A Special Event;

"CSS" means the County Surveyor's Society;

"CSS Guidance Documents" means any guidance document issued from time to time in respect of highways maintenance by the CSS;

"Culvert" means an enclosed conduit necessary to take a watercourse beneath any part of a Project Road as set out in schedule 30 (*Project Network/Technical Information*);

"Cumulative Capital Expenditure" means the aggregate of:

- (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the Service Period; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under clause 53 (*Change in Law*);

"Customer Care Management System" means an electronic database for recording information including complaints in relation to the Service Provider's contact with Third Parties and the Authority and the requirements of Performance Standard 10 (*Contract Management and Customer Interface*);

"Customer Satisfaction Survey" means a survey of members of the public in accordance with clause 42.6 (*Customer Satisfaction Survey*);

"Customer Satisfaction Survey Date" means the date which is two (2) months prior to the submission date of each Annual Service Report and each anniversary thereof during the Term;

"Cutting" means the face of the ground produced when a Project Road has been constructed such that the Project Road surface is lower than the original ground and is exposed;

"Cyclolane" means a section of the Carriageway designated for use by bicycles;

"Cyclepath" means that part of a Project Road (including the constituent construction materials and any treatments to the surface) with an unbound surface laid out for use by bicycles;

"Cycleway" means any part of a Project Road (including the constituent construction materials, any Road Markings, Road Studs, Anti-Skid Treatments and any other treatments to the surface) with a bound surface laid out specifically for use by bicycles;

"Cycleway Section Length" or "CTSL" means a length of Cycleway for an individual cross sectional position;

"Daily Actions Report" means the document provided by the Service Provider as required by Performance Standard 7 Appendix PS 07 of schedule 2 (*Output Specification*);

"Dashboard Reporting" means the notification of selected information regarding the Services, Core Investment Works, operations and details of contract performance in electronic format either on a continuous or at specified times that allows database interrogation;

"Data" means all or any information, bespoke software, results, diagrams, schematics, formulae and any other form of information (whether recorded in writing, in electronic or electromagnetic form or otherwise) created or developed by the Authority, any Authority Party or the Service Provider or any Service Provider Party in the course of this Contract and for the purpose of providing the Services;

"Data Protection Act" means the Data Protection Act 1998;

"Data Room Document" means a document contained in Schedule 30 (*Project Network/Technical Information*);

"De-Accrual Cap" shall have the meaning given to it in paragraph 5.1.2 of schedule 18 (*Accruals and De-Accruals*);

"De-Accrual Date" shall have the meaning given to it in paragraph 3.1.5 of part 1 of schedule 18 (*Accruals and De-Accruals*);

"De-Accrual Notice" shall have the meaning given to it in paragraph 3.1 of part 1 of schedule 18 (*Accruals and De-Accruals*);

"De-Accrued" means, when applied to any Project Network Part, a Project Network Part which is no longer the responsibility of the Service Provider pursuant to this Contract by reason of the application of the provisions of schedule 18 (*Accruals and De-Accruals*) and/or a Change under schedule 17 (*Change Protocol*) and "De-Accrual" and "De-Accrue" shall be construed accordingly;

"Debris" means solid material including Litter lying on the Project Network which is not designed to be a Project Network Part or component of such Project Network Part located at the discovered position;

"Deemed Available" a monitoring length is Deemed Available:

- (a) in the event that the highway is obstructed due to a Civil Emergency, for the duration of the Civil Emergency and any temporary repair works required as a result;
- (b) in the event of a Highway Emergency, for the duration of the emergency and until expiry of the time allowed for any temporary repair works required as a result;
- (c) in the event of an Emergency Call Out, for the duration of the emergency and until expiry of the time allowed for any temporary repair works required as a result;
- (b) in the event that any of the following obstruct the highway provided that the Service Provider is otherwise compliant with schedule 2 (*Output Specification*):
 - (i) broken down or abandoned vehicles;
 - (ii) animal carcasses, detritus, fly tipping or spillages;
 - (iii) items placed on the highway under the terms of a specified licence;
 - (iv) unlawful blockages, closures or restrictions;

- (e) for the duration of closures agreed by the Authority for Special Events;
- (f) during Programmed and Emergency works by Statutory Undertakers and third parties under the provisions of the New Roads and Street Works Act provided that the Service Provider is compliant with schedule 2 (*Output Specification*);
- (g) for the duration of the periods identified as "Deemed Available" in Annex 2 to schedule 4 (*Payment Mechanism*);

"Deemed Liability" means an Actual Liability which would have arisen but for the utilisation of a Relief other than a Relevant Relief;

"Deemed New Contract" means an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Service Commencement Date, then the Service Commencement Date shall be extended by a period to allow a New Service Provider to achieve Service Commencement;
- (b) if this Contract is terminated prior to the completion of the Core Investment Period Programme, then the Core Investment Period and the date for completion of any applicable Milestones shall be extended by a period to allow a New Service Provider to achieve completion of the Core Investment Period Programme and any applicable Milestones;
- (c) any accrued Milestone Default Termination Points and Service Default Termination Points pursuant to the provisions of schedule 4 (*Payment Mechanism*) and/or any warning notices and/or Final Warning Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make Performance Adjustments, be cancelled and any ratchets applied in accordance with paragraph 8 of schedule 4 (*Payment Mechanism*) shall be reset to 1;
- (d) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;
- (e) any other amendments which do not adversely affect the Service Provider;

"Deemed to Comply in respect of Containment" means deemed to comply with TD19/06 of the DMRB and deemed to comply with the accidental wheel load in BD21/01 of the DMRB;

"Deemed to Comply Lighting Points" means that Street Lighting:

- (a) which is situated on a Monitoring Length of Carriageway, Footway, Cycleway, Urban Footpath or Cyclepath (as the case may be) where more than fifty percent (50%) of the number of Lighting Points on such Monitoring Length are fitted with Compliant Lamp Types;
- (b) which are Non-Standard Street Lighting; or
- (c) set out in Table 5 in schedule 15 (*Deemed to Comply*),

that are deemed compliant with the requirements of BS5489:2003 and BS EN13201:2003;

"Deemed to Comply Project Network Parts" means all Deemed to Comply Street Lighting, Deemed to Comply Lighting Points and all Deemed to Comply Structures;

"Deemed to Comply Street Lighting" means deemed to comply with the requirements of BS5489:2003 and BS EN13201:2003;

"Deemed to Comply Structures" means those Structures identified in Tables 1, 2, 3 and 4 of schedule 15 (*Deemed to Comply*) which are not required to meet the conditions identified in Performance Standard 4;

"Default Interest" means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

"Defect" means any attribute which is not part of the design of the Project Network Part;

"Deferred Services" shall have the meaning given to it in clause 27.3.1 (*Inability to Complete Milestone*);

"Deflectograph Surveys" means such named survey of the Carriageway undertaken to determine its structural condition through measurement of the deflection of the Carriageway as the result of the passage of a loaded wheel;

"Delegated Function" shall have the same meaning as "Authorised Function";

"Delegated Functions System" and/or **"Authorised Functions System"** means the database that holds all data on the Authorised Functions and is capable of demonstrating the Service Provider's compliance with schedule 2 (*Output Specification*);

"Delegated Obligations" means the obligations owed to Third Parties under the Third Party Agreements other than Retained Obligations;

"Delegated Rights" means the obligations owed to the Authority by Third Parties under the Third Party Agreements, excluding the Retained Obligations listed in schedule 22 (*Third Party Agreements*), which are assigned or assignable to the Service Provider in accordance with clause 40 (*Third Party Agreements*) of this Contract;

"Delegated Statutory Functions Register" means the register maintained by the Service Provider in accordance with PS10.8.1.1 of Appendix PS10 of schedule 2 (*Output Specification*) recording the Authorised Functions;

"Demobilisation Plan" means the Service Provider's detailed plan to achieve demobilisation which complies with the requirements of schedule 12 (*Demobilisation*);

"Department for Transport" ("DfT") shall mean the United Kingdom Department for Transport, or any successor body;

"Depots" means the Principal Depot, Stag Lane Depot and Smallbrook Depot;

"Depot Leases" shall mean each and all of the following depot leases;

- (a) the Stag Lane Depot Lease; and
- (b) the Smallbrook Depot Lease;

"Design Manual for Roads and Bridges" or "DMRB" means any and all volumes of the Design Manual for Roads and Bridges published by the Stationery Office, as updated or amended from time to time;

"Design Quality Plan" means a design quality plan to be submitted by the Service Provider pursuant to clause 33 (*Quality Management*);

"Design Variation Approval" means the approval of a design in accordance with the requirements of the Technical Approval Authority if it does not conform to the required standards with the original design;

"Determined Amount" shall have the meaning given to it in paragraph 2.14 of schedule 18 (*Accruals and De-Accruals*);

"Direct Agreement" means the direct agreement dated on or about the date of this Contract made between the Authority, the Service Provider and the Agent in the form set out in annexure 1 (*Form of Direct Agreement*);

"Direct Losses" means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

"Directive" means the EC Acquired Rights Directive 77/187 as amended;

"Disclosed Information" means all and any materials, documents, drawings, plans or other information relating in any way to the Project made available by the Authority or its agents in connection with the negotiation and preparation of this Contract (and during the procurement process which preceded such negotiation and preparation) whether provided in writing, orally, or by any other means including electronically, including all such materials, documents, drawings, plans, models or other information provided in connection with pre-qualification for that process;

"Discriminatory Change in Law" means a Change in Law, the terms of which apply expressly to:

- (a) the Project and not to similar projects procured under the PFI;
- (b) the Service Provider and not to other persons; and/or
- (c) PFI Contractors and not to other persons;

"Dispute" means any difference or dispute between the Authority and the Service Provider arising out of or in connection with the Contract (including any question as to the validity or interpretation of the Contract and including any dispute arising before or after termination of the Contract or any failure by either Party to perform their obligations pursuant to the Contract);

"Dispute Resolution Procedure" means the procedures set out in clause 83 (*Dispute Resolution Procedure*);

"Disputed Sum" shall have the meaning given to it in clause 56.8.2 (*Disputed Amounts*);

"Distribution" means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
 - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or
- (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

"District Proportion" means the proportion for each PFI District as set out in Table 1 of schedule 4 (*Payment Mechanism*);

"Diversionary Works" means works involving the diversion, change in level, protection or removal of part of the Project Network or other works in relation to the Project Network which are necessary to facilitate the execution of the Services;

"Diversity and Equality Policy" means the policy produced by the Service Provider under the provisions of clause 34.8 (*Diversity and Equality Policy*) and which is contained in schedule 35 (*Workforce Policies*);

"DNO" means a distribution network operator within the meaning of Part 1 of the Electricity Act 1989 as amended by the Utilities Act 2000;

"Draft Monthly Payment Report" means the draft report the Service Provider shall prepare and deliver to the Authority for each Month containing the information required to enable the calculation of the Monthly Payment;

"Drainage" means a physical system designed to drain water and other fluids away from the Project Network;

"Drainage Schemes" means the projects identified in schedule 2 (*Output Specification*) which are required to be carried out as CIP works to assist in improvement of the Project Network;

"Drainage Structure" means any or all of the following on the Project Network:

- (a) manholes, Catchpits, soakaways, headwalls, outfalls, grips and ditches balancing bonds, settlement ponds necessary for the removal of rain water from the Project Network (excluding any combined drainage structure or system that is the responsibility of the Water Authority);
- (b) Culverts which are under 900 mm in diameter;

"Drainage System" means any or all of the following on the Project Network:

- (a) Drainage Structures;
- (b) oil/petrol interceptors; and
- (c) Gullies and pipes;

"Dropped Kerb" means a crossing across a Footway or Verge that allows a vehicle to gain access to a property from the Carriageway;

"Dropped Kerb Application" shall have the meaning ascribed to it in paragraph 1.1 of part 7 of schedule 13 (*Call-Off Services*);

"DVI Surveys" or **"DVI"** means a survey that is carried out by a qualified inspector on foot in accordance with the UKPMS User Manual Volume 2 Chapter 8 current version as updated or amended from time to time;

"EAC" means the estimated rate of electricity consumption expressed in kWh/year of the Powered Apparatus;

"EIA Application" means a Planning Application where an environmental statement is required;

"Earthworks" means any Embankments and Cuttings;

"Eco Island" means the Isle of Wight's Sustainable Community Strategy 2008-2020;

"Edge Condition Index" has the same meaning as that given to it in UKPMS Visual Inspection Guide current version as updated or amended from time to time;

"Electrical Asset Management System" means a process and documentation (electronic) for recording electrical assets, their inspection, condition, the works undertaken and the timing of any replacement in compliance with schedule 2 (*Output Specification*);

"Electrical Inspection" means an inspection and testing to determine the electrical integrity of the Powered Apparatus in accordance with the requirements of Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"Electricity Consumption Report" shall have the meaning given to it in clause 57.2 (*Electricity Procurement*);

"Electricity Contract" means a contract entered into for the supply of electricity;

"Electricity Costs" means the cost of electricity supplying the Powered Apparatus for the purposes of this Contract—(including all fixed and standing charges, all associated metering and data management charges, the climate change levy (and any replacement levy or charge) and any premium charged for any specific terms and conditions related to the supply of electricity to the Powered Apparatus);

"Electronic Licence Management System" or "ELMS" means a computer based system for the management and payment of licences issued to third parties that are not Statutory Undertakers to enable them to undertake operations that impinge on the highway;

"Eligible Employees" means the Transferring Employees who are active members of or who are eligible to join the Local Government Pension Scheme;

"Elgin" means the electronic local government information network;

"Embankments" means a raised man-made bank to support a Project Road constructed using suitable fill material whether reinforced or otherwise;

"Emergency" means any:

- (a) event or circumstance which gives rise to the involvement of the Emergency Services; or
- (b) fire, flood, serious criminal act or other act which creates an immediate risk to public health and/or safety,

which may where the circumstances so dictate, also constitute a Civil Emergency;

"Emergency Call Out" means the mobilisation of resources to deal with an incident on the Project Network which requires immediate attention in accordance with Performance Standard PS6 (Emergencies and Reactive Response) of schedule 2 (*Output Specification*);

"Emergency Contact Number" means a telephone number whether a landline or mobile for the purpose of the Service Provider being informed of incidents or problems on the Project Network at any time;

"Emergency Fault" means a fault arising in any item of Powered Apparatus which:

- (a) gives rise to the involvement of the Emergency Services;
- (b) creates an immediate risk to public health and safety;
- (c) causes a risk of electric shock;
- (d) involves attendance at and making safe damaged Powered Apparatus;
- (e) results in Traffic Signal Sites being obscured by Vegetation;

"Emergency Services" means the police, fire, ambulance services or coastguard;

"Employee Liability Information" means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or

employees which is the subject of the Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;

"**Energy Payment**" means the payment calculated in accordance with paragraph 3.3.2 of schedule 4 (*Payment Mechanism*);

"**Enforcement Cases**" means such enforcement action undertaken by the Authority through its Planning Services department;

"**Enhanced Project Network Part(s)**" means those Project Network Parts which are required to be installed to an Enhanced Standard;

"**Enhanced Project Network Part Application**" shall have the meaning ascribed to it in paragraph 1 of part 8 of schedule 13 (*Call-Off Services*);

"**Enhanced Standards**" means a standard in excess of the requirements of schedule 2 (*Output Specification*) and any other relevant provisions of the Contract which shall for any Project Network Part subject to the provisions of part 8 of schedule 13 (*Call-Off Services*) be set out within the Enhanced Project Network Part Application for that Project Network Part;

"**Enhancement Notice**" shall have the meaning ascribed to it in paragraph 4 of part 8 of schedule 13 (*Call-Off Services*);

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"**Environmental Protection Act**" means the Environmental Protection Act 1990;

"**Epicormic Growth**" means shoots emanating from dormant sections of a tree or adventitious buds along tree branches, tree trunks, tree buttress roots and from tree roots within 0.5m of the trunk or planting pit (whichever is the greater distance) of the relevant tree;

"**Equity IRR**" means the projected blended rate of return to the Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made;

"**Escalation Type**" means in respect of each Performance Requirement the corresponding type of escalation, taken from Table 5 of schedule 4 (*Payment Mechanism*), to be applied in respect of each failure to comply with such Performance Requirement as set out in Performance Standards 1 to 10 of schedule 2 (*Output Specification*);

"**Escalation Value**" means the factor applied for each Escalation Type as set out in Table 5 of schedule 4 (*Payment Mechanism*);

"**ESDAL**" means the "Electronic Service Delivery for Abnormal Loads" which is a national system developed by the Highways Agency for the management of Abnormal Loads;

"**Estimated Change in Project Costs**" means in relation to clause 46.2 (*Procedure - Compensation Events*), clause 53 (*Change in Law*) and schedule 17 (*Change*

Protocol), the aggregate of any estimated increased construction costs, installation costs, operating costs (including lifecycle and electricity costs) and financing costs less the aggregate of any estimated reduction in construction costs, installation costs, operating costs (including lifecycle and electricity costs) and financing costs;

"**Estimated Fair Value of the Contract**" means the amount determined in accordance with clause 80.2.3 (*No Retendering Procedure*) that a third party would pay to the Authority as the market value of the Deemed New Contract;


"**European Economic Area**" means the area established by the Agreement on the European Economic Area (03/01/1994);

"**Event Criterion**" means the parameter set for as the measurement of an instance of a failure against a Performance Requirement as set out in Performance Standards 1 to 10 of schedule 2 (*Output Specification*). For any given Performance Requirement the Event Criterion may be, but not limited to, per occurrence, Monitoring Length or District;

"**Event Storm**" means precipitation with rainwater intensity equal or greater than 25mm per hour;

"**Exceptional Cost**" means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount thirty (30) per cent of the Base Relevant Insurance Cost for that Insurance Review Period;

"**Exceptional Saving**" means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount thirty (30) per cent of the Base Relevant Insurance Cost for that Insurance Review Period;


"Excusing Cause" shall mean any of the following events:

- (a) where the circumstances in clause 6.6 (*Refusal or delay by Authority to take requested action*) apply;
- (b) where the circumstances in clause 12.6 (*Geotechnical Failure*) apply;
- (c) where the circumstances in clause 15.1 (*Trials*) apply;
- (d) where the circumstances in clause 12.13.3 (*General*) apply;
- (e) where the circumstances in clause 13.10.10 (*Cap Expiry*) or 13.12.3 (*General*) apply;
- (f) where the circumstances in clauses 17.4 or 17.6.2 (*Necessary Consents*) apply;
- (g) where the circumstances in clause 18.4 (*Access to Third Party Land to install Project Network Parts*) apply;
- (h) where the circumstances in clause 20.4.3 (*Gypsies and Travellers*) apply;
- (i) where the circumstances in clause 29.4.6 (*Project Network Discoveries*) apply;
- (j) where the circumstances in clause 68.12.3 (*Reinstatement*) apply;

- (k) where the circumstances in paragraph 1.13 of part 3 (*Special Events*) of schedule 13 (*Call-Off Services*) shall apply;
- (l) the circumstances in which the Service Provider complies with the directions and/or instructions issued by the Authority in respect of a Civil Emergency Declaration pursuant to PS6.4.1.2(a) of schedule 2 (*Output Specification*);
- (m) the circumstances where the Service Provider diverts resources away from achieving Performance Standard 6 to attend an Emergency in accordance with PS 6.4.1.2 of schedule 2 (*Output Specification*);
- (n) where the Emergency Services take over the Project Network or part of the Project Network for more than three (3) hours;
- (o) where Statutory Undertakers' emergency works or over-runs utilise the Project Network where the Service Provider had planned works;
- (p) where the Authority exercises its right to use the Service Provider's Equipment in accordance with clause 15.3 (*Obligation to make Equipment Available*);
- (q) where the circumstances in clause 15A (*Unascertained Land Rights*) apply;
- (r) any failure of, or disruption to:
 - i. power occurring to the electricity distribution system belonging to a DNO (excluding the low voltage cable which supplies the Apparatus); or
 - ii. the telecommunications network to the extent that this is beyond the reasonable control of the Service Provider and Service Provider Parties;
- (s) a failure by the DNO to carry out Non-Contestable Works or services within the meaning of the Electricity Act 1989;
- (t) any failure or shortage of oil, fuel, salt or gritting materials arising as a consequence of:
 - i. an act or omission by any Relevant Authority; or
 - ii. in the case of oil or fuel only, any blockade or embargo which does not constitute a Force Majeure Event;
- (u) where the Service Provider is prevented from performing its obligations as a consequence of the failure of a technical review body with statutory rights of review to respond within a reasonable timeframe to a validly constituted request for advice or assistance from the Service Provider, provided always that in determining a reasonable timeframe the normal response times of the relevant technical review body in respect of such validly constituted requests shall be taken into consideration; and
- (v) where the Authority carries out or procures the carrying out of Major AHW Works, Standard AHW Works, Small AHW Works or AHW Structural Works;

"Execution Documents" means the documents to be delivered by the Parties pursuant to schedule 31 (*Execution Documents*);

"Executive" shall have the meaning given to it in the CDM Regulations;

"Exempt Refinancing" means:

- (a) any Refinancing that was fully taken into account in the calculation of the Annual Unitary Charge;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements;
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Sub-Contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);
 - (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Service Provider under the Senior Financing Agreements and/or amounts released from the Proceeds Account during the Availability Period, each as defined in the Senior Financing Agreements and which are given as a result of any failure by the Service Provider to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Service Provider or the Senior Lenders to the Authority prior to being given;
 - (vii) changes to milestones for drawdown and/amounts released from the Proceeds Account during the Availability Period set out in the Senior Financing Agreements and which are given as a result of any failure by the Service Provider to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Service Provider or the Senior Lenders to the Authority prior to being given;
 - (viii) failure by the Service Provider to obtain any consent by statutory bodies required by the Senior Financing Agreements; or
 - (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;

- d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Contract;
- e) any sale of shares in the Service Provider or Holdco by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Service Provider or Holdco provided that this paragraph (e) shall, in respect of shares in Holdco, only apply for so long as Holdco holds 100% of the issued share capital in the Service Provider;
- f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- g) any Qualifying Bank Transaction;

"Existing Apparatus" means the Apparatus on the Project Network on Service Commencement Date;

"Expired BRB Agreements" shall mean those agreements between the Authority and British Railways Board set out in Table 2 of Schedule 22 (*Third Party Agreements*);

"Expiry Condition A Requirements" shall have the meaning given to it in the Handback Expiry Condition section of PS3 of schedule 2 (*Output Specification*);

"Expiry Condition B Requirements" shall have the meaning given to it in the Handback Expiry Condition section of PS3 of schedule 2 (*Output Specification*);

"Expiry Date" means the twenty-fifth (25th) anniversary of the Planned Service Commencement Date;

"External Auditor" means any external auditor of the Authority from time to time;

"External Power Supply Points" means those external power supply points which are externally powered and provide electricity and support to Festive Decorations;

"Failure Cost" means costs incurred by the Service Provider in respect of the rectification, management and mitigation of a Geotechnical Failure, and/or Geological Failure pursuant to clause 12 (*Geotechnical and Geological Zones*);

"Failure Notice" shall have the meaning given in clause 12.9 (*Failure Notice*);

"Failure Notification" shall have the meaning given in clause 12.8 (*Failure Notification*);

"Failure Report" shall have the meaning given in clause 12.11 (*Failure Report*);

"Failure Solution" means the solution agreed between the Parties pursuant to clauses 12.11.7.1 (*Failure Report*) or determined pursuant to clause 12.9.3 (*Failure Notice*) in respect of the rectification, management and/or mitigation of a Geotechnical Failure and/or a Geological Failure;

"Fair and Equitable Operations Protocol" means the protocol contained in schedule 34 (*Fair and Equitable Operations Protocol*);

"Fair Value" means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced or liquidation sale;

"Fascia Panel" means a non-structural facing material on a fence or structure;

"Fees Regulations" means The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

"Feeder Pillar" means a purpose made waterproof cabinet used to protect electrical cables and/or switchgear as set out in schedule 30 (*Project Network/Technical Information*);

"Fellow of the Institute of Actuaries" means an actuary who has been awarded fellowship status by the Institute of Actuaries;

"Festive Decorations" means lighting, illuminations, decorations, banners and bunting used or intended for:

- (a) the celebration or enjoyment of festivities;
- (b) annual or regular displays; and/or
- (c) licensed markets;

"Festive Decoration Plan" shall have the meaning given to it in paragraph 2.2 of part 2 of schedule 13 (*Call-Off Services*);

"Festive Decoration Testing Date" shall have the meaning given to it in paragraph 3.1 of part 2 of schedule 13 (*Call-Off Services*);

"Festive Periods" shall have the meaning given to it in paragraph 2.1.2 of part 2 of schedule 13 (*Call-Off Services*);

"Festive Report" shall have the meaning given to it in paragraph 3.2 of part 2 of schedule 13 (*Call-Off Services*);

"Final Employee List" has the meaning given to it in clause 70.8 (*Update of the First Employee List*);

"Final New Works Response" shall have the meaning given to it in clause 49.24.5 (*Completion of New Works*);

"Final Report" shall have the meaning given to it in clause 82.5.3.1 (*Independent Certifier's Report*);

"Final Service Inspection" means that service inspection which the Service Provider is required to undertake in the Final Contract Year pursuant to PS2 of schedule 2 (*Output Specification*);

"Final Warning Notice" shall have the meaning given to it in clause 75.6.2 (*Persistent Breach*);

"Financial Close" has the meaning given to it in the Senior Credit Agreement as at the date of this Contract;

"**Financial Terms**" means the financial terms set out in the Financing Agreements;

"**Financing Agreements**" means all or any of the agreements or instruments entered into or to be entered into by the Service Provider or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Service Provider or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing);

"**Financing Default**" means an Event of Default as defined in the Senior Credit Agreement;

"**Financial Panel**" shall have the meaning given to it in clause 83.2.1.1 (*Adjudication*);

"**Finds**" means all fossils, articles of value or antiquity, unexploded ordnances, and structures or other remains (including human remains) or things of significant geological, historical or archaeological interest discovered on, in, under or over any land in the course of performing the Services;

"**First Contractor**" means the person with whom the Authority initially contracted for the provision of services which are similar to the Service;

"**First Employee List**" means the information set out in Schedule 29 (*Employee Information*);

"**First Insurance Review Date**" means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;

"**Five Year Indicative Programme**" means a programme of Services provided by the Service Provider pursuant to Performance Standard (*Network Performance*) Appendix PS01 of schedule 2 (*Output Specification*), as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*);

"**Five Year Landscape Management Strategy**" means the Service Provider's five year landscape management strategy which shall set out all details of the actions to be carried out (or procured to be carried out) by the Service Provider in each period of five (5) Contract Years for the duration of the Service Period in relation to the provision of the Services in accordance with Performance Standard 5 (*Environment*) of schedule 2 (*Output Specification*);

"**Five Year Tree Replacement Programme**" means the Service Provider's five year tree replacement programme which shall set out all details of the action to be carried out (or procured to be carried out) by the Service Provider in each period of five (5) Contract Years for the duration of the Service Period in relation to providing the Services in accordance with Performance Standard 5 (*Environment*) of schedule 2 (*Output Specification*);

"**Fixed Penalty Notices**" means a document and process used to notify the applicant of a penalty of fixed value for not meeting the requirements of a process or condition as laid down by Statute;

"**Fixed Traffic Counter**" means equipment for the measurement of number, speed and classification of traffic on the Project Network;

"Fixed Traffic Counter Site" means a location for a Fixed Traffic Counter;

"Fixing Point" means a fabrication attached to any other Project Network Part which allows the fixing of a Festive Decoration;

"Flagpole" means any item of street furniture used for the affixing and flying of any flag or Banner;

"Flexible Earth Retaining Structure" means a Structure that is allowed to move as a function of its retaining capacity or action;

"Flood Response Plan" means the document produced by the Service Provider to demonstrate the Service Provider's ability and plan to comply with the Service Provider's obligations under Performance Standard 6 (Emergencies and Reactive Response) Appendix PS6 of schedule 2 (*Output Specification*) together with such other specific requirements as may be notified by the Authority from time to time;

"Fly Posting" means any printed material attached onto a Project Network Part by any person or persons at a location where permission for such deposition has not been granted by the Authority;

"Fly Tipping" means rubbish, Debris or any material left on the Project Network by any person or persons at a location where permission for such deposition has not been granted by the Authority;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"FOIA Code" shall have the meaning given to it in clause 90.8 (*FOIA Code*);

"Footbridge" means a structure provided to allow pedestrians only to pass over a Project Road, railway or other obstruction to gain access from one side to the other as set out in schedule 30 (*Project Network/Technical Information*);

"Footpath" means a facility for use by pedestrians remote from a Carriageway with an unbound surface;

"Footway" means those segregated facilities laid out for use by pedestrians either proximate or remote from a Carriageway (including the constituent construction materials and any treatments to the surface);

"Footway Crossing" means a section of a Footway which has been constructed such that it is depressed below the general Footway level to provide a crossing point for pedestrians at Carriageway level;

"Force Majeure Event" means the occurrence after the date of Contract of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Service Provider or its sub-contractors; or

(c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either party ("the Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;

"Force Majeure Termination Sum" shall have the meaning given to it in clause 80.4.1 (*Compensation Following a Force Majeure Event or Uninsurability*);

"Ford" means a shallow place in a body of water, such as a river or stream where vehicular, pedestrian or equestrian users can safely cross the watercourse;

"Forecast Carbon Footprint" means the forecast of carbon within the Carbon Calculation Tool;

"Forecast Water Footprint" means the forecast of water calculated within the Water Calculation Tool;

"Frame" means the supporting structure for an access cover and the grating on top of a Gully;

"Free From Algae, Bird Droppings and Dirt" means the level of bird, animal and human waste products does not exceed that which would detract from the visual appearance of the structure and/or constitute a risk to the health or safety of any person or property;

"Free from Defects" means that there are no surface defects on a Structure, Apparatus or Furniture which detract from the visual appearance and/or no structural defects which are detrimental to the structural integrity of the Structure, Apparatus or Furniture;

"Free From Standing Water" shall have the meaning given to it in Performance Standard PS4 of schedule 2 (*Output Specification*);

- (a) in respect of Hierarchy 1 Carriageways, no ponding, puddling or accumulation of water of a depth greater than 10mm covering an area exceeding 1 square metre has occurred; and
- b) in respect of Hierarchy 2,3 and 4 Carriageways, no ponding, puddling or accumulation of water of a depth greater than 15mm covering an area exceeding two square metres has occurred;

"Full Term Indicative Programme" means a programme which relates to the whole of the Term providing the detail required by Performance Standard 1 (Network Performance) Appendix PS 1 Part 1 Programmes of schedule 2 (*Output Specification*), as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*);

"Furniture" means:

- (a) Street Furniture; and
- (b) Attachments;

"Further Management Strategy" means the strategy that is required to by BA 74 where a structure is under threat from damage due to scour, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Future Service Provider" shall have the meaning given to it in clause 70.19.1 (*Service Provider Indemnities*);

"Gabion" means a wire mesh basket filled with graded stone or other suitable fill used to retain earth and provide erosion protection on or supporting a Project Road or structure;

"General Change in Law" means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"General Inspections" means an inspection so named carried out in compliance with Management of Structures Code of Practice and the Design Manual for Roads and Bridges Volume 3 BD 63;

"Geological Area" shall mean the area detailed in the plan contained at part 3 of schedule 9 (*Geotechnical and Geological Zones*) but excluding the Geotechnical Sites within that area;

"Geological Failure" means a failure in or movement of the natural landform including the sub-surface (below construction depth) on the Project Network within the Geological Area as a consequence of inherent geological features, processes or actions that give rise to movements or forces that act on a Project Network Part, and which are not the intended subject of the proposed capital works solutions, which are described on a site by site basis in a "Works Design Statement" for each site set out in Schedule 9 (*Geotechnical and Geological Zones*);

"Geological Failure Caps" means:

- (a) in respect of a single Geological Failure, [REDACTED] (Indexed);
- (b) [REDACTED] (Indexed) in aggregate in any Contract Year; and
- (c) [REDACTED] (Indexed) in aggregate over the Term;

"Geotechnical Asset" means those Project Network Parts that were constructed as Earthworks including elements of Flexible Earth Retaining Structures;

"Geotechnical Asset Management Plan" means a document to identify the processes, procedures, programme and work that it is intended to be carried out each Contract Year with regard to all matters related to the Geotechnical Assets;

"Geotechnical Failure" means a failure in or movement of the natural sub-surface (below construction depth) on the Project Network within a Red Zone or an Amber Zone which is intended to be mitigated or improved by the proposed engineering works and which is not a consequence of inherent geological features, processes or actions that give rise to movements or forces that act on a Project Network Part, and which are described on a site by site basis in a "Works Design Statement" for each site set out in Schedule 9 (*Geotechnical and Geological Zones*);

"**Geotechnical Inspection**" means the inspection required to be carried out by the Service Provider in accordance with schedule 2 (*Output Specification*) to check on the condition of any Geotechnical Asset and report on such condition for the assessment of maintenance works or renewal;

"**Geotechnical Inspection and Monitoring**" means the inspections and monitoring carried out by the Service Provider in accordance with paragraph 2.4.10.1 of Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"**Geotechnical Inspection and Monitoring Strategy**" means the Service Provider's Strategy provided in accordance with paragraph 2.4.10.1 of Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"**Geotechnical Inspection Programmes**" means a document identifying the Service Provider's processes, procedures and work, including timing and resources to be carried out each Contract Year with regard to all matters related to Geotechnical Inspections on the Project Network;

"**Geotechnical Risk Area**" means those areas designated as "Red Zones" and "Amber Zones" specified in Tables 1 and 2 of schedule 9 (*Geotechnical and Geological Zones*);

"**Geotechnical Risk Cap**" means:

- (a) in respect of the Red Zone, the relevant LTS Cap or STS Cap;
- (b) in respect of the Amber Zone, the relevant Amber Zone Cap;
- (c) in respect of all Geotechnical Failures, [REDACTED] (Indexed) in aggregate over the Term;

"**Geotechnical Risk Map Rectification Period**" shall mean the rectification period agreed with the Authority in accordance with paragraph 4.4.18.3 of Performance Standard 4 (*Network Standards*) of schedule 2 (*Output Specification*);

"**Geotechnical Risk Mapping**" means an assessment of the possible failure of the geotechnical nature of a highway as a result of slope stability issues;

"**Geotechnical Site**" shall mean the Red Zones and Amber Zones;

"**Gilt**" means UK Government securities issued by HM Treasury;

"**Good Arboricultural Practice**" means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

"**Good Horticultural Practice**" means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

"**Good Industry Practice**" means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

"**Government**" means the central Government;

"**Government Actuary Department**" means such body or any replacement or successor body which provides actuarial advice to all parts of the United Kingdom Government and any relevant United Kingdom public bodies, on policy related to pensions, social security and other actuarial matters;

"**Grace Period**" means the duration allowed, as given by Performance Standard 3 (Core Investment Period and Handback Expiry Period) of schedule 2 (*Output Specification*) for the relevant Project Network Parts to be brought up to the required standard of schedule 2 (*Output Specification*);

"**Graffiti**" means any images or lettering scratched, scrawled, painted or marked in any matter on any Project Network Part;

"**Grass Verges**" means the strip of land between a Carriageway and any Earthwork or fence designated for coverage with grass;

"**Grassed Area**" means an area designated on the Project Network for coverage with grass;

"**Grating**" means the slotted cover on a Gully;

"**Gravel Surface**" means an unbound surface made up of stone or similar material;

"**Green Waste**" means any waste products resulting from Vegetation;

"**Grit Bin**" means the grit bins owned by the Authority used for the storage of any anti-icing product to be used by the Service Provider or the public;

"**Guidance**" means any applicable guidance or directions with which the Service Provider is bound to comply;

"**Gully**" means a small chamber covered by a metal grating, (usually found in the gutter of a road) which collects surface water from the road and includes the pipe connection to the carrier drain;

"**Handback Requirements**" means the defined condition of any element of a Project Network Part required pursuant to clause 82 (*Handback Procedure*);

"**Hanging Baskets**" means a decorative hanging basket, weighing not more than twenty (20) kilograms;

"**Hard Landscaping**" means any area or object on the Project Network that is made of solid material which is not a normal growing medium for grass, fungi or other

provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

"**Good Industry Practice**" means using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking as under this Contract under the same or similar circumstances;

"**Government**" means the central Government;

"**Government Actuary Department**" means such body or any replacement or successor body which provides actuarial advice to all parts of the United Kingdom Government and any relevant United Kingdom public bodies, on policy related to pensions, social security and other actuarial matters;

"**Grace Period**" means the duration allowed, as given by Performance Standard 3 (Core Investment Period and Handback Expiry Period) of schedule 2 (*Output Specification*) for the relevant Project Network Parts to be brought up to the required standard of schedule 2 (*Output Specification*);

"**Graffiti**" means any images or lettering scratched, scrawled, painted or marked in any matter on any Project Network Part;

"**Grass Verges**" means the strip of land between a Carriageway and any Earthwork or fence designated for coverage with grass;

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"**Grating**" means the slotted cover on a Gully;

"**Gravel Surface**" means an unbound surface made up of stone or similar material;

"**Green Waste**" means any waste products resulting from Vegetation;

"**Grit Bin**" means the grit bins owned by the Authority used for the storage of any anti-icing product to be used by the Service Provider or the public;

"**Guidance**" means any applicable guidance or directions with which the Service Provider is bound to comply;

"**Gully**" means a small chamber covered by a metal grating, (usually found in the gutter of a road) which collects surface water from the road and includes the pipe connection to the carrier drain;

"**Handback Requirements**" means the defined condition of any element of a Project Network Part required pursuant to clause 82 (*Handback Procedure*);

"**Hanging Baskets**" means a decorative hanging basket, weighing not more than twenty (20) kilograms;

"**Hard Landscaping**" means any area or object on the Project Network that is made of solid material which is not a normal growing medium for grass, fungi or other

rooted plants and on which the growth of plants, fungi or rooted plants is not intended;

"**Hard Landscaping Weeds**" means all Weeds arising on Hard Landscaping Areas;

"**Health and Safety File**" shall have the meaning given to it in the CDM Regulations;

"**Health and Safety Regime**" means the Health and Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;

"**Hedge**" means a group of plants that grow in a linear arrangement and require trimming to produce a desired cut cross section;

"**Hedging Agreements**" means the documents falling within the definition of "Hedging Documents" as defined in the Senior Credit Agreement;

"**Height Restriction**" means any height restriction which has been put in place as a result of a Traffic Regulation Order or an advisory or mandatory Traffic Sign;

"**Help Desk**" means the customer interface facility provided or procured by the Service Provider pursuant to Performance Standard 10 Appendix PS 10 of schedule 2 (*Output Specification*);

"**Heritage**" means Project Network Parts that are physical assets such as street lighting columns, cattle troughs etc from a preceding generation worthy of preservation for the future and design concepts applied to specific areas labelled "Conservation Areas". When it is not possible to exactly match the asset then as close a match as possible will be required;

"**Heritage Area**" means local designations are Conservation Area, local listings, and natural designations, i.e. sites of special scientific interest, (SSSI), special areas of conservation (SAC), special protection areas (SPA), Ramsar sites, national nature reserves (NNR), local nature reserves (LNR), and marine protected areas (MPA). In addition they can have national and international statutory environment designations;

"**Hierarchy**" means the designated order applied to indicate level of importance on the Project Network based on the volume of traffic flow on the Monitoring Length;

Hierarchy	Condition
Hierarchy 1	Monitoring Lengths that are surveyed by SCANNER as shown on the GIS layer as Hierarchy 1
Hierarchy 2	Monitoring Lengths that are surveyed by SCANNER as shown on the GIS layer as Hierarchy 2
Hierarchy 3	Monitoring Lengths that are surveyed by SCANNER as shown on the GIS layer as Hierarchy 3

	Hierarchy 3
Hierarchy 4	Hierarchy 4 Monitoring Lengths that are surveyed by SCANNER as shown on the GIS layer
Hierarchy 4A	Hierarchy 4 Monitoring Lengths that are surveyed by DVI as shown on the GIS layer
Hierarchy 4B	Access roads to single properties as shown on the GIS layer as Hierarchy 4B
Hierarchy 5	Unpaved Carriageways as shown on the GIS layer as Hierarchy 5
Hierarchy 5A	Fords as shown on the GIS layer as Hierarchy 5A

"Highest Compliant Tender Price" means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero;

"Highway Asset Management Plan" means the Service Provider's plan for the management of Assets as identified in the Well Maintained Highways Code of Practice and referred to in paragraph 1.4.2.1 of Performance Standard 1 (*Network Performance*) of schedule 2 (*Output Specification*);

"Highway Improvement Scheme" means any highway improvement scheme which the Authority wishes to implement in respect of the Project Network, including Local Transport Schemes;

"Highways Register" means the list maintained by the Authority pursuant to section 36(6) of the Highways Act giving details of Highways Maintainable at Public Expense, Carriageways, Footways, Cycleways designated as Highway, Privately Maintainable Public Rights of Way and private streets as set out in schedule 30 (*Project Network/Technical Information*);

"High Value Change" means a Change which is not listed in the Catalogue and which:

- (a) in the reasonable opinion of the Authority, is likely to either cost more than [REDACTED] (Indexed) to implement, or require an adjustment to the Annual Unitary Charge that is greater than [REDACTED] of the Annual Unitary Charge; and/or
- (b) involves a structure for which there is no applicable or analogous Y value in part 2.1 of schedule 18 (*Accruals and De-Accruals*); or
- (c) is a change to the terms and/or conditions of the Contract (which has not arisen as a result of any other Change);

"Highway" means all Carriageways, Footways, Cycleways and Cyclepaths on the Project Network subject to a Section 38 Agreement which have received a Part 2 Certificate as defined under the relevant Section 38 Agreement;

"Highways Act" means the Highways Act 1980;

"Highway Artwork" means a man made object on the Project Network which is of artistic significance including pieces of art, sculptures and ornamental railings;

"Highway Authority" has the meaning given to it in section 1(2) of the Highways Act;

"Highway Claim" shall include all public liability claims for injury and/or damage caused by the alleged breach of statutory duty and/or negligence of the Authority and/or the Service Provider, or any claim made in nuisance, in relation to those matters indemnified by the Service Provider under clause 67.1 (*Matters Indemnified by the Service Provider*);

"Highway Condition Survey" means any survey which identifies a particular or general condition of a Project Road or part thereof;

"Highway Condition Survey Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all assessments of the condition of Project Roads produced in accordance with Performance Standard 2 (Surveys and Inspections), and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Highway Construction Details" means the Highway Construction Details published by the Stationery Office as Volume 3 of the Manual of Contract Documents for Highways Works as updated or amended from time to time;

"Highway Emergency" means an event on the Project Network which is not a Civil Emergency, Emergency Call Out, Category 1 Defect, an Emergency Fault, or part of the Winter Maintenance Service where the Service Provider's assistance is requested by the Authority or the Emergency Services;

"Highway Emergency Plan" means the plan produced in accordance with Performance Requirement 6.4.2 of Performance Standard 6 (Emergency and Reactive Response) of Schedule 2 (*Output Specification*);

"Highway Maintainable at Public Expense" means a highway which by virtue of section 36 of the Highways Act or of any other enactment (whether contained in the Highways Act or not) is a highway which for the purposes of the Highways Act is a highway maintainable at the public expense;

"Highway Network" means the electronic map of that name set out in schedule 30 (*Project Agreement/Technical Information*);

"Highway Safety Inspection" means inspections of the Project Network (or a part thereof) including Highway Trees to identify all Defects likely to create danger or serious inconvenience to users of the Project Network required to be carried out by the Service Provider in accordance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"Highway Safety Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all strategy for ensuring that Safety Inspections are carried out on all Project Network Parts in accordance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*), as set out in Performance Standard 1 (Network Performance) and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Highway Service Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all Highway Service Inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Highway Service Inspection" means those visual inspections of all Project Network Parts carried out by a qualified inspector in accordance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"Highway Tree" means any tree on the Project Network as set out in schedule 30 (*Project Network/Technical Information*);

"Highway Works Authority" means the Authority when undertaking works in any of the following capacities:

- (a) as a Highway Authority;
- (b) as a Street Authority;
- (c) as a Bridge Authority;
- (d) as a Traffic Authority; or
- (e) as a council under the Highways Act;

"Highways Asset List" shall have the meaning given in clause 11.4.2 (*Part 1 Authority Predicted Works and other works*);

"Highways Development Control and Highway Adoptions" means the Services undertaken by the Service Provider pursuant to Performance Standard 10 (Contract Management and Customer Interface) paragraph 10.4.25;

"Highways Development Control" shall mean the function of the Service Provider designated to undertake the services set out in PS10 Part 10 of schedule 2 (*Output Specification*);

"Highways Development Control Fee" shall mean the proportion of the fee in relation to the Development Control function carried out by the Service Provider and received under a Section 38 Agreement or Section 278 Agreement;

"Highways Lighting Code" means the Code of Practice entitled "Well-Lit Highways: Code of Practice for Highways Lighting Management" as amended or replaced from time to time;

"Highways Maintenance Code" means the Code of Practice entitled "Well-Maintained Highways: Code of Practice for Highway Maintenance Management" as amended or replaced from time to time;

"Highways PFI Board" means the board convened and operated in accordance with the provisions of clause 44.1 (*Objectives of the Highways PFI Board*);

"Highways PFI Board's Objectives" has the meaning given to it in clause 44.1 (*Objectives of the Highways PFI Board*);

"Highways Standards" means save to the extent that the same are:

- (a) Relevant Lighting Standards; and/or
- (b) inconsistent with the provisions of schedule 2 (*Output Specification*) in which case the provisions of schedule 2 (*Output Specification*) shall take precedence;

all standards, specifications, codes of practice, all department technical advice notice, technical design notes, British Standards, European Standards, supplements, bulletins and any other documents of a similar nature issued by the Secretary of State for Transport and/or the Department for Transport (or such successor body) and/or any other Relevant Authority (including a local authority) and/or the British Standards Institution in respect of the design, construction, operation or maintenance of highways including the following:

- (a) the Design Manual for Roads and Bridges published by the Stationery Office;
- (b) the Specification for Highway Works;
- (c) the Trunk Roads Maintenance Manual;
- (d) Notes for Guidance;
- (e) Highway Construction Details;
- (f) Roads Circulars;
- (g) the Traffic Signs Manual;
- (h) Highways Maintenance Code;
- (i) Transport in the Urban Environment;
- (j) Highways Lighting Code;
- (k) Highways Structures Code; and
- (l) the Manual of Contract Documents for Highways Works;

"Highways Structures Code" means the Code of Practice entitled "Management of Highway Structures - A Code of Practice" as amended or replaced from time to time;

"HM Land Registry" means the government department responsible for publicly recording interests in registered land in England and Wales;

"HoldCo" means Island Roads Investment Limited (Company No. 8168976) whose registered office is at 1 Park Row, Leeds, LS1 5AB;

"Holding Company" has the meaning given to it in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is a Holding

Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"Human Resources Policy" means the policy produced by the Service Provider under the provisions of clause 34.11 (*Human Resources Policy*) and which is contained in schedule 35 (*Workforce Policies*);

"H&S Conviction" shall have the meaning given to it in the definition of "Service Provider Default";

"Ice Early Warning System" means an electronic system which can detect, as a minimum, dew points, wind speed, wind direction, road surface temperature, air temperature, deep surface temperature, surface condition and residual levels of anti-icing products and transmit the data to designated locations or be accessible via the internet;

"Illuminated Bollard" means an illuminated traffic delineator which is not a Traffic Sign which is base mounted, carrying one or more diagrams from the Traffic Signs Regulations & General Directions (2002), or occasionally the same type of unit with all plain aspect and shall include base, flexible body shell, lighting units, Luminaires, Lamps, electrical circuits and component, control devices, wiring and components, cut-out electricity connection and numbering as set out in schedule 30 (*Project Network/Technical Information*);

"Illuminated Centre Island Beacons" means a refuge beacon which complies with the Traffic Signals Manual both in construction and situation on a Project Road as set out in schedule 30 (*Project Network/Technical Information*);

"Illuminated Traffic Sign" means any direction signs and any sign required by the Traffic Signs Regulations & General Directions 2002 externally or internally illuminated including plates, faces, posts/mounting, brackets, Luminaires, Lamps, electrical circuits, control devices, wiring, components, cut out and electricity connection and numbering as set out in schedule 30 (*Project Network/Technical Information*);

"In Light" means any Lighting Points, that are operating at the required light output as set out in Performance Standard 4 of schedule 2 (*Output Specification*) and operating in accordance within the manufacturers specified operating parameters at the correct time as set out in the Lighting Up Periods;

"In Light Adjustment Value" means for any Performance Requirement of Adjustment Type 13 (Lighting Failure) as set out in Performance Standards 1 to 10 of schedule 2 (*Output Specification*), the corresponding Adjustment Value, taken from Table 4 of schedule 4 (*Payment Mechanism*), to be applied in respect of each failure to comply with such Performance Requirement;

"In Light Escalation Type" means for any Performance Requirement of Adjustment Type 13 (Lighting Failure) as set out in Performance Standard 1 to 10 of schedule 2 (*Output Specification*), the corresponding type of escalation, taken from Table 4 of schedule 4 (*Payment Mechanism*), to be applied in respect of each failure to comply with such Performance Requirement;

"In Light Service Default Termination Type" means for any Performance Requirement of Adjustment Type 13 (Lighting Failure) as set out in Performance Standard 1 to 10 of schedule 2 (*Output Specification*), the corresponding Service

Default Termination Type, taken from Table 4 of schedule 4 (*Payment Mechanism*), to be applied in respect of each failure to comply with such Performance Requirement;

"**Indemnified Liabilities**" means actions, claims (including Third Party claims), demands, proceedings, losses, damages, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges;

"**Indemnifier**" shall have the meaning given to it in clause 67.4 (*Conduct of proceedings for matters covered by Service Provider's and Authority's indemnities*);

"**Indemnity Payment**" shall have the meaning given to it in clause 61.1 (*Adjustments of payments after taking a Relevant Tax Liability into account*);

"**Independent Certifier**" means the appropriately experienced and qualified professional person appointed jointly by the Authority and the Service Provider to act as the independent certifier to the Project in accordance with the Independent Certifier's Appointment;

"**Independent Certifier's Appointment**" means the deed of appointment of the Independent Certifier in the form set out in annexure 5 (*Form of Independent Certifier's Appointment*);

"**Independent Technical Adviser**" means a person who is independent of the Authority or any Service Provider Party who is a member of the Institution of Civil Engineers and has not less than ten (10) years relevant experience of highways maintenance PFI projects and, where this is not practicable, not less than ten (10) years relevant experience of managing an maintaining a highways network;

"**Indexation Review Date**" means 1 April in each year following the Planned Service Commencement Date until the earlier of the Expiry Date or the Termination Date;

"**Indexed**" means that such amounts referred to be indexed are to be multiplied by:

$\text{Index}_1/\text{Index}_2$

where Index_1 is the value of RPIX most recently published for the Month of January immediately preceding the Indexation Review Date and Index_2 is the value of RPIX at the end of January 2012;

"**Indirect Losses**" means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relates to loss of revenue under this Contract;

"**Information**" has the meaning given to it in section 84 of the FOIA;

"**Information System**" means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

"**Injurious Weeds**" means any Weeds which are listed as injurious under legislation;

"**Initial Availability Period**" shall have the meaning given to it in the Senior Financing Agreements;

"Initial Financing Agreements" means the Financing Agreements put in place upon signature of this Contract as listed in annexure 4 (*Financing Agreements*);

"Initial New Works Response" shall have the meaning given to it in clause 49.6 (*Maintainability Assessment*);

"Instalment Dates" shall have the meaning given to it in clause 80.7.7.2(a)(i) (*Method of Payment*);

"Institute of Actuaries" shall mean such body or replacement body which provides regulatory standards for actuaries in England and Wales;

"Inspection Strategies" means any or all of the Special Inspection Strategy, Risk Assessment Strategy and Structural Review and Assessment Strategy, as set out in schedule 2 (*Output Specification*);

"Insurance Cost Decrease" means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;

"Insurance Cost Differential" shall, subject to the Insurance Review Procedure, be determined as follows:

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\pm \text{PIC})$$

where:

"ARIC" is the Actual Relevant Insurance Cost;

"BRIC" is the Base Relevant Insurance Cost; and

"PIC" is any Project Insurance Change;

"Insurance Cost Increase" means the Insurance Cost Differential if the value thereof is greater than zero;

"Insurance Cost Index" means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

"Insurance Recovery Claim" shall have the meaning given to it in clause 68.12B.1 (*Conduct of Third Party Claims*);

"Insurance Review Date" means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;

"Insurance Review Period" means a (2) two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;

"Insurance Summary Sheet" has the meaning given to it in clause 68.24.2.3 (*Insurance Review Procedure*);

"Insurance Term" means any terms and/or conditions required to be included in a policy of insurance by clauses 68.1 to 68.11 (*Insurance*) but excluding any risk;

"Insured Reinstatement Plan" shall have the meaning given to it in clause 68.12A1.1 (*Reinstatement under Required Insurances*);

"Insured Reinstatement Works" shall have the meaning given to it in clause 68.12A1.1 (*Reinstatement under Required Insurances*);

"Intellectual Property Rights" means all intellectual property rights of whatever nature subsisting in any part of the world at any time including patents, registered designs and trade marks (whether registered or not) and applications for any of the foregoing, copyright, database rights, design right, rights in and to confidential information and protection similar to any of the foregoing subsisting in any part of the world at any time;

"Intended Service Commencement Date" shall mean the Planned Service Commencement Date or such other date as the Service Provider may notify the Authority pursuant to clause 8.7 (*Mobilisation*);

"Interested Parties" means those persons who may be affected by the carrying out of the Services or who are duly authorised by a Legal Requirement to review or otherwise take an interest in the Services including the Relevant Authorities;

"Interim Project Report" means the report prepared by the Service Provider pursuant to clause 104.2 (*Interim Project Report*) of this Contract including:

- (a) the nature of any Potential Financing Default or Financing Default;
- (b) all circumstances surrounding or leading up to the Potential Financing Default or Financing Default and relevant to its occurrence;
- (c) any proposed or actual action taken or to be taken by the Senior Lenders in respect of the Potential Financing Default or Financing Default, including acceleration of any or all outstanding Senior Debt or the exercise of any enforcement or similar rights under the Senior Financing Agreements;
- (d) any cure period or remedial plan proposed by the Service Provider or the Senior Lenders, and whether such cure period or remedial plan has been agreed by the Senior Lenders;
- (e) any other action that the Senior Lenders require the Service Provider to take in respect of the Potential Financing Default or Financing Default;
- (f) the Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount (assuming that the Termination Date was the date of the Interim Project Report); and
- (g) any other information as may be notified by the Authority to the Service Provider at the time of such request;

"Intervening Contract" means a contract with the Authority for the provision of services which are similar to the Service, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Service Provider;

"Investigatory Incident" means an incident on the Project Network in relation to Traffic Signals or pedestrian crossing that requires a physical survey and report at the request of the Police;

"Investment Costs" means either (i) the net amount paid by the relevant Shareholder on the acquisition or issue of the Shares which are the subject of the Change of Ownership or (ii) the net amount paid by the relevant Shareholder Loan Holder for the Shareholder Loan or the initial value of the Shareholder Loan, as applicable, which is the subject of the Shareholder Loan Transfer;

"Investment Proceeds" means (i) any income received by the Shareholder or Shareholder Loan Holder in respect of the shares or Shareholder Loan which is the subject of the Change of Ownership or Shareholder Loan Transfer, including any dividend or interest income, and (ii) the Qualifying Proceeds;

"Ironwork" means any Access Cover or frame to a Manhole, Catchpit, Gully, drain, cellar, stopcocks and covers to Services;

"IRR" means the internal rate of return achieved by a Shareholder or Shareholder Loan Holder on a Change of Ownership and/or Shareholder Loan Transfer expressed as a percentage calculated by reference to the nominal post-Service Provider tax, pre-Shareholder/Shareholder Loan Holder tax cash flows comprised of the Investment Costs and the Investment Proceeds and calculated by reference to dates on which such cash flows occurred on the basis of an updated financial model;

"Irrecoverable VAT" shall have the meaning given to it in clause 63.5 (*Value Added Tax*);

"Isle of Wight Festival" means the annual Isle of Wight music festival which is classified under this Contract as a Category A Special Event;

"Isle of Wight Traffic Model" means the computer program and data that provides a representation of the observed and predicted traffic flows on the Project Network;

"ISO 9001" means the international standard for the quality management of business;

"ISO 14001 (Environment)" means the international standard for environmental management systems;

"IWC Standard Detail" means those standard detail drawings and designs listed under this heading and contained within schedule 30 (*Project Network/Technical Information*);

[REDACTED]

"Joint Insurance Cost Report" has the meaning given to it in clause 68.24.2 (*Insurance Review Procedure*);

"Judicial Review" means any application for judicial review (including any application for permission) made under Part 8 or Part 54 of the Civil Procedure Rules seeking review of any determination, decision, order or omission of the Authority or any application for a declaration (not made pursuant to Part 8) which concerns the legality of any determination, decision, order or omission of the Authority, or any statutory challenge, action or appeal which proceeds on similar principles to Judicial Review;

"Junior Debt" means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

"Kerb" means the edge restraint placed along the side of a Carriageway within the Project Network;

"Key Ratios" means the Loan Life Cover Ratio and Annual Debt Service Cover Ratio;

"Key Sub-Contract" means any or all of the following contracts:

- (a) the Sub-Contract(s); and
- (b) any contracts entered into by Sub-Contractors in respect of the following Services:
 - (i) Winter Services;
 - (ii) Routine Maintenance; and
 - (iii) Street Lighting;

"Key Sub-Contract Dispute" shall have the meaning given to it in clause 83.4.1 (*Related Disputes*);

"Key Sub-Contractor" means the Sub-Contractor(s) and any other sub-contractors who enters into a Key Sub-Contract;

"Key Sub-Contractor Collateral Warranty" means a collateral warranty entered into between the Authority and a Key Sub-Contractor in the agreed form as set out in annexure 8 (*Form of Key Sub-Contractor Collateral Warranty*) or substantially in that form or such other form as is agreed between the Parties;

"Lamp" means the light emitting component of a Luminaire;

"Land Charges Registry" means the government department responsible for maintaining registers of land charges, pending actions, writs, and orders affecting land and other encumbrances registered against the names of owners of land in England and Wales that is not registered at HM Land Registry;

"Land Drainage Act" means the Land Drainage Act 1991;

"Land Drainage Act Services" means any works carried out by the Service Provider in accordance with the provisions of Performance Standard 10 of schedule 7 (*Output Specification*) and part 6 of schedule 13 (*Call-Off Services*);

"**Land Right**" means any right or matter whether public, private or statutory over or in respect of or otherwise relating in any way to land, whether temporary, revocable, legal, equitable or otherwise of whatever nature;

"**Landscape Maintenance Service**" means the operations, processes and procedures that relate to the management of flora in relation to the Project Network;

"**Lane Length**" means the section of a Monitoring Length for the passage of a single line of vehicles;

"**Lantern**" shall have the same meaning as the definition of "Lamp" as referred to in this schedule 1 (*Definitions*);

"**Latent Defect**" means a defect in a Major Structure attributable to:

- (a) a defect in the original design, workmanship or materials of a Major Structure at the date of original construction or the date of any substantive works to such Major Structure after the date of original construction, which, having regard to Good Industry Practice and to appropriate Highways Standards existing at the date of this Contract, has not become patent as at the date of this Contract; or
- (b) any chemical reaction or chemical interaction between constituent materials in a Major Structure or between constituent materials and an external agent (excluding fair wear and tear or any inadequate maintenance) provided that the consequences of such chemical reaction or chemical interaction was not known about at the date of this Contract by contractors or consultants in the business of maintaining and/or advising on the maintenance of highway structures and the chemical reaction or chemical interaction was not caused by failure to carry out the Services,

in each case, only to the extent that:

- (c) the defect was not present as at the date of this Contract in that Major Structure;
- (d) the Service Provider was not actually aware of such defect; or
- (e) the Service Provider could not reasonably be expected to know about such defect as a reasonably competent highways or structures maintenance contractor and/or structures inspector which had, prior to the date of this Contract, inspected all Major Structures in accordance with Good Industry Practice and reviewed all Data contained within Schedule 30 (*Project Network/Technical Information*);

"**Latent Defect Cap**" shall bear the meaning given thereto in clause 13.2 (*Cap on Liability for Latent Defects*);

"**Latent Defect Costs**" means the costs (including any utility diversion costs arising as a direct result of a Latent Defect, any Latent Defect Traffic Management Costs and any costs incurred by the Service Provider in complying with all provisions of this Contract other than the provisions of clause 13 (*Latent Defects*));

- (a) reasonably and properly incurred by the Service Provider arising directly from carrying out the works required to rectify, manage and/or mitigate a Latent Defect; and
- (b) calculated on an open book basis and benchmarked against the rates set out at appendix 1 part B of the Catalogue,

less any savings achieved by the Service Provider as a result of the Service Provider not providing any element of the Services due to the occurrence of the Latent Defect;

"Latent Defects Log" shall bear the meaning given thereto in clause 13.11.1 (*Latent Defects Log*);

"Latent Defect Notification" shall have the meaning ascribed to it within clause 13.3.1 (*Latent Defect Notification and Latent Defect Notice*);

"Latent Defect Notice" shall have the meaning ascribed to it within clause 13.3.2 (*Latent Defect Notification and Latent Defect Notice*);

"Latent Defect Traffic Management Costs" means the traffic management costs incurred by the Service Provider (acting reasonably) as a direct consequence of the occurrence of a Latent Defect and the obligation imposed on the Service Provider pursuant to this Contract to manage traffic on the Project Network;

"Latent Defect Report" shall have the meaning given to it in clause 13.4 (*Latent Defect Report*);

"Latent Defect Solution Report" means the report setting out the agreed solution to address a Latent Defect, which shall be based on the Value Engineering Report provided following Value Engineering Workshop No.1 and/or Value Engineering Workshop No.2, as applicable, as amended in accordance with clause 13.8 (*Latent Defect Solution Agreed by the Parties*);

"Law" means:

- (a) any applicable Legislation;
- (b) any applicable Guidance; and
- (c) any applicable judgement of a relevant court of law which is a binding precedent;

in each case in force in England;

"Leeson Road" means that section of the Project Network designated under this heading as detailed in schedule 30 (*Project Network/Technical Information*);

"Leeson Road Scheme" means the Service Provider's scheme to rehabilitate and upgrade Leeson Road;

"Legal Requirement" means the requirement of any Law of the United Kingdom or the European Community Law, or any requirement or demand of any Relevant Authority which has jurisdiction with regard to any part of the Services or whose systems or apparatus may be affected by the conduct of any part of the Services;

"Legislation" means:

- (a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (b) any exercise of the Royal Prerogative; and
- (c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Letter of Acknowledgment" shall have the meaning given to it in paragraph 2.3 of schedule 26 (*Administration of Highway Claims*);

"Level of Excess Proceeds" means each level of Excess Proceeds as set out in a separate row in the table at clause 86.2.3;

"Liaison Procedures" means any liaison procedures to be effected between the Parties and/or the Parties and a Third Party pursuant to this Contract, including those liaison procedures established by the Parties acting through the Highways PFI Board;

"Licence" shall have the meaning given to it in clause 16.5 (*Terms of the Licence*);

"Lifecycle Replacement Programme" means the timings and duration of works on the Project Network for any asset that has reached the end of its operational life and is no longer capable of providing the required service, containing the information set out in Performance Standard 1 Appendix PS1 Part 1 Programmes of schedule 2 (*Output Specification*) as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*);

"Lifecycle Works" means the works undertaken by the Service Provider following the completion of the Core Investment Works;

"Lighting Column" means all columns comprised in the Powered Apparatus including Luminaries, Lamps, electrical circuits and components, control devices, wiring and components, bracket, cut out and electricity connection and numbering and the term as set out in schedule 30 (*Project Network/Technical Information*);

"Lighting Failure" means that any Lighting Point is not illuminated;

"Lighting Point" means any Powered Apparatus incorporating an internal or external Luminaire as set out in schedule 30 (*Project Network/Technical Information*);

"Lighting Up Periods" means the time periods when Lighting Points are to be in light;

"Lights In Light" means that any Lighting Point is illuminated as required;

"Liquid Market" means that there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Service Provider) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that

any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

"Listed Building" means a building designated by the local planning authority under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to be of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance;

"Litter" means discarded waste materials on the Project Network including foodstuffs and packaging;

"Litter and Dog Bins" means those receptacles located on the Project Network designated for deposition of litter and animal waste as set out in schedule 30 (*Project Network/Technical Information*);

"Loan Life Cover Ratio" has the meaning given to it in the Senior Financing Agreements;

"Local Footways" means the network of Footways designated in the Pavement Management System, within schedule 30 (*Project Network/Technical Information*);

"Local Government Ombudsman" means the body established under the Local Government Act 1974 to investigate complaints of injustice in consequence of maladministration against the Authority, or any successor body;

"Local Government Pension Scheme" or **"LGPS"** means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 Superannuation Act 1972 as amended from time to time;

"Local Transport Schemes" means those transport schemes which the Authority wishes to implement in order to meet the aims of its Local Transport Plan;

"Local Transport Plan" means the plan produced by the Integrated Transport Authority as required under the Transport Act 2000 (as amended);

"Long Stop Date" means the date falling three (3) Months after the Planned Service Commencement Date;

"Long Term Solution" or **"LTS"** means any design and works that following construction has in excess of eight (8) years total design life beyond the Term;

"Loop Detector" means a sensor located within the surface of the Carriageway to detect the presence of vehicles;

"Loss" means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;

"Low Value Change" means any change to the Services requested by the Authority or any works required by the Authority or any additional items of Project Network Parts having a cost not exceeding:

(a) [REDACTED]

(b) [REDACTED]

(or as otherwise agreed from time to time between the Parties) except for any request which would (if implemented) increase the likelihood of the Services not complying with schedule 2 (*Output Specification*) or materially and adversely affect the Service Provider's ability to perform its obligations under the Contract;

"LTP Works" means those works to be undertaken as required by the Authority's Local Transport Plan;

"LTP Works Meeting" shall have the meaning ascribed to it in paragraph 1.3 of part 5 of schedule 13 (*Call-Off Services*);

"LTP Works Notification" shall have the meaning ascribed to it in paragraph 1.1 of part 5 of schedule 13 (*Call-Off Services*);

"LTS Cap" means the figure set out in column 3 of Table 1 of part 1 of schedule 9 (*Geotechnical and Geological Zones*) which shall be Indexed;

"LTS Red Zones" means the Red Zones set out in Table 1 of schedule 9 (*Geotechnical Zones and Geological Zones*);

"LTS Scheme" means the works the Service Provider shall undertake (as set out in part 4 of schedule 9 (*Geotechnical and Geological Zones*)) in respect of LTS Red Zones;

"LTS Scheme Completion Date" means the date set out in an LTS Scheme Programme for completion of the LTS Scheme;

"LTS Scheme Programme" means the programme produced by the Service Provider pursuant to clause 21 (*Service Provider Programme*) in relation to an LTS Scheme;

"Luminaire" means that part of Street Lighting or an Illuminated Traffic Sign which is a complete lighting unit consisting of a Lamp or Lamps together with the housing designed to distribute the light, position and protect the Lamps and connect the Lamps to the power supply;

"Main Body" means the Parties, the recitals, clauses 1 to 112 (inclusive) and the attestation and testimonium provisions to this Contract;

"Maintainability Assessment" shall have the meaning given to it in clause 49.11 (*Maintainability Assessment*);

"Maintenance Assessment Reference Number" means the unique reference number assigned by the Authority to New Works to which the Service Provider is required to provide a Maintainability Assessment;

"Maintenance Period" shall mean:

- (a) where a Section 38 Agreement applies, the period from the date the Part 2 Certificate (as defined under the relevant Section 38 Agreement) is issued

until the date the Final Certificate (as defined under the relevant Section 38 Agreement) is issued in respect of the New Works;

- (b) where a Section 278 Agreement applies, the period from the date the Section 278 Certificate (as defined under the relevant Section 278 Agreement) is issued until the date the Final Certificate (as defined under the relevant Section 278 Agreement) is issued in respect of the New Works; or

any other period of supervision of the New Works before they are accepted as Highway Maintainable at Public Expense by the Authority, as defined under any relevant agreement entered into by the Authority in respect of the New Works;

"Major AHW Works" means major highway works as defined in Section 86(3) of NRSWA, major bridge works as defined in Section 88(2) of NRSWA, any other works undertaken by the Authority where such works are likely to have a duration of more than ten (10) days and major works as defined in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 as amended from time to time;

"Major Application" means an application for development involving any one or more of the following:

- (a) the mining and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where:
 - (i) the number of dwellinghouses to be provided is ten (10) or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i) above;
- (d) the provision of a building or buildings where the floor space to be created by the development is one thousand (1,000) square metres or more; or
- (e) development carried out on a site having an area of one (1) hectare or more.

"Major Structures" means:

- (a) Subways;
- (b) Bridges; and
- (c) Retaining Walls;

"Major Works" means those works which:

- (a) have been identified in an undertaker's annual operating programme or, are normally planned or known about at least six (6) months in advance of the proposed start date; and

- (b) require a temporary traffic order (not a temporary traffic notice) under the Road Traffic Regulation Act 1984 for any works other than immediate works; or
- (c) have a planned duration of eleven (11) days or more, other than immediate works.

"**Management Information System**" or "**MIS**" means the electronic system comprising of the requirements of Performance Standard 10 Appendix PS 10 of schedule 2 (*Output Specification*) to be provided and maintained by the Service Provider in accordance with this Contract;

"**Management of Structures Code of Practice**" means the Code of Practice entitled Management of Highway Structures: A Code of Practice issued October 2005 by the Department of Transport including amendments and revisions;

"**Manhole**" means a pit constructed as part of a drainage system which allows the unrestricted movement of both water and waterborne solids and allows access for inspection and maintenance;

"**Manned**" means operation by a team which is capable of managing the required operations and making necessary decisions;

"**Manual of Contract Documents for Highways Works**" means the publication by the Office for Public Sector Information ("**OPSI**"), available through the Stationery Office entitled "Manual of Contract Documents for Highways Works";

"**Manufacturer**" means the company that produced the relevant piece of Apparatus or Powered Apparatus and issued relevant instruction on its use, maintenance and renewal;

"**Margin**" has the meaning given to it in the Senior Financing Agreements as at the date immediately prior to the relevant Qualifying Refinancing;

"**Margin Gain**" means an amount equal to the lower of:

(a) the Refinancing Gain; and

(b) the higher of:

i) Zero; and

ii) D - E

Where:

D = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the change to the Margin only in relation to the Refinancing and the senior debt repayment profile immediately prior to the Qualifying Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing; and

E = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing,

save that, where the replacement finance is a bond, for the purpose of calculating the effect of the change to the Margin, the margin on the bond shall be the rate of interest on the bond less the yield on the relevant reference gilt in place on issue of the bond.

"Market Value Availability Deduction Amount" means for any month or part of a month, an amount equal to the Availability Adjustment that was made to the Unitary Charge in the Month immediately preceding the Termination Date, less an amount equal to any Availability Adjustment that was made for an unavailable Monitoring Length which was unavailable at the Termination Date but which has subsequently become available whether as a result of the Authority incurring Rectification Costs or otherwise;

"Material Damage Limit" has the meaning given to it in clause 68.12.1 (*Reinstatement*);

"Maximum Monthly Unitary Charge" means, in respect of a Month, the maximum Unitary Charge payable in respect of that Month before any adjustments under schedule 4 (*Payment Mechanism*) but Indexed;

"Maximum Unitary Charge" means, in respect of a month, the unitary charge payable in respect of that month before any adjustments under Schedule 4 (*Payment Mechanism*) but Indexed;

"Mechanical and Electrical Inspection Strategy for Pumping Stations" means the Service Provider's procedures, processes, timings, resources and controls relating to the executing of all mechanical and electrical inspections in relation to Pumping Stations as referred to in paragraph 2.4.20.1 of Performance Standard 2 (*Surveys and Inspections*) of schedule 2 (*Output Specification*);

"Mechanical and Structural Integrity" means the measurement of the acceptable level relating to the structural and mechanical condition of the Project Network Parts in accordance with the requirements of Performance Standard 2 (*Surveys and Inspections*) of schedule 2 (*Output Specification*);

"Medium Value Change" means a change to the Services and/or any works required by the Authority and/or any Project Network Parts to be included or removed from the scope of the Project which is not a High Value Change, Call-Off Service, Low Value Change, Accrual or a De-Accrual;

"Medium Value Change Threshold" means where the Medium Value Changes in any Contract Year exceeds [REDACTED] in number or cost in excess of the aggregated sum of [REDACTED] (Indexed);

"MDTP Termination Threshold" means [REDACTED] Milestone Default Termination Points, being the level of Milestone Default Termination Points upon which a termination for Service Provider Default is triggered in accordance with paragraph 8 of schedule 4 (*Payment Mechanism*);

"Mechanical and Electrical Inspection" means those inspections of all Project Network Parts carried out by a qualified inspector in accordance with Relevant Electrical Code of Practice in compliance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*).

"Mechanical and Electrical Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all mechanical and electrical inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Method Statements" means the method statements prepared by the Service Provider set out at schedule 3 (*Method Statements*);

"Milestone" means the period of time that the Core Investment Period is sub divided to measure the completion of the Core Investment Works;

"Milestone 1" means 6 Months after Service Commencement Date;

"Milestone 2" means 12 Months after Service Commencement Date;

"Milestone 3" means 18 Months after Service Commencement Date

"Milestone 4" means 24 Months after Service Commencement Date

"Milestone 5" means 30 Months after Service Commencement Date

"Milestone 6" means 36 Months after Service Commencement Date

"Milestone 7" means 42 Months after Service Commencement Date

"Milestone 8" means 48 Months after Service Commencement Date

"Milestone 9" means 54 Months after Service Commencement Date

"Milestone 10" means 60 Months after Service Commencement Date

"Milestone 11" means 66 Months after Service Commencement Date

"Milestone 12" means 72 Months after Service Commencement Date

"Milestone 13" means 78 Months after Service Commencement Date

"Milestone 14" means 84 Months after Service Commencement Date

"Milestone Adjustment Factor" or "MAF" means the factor applied to the Monthly Unitary Charge during the Core Investment Period calculated in accordance with paragraph 3.2 of schedule 4 (*Payment Mechanism*);

"Milestone Completion" means, in respect of each Milestone, the completion (or deemed completion pursuant to clause 27 (*Milestones*)) by the Service Provider of the Services necessary to meet the relevant Milestone Completion Criteria;

"Milestone Completion Criteria" means, in respect of each Project Network Part, those criteria set out in Performance Standard 3 of Schedule 2 (*Output Specification*) and, as applicable, in Schedule 14 (*WCCI WFCI and BCI Milestone Completion Criteria*);

"Milestone Completion Date" means the date determined in accordance with clause 28.5 (*Dates on which Milestone Completion can occur*);

"Milestone Default Termination Point" ("MDTP") means a point accrued for a failure to achieve a Milestone in accordance with paragraph 8.1 of schedule 4 (*Payment Mechanism*);

"Minor Works" means any Services that have a duration of three (3) days or less;

"Minor Snagging Items" means the following minor defects:

- (a) in respect of Project Roads:
 - (i) application of jointing sand to block paving required;
 - (ii) painting to bitumen joint required;
 - (iii) relaying to small area of out of tolerance flag paving;
 - (iv) resetting of out of tolerance utility box;
 - (v) patching small area of wearing course on bitumen macadam footway required;
 - (vi) relaying of out of tolerance Kerb;
 - (vii) replacement of Kerb damaged during the construction; and/or
 - (ix) topsoiling and/or seeding of Verges;
- (b) in respect of Drainage Structures, Gullies and Covers:
 - (i) resetting of Gully cover required;
 - (ii) application of padlock to Gully cover required;
 - (iii) removal of spoil required;
 - (iv) grass reinstatement required;
 - (v) painting of steelwork to Gully required; and/or
 - (vi) remedial works to trench reinstatement required;
- (c) in respect of Structures and Bridges:
 - (i) repairs to fencing surrounding the Structure or Bridge required;
 - (ii) replacement of damaged coping stone required;
 - (iii) removal of signs and cones required;
 - (iv) site has not been left in a clean and tidy condition;
 - (v) repair to joint sealant required;
 - (vi) replacement of overseal banding required; and/or

- (vii) minor paint defects;
- (d) in respect of Street Lighting:
 - (i) final painting required or paintwork is not free from damage, streaks or runs or has not been applied uniformly;
 - (ii) grass seed reinstatement required where non-seasonal;
 - (iii) site has not been left in a clean and tidy condition;
 - (iv) door and/or lock to door of Lighting Column has not been greased;
 - (v) damage to Lighting Column attachments;
 - (vi) Lighting Column requires numbering;
 - (vii) holes in Lighting Columns for wiring have not been adequately sealed;
 - (viii) Luminaire has installation blemishes; and/or
 - (ix) Attachments temporarily removed on Authority instructions;
- (e) in respect of UTMC such minor snagging items as are specified by the Independent Certifier;
- (f) in respect of Pumping Stations such minor snagging items as are specified by the Independent Certifier;

"Mitigation Plan" shall bear the meaning given thereto in clause 13.4.6.2 (*Latent Defect Report*);

"Mobile Traffic Counter" means equipment for the measurement of speed, number and classification of traffic on the Project Network at any location;

"Mobilisation" means the activities required by the Authority to be undertaken by the Service Provider prior to the Service Commencement Date as set out in schedule 11 (*Mobilisation*), including the Mobilisation Requirements and the Mobilisation Plan;

"Mobilisation Period" means the period from the date of this Contract until the Service Commencement Date;

"Mobilisation Plan" means the Service Provider's plan to meet the Mobilisation Requirements as set out in part 6 (*Mobilisation Plan*) of schedule 11 (*Mobilisation*);

"Mobilisation Requirements" means any or all of the Mobilisation Requirements A, Mobilisation Requirements B, Mobilisation Requirements C, Mobilisation Requirements D and Mobilisation Requirements E;

"Mobilisation Requirements A" means the requirements of the Authority to be carried out by the Service Provider prior to the Service Commencement Date, as set out in part 1 (*Mobilisation Requirements A*) of schedule 11 (*Mobilisation*);

"**Mobilisation Requirements B**" means the requirements of the Authority to be carried out by the Service Provider prior to the Service Commencement Date, as set out in part 2 (*Mobilisation Requirements B*) of schedule 11 (*Mobilisation*);

"**Mobilisation Requirements C**" means the requirements of the Authority to be carried out by the Service Provider prior to the Service Commencement Date, as set out in part 3 (*Mobilisation Requirements C*) of schedule 11 (*Mobilisation*);

"**Mobilisation Requirements D**" means the requirements of the Authority to be carried out by the Service Provider prior to the Service Commencement Date, as set out in part 4 (*Mobilisation Requirements D*) of schedule 11 (*Mobilisation*);

"**Mobilisation Requirements E**" means the requirements of the Authority to be carried out by the Service Provider prior to the Service Commencement Date, as set out in part 5 (*Mobilisation Requirements E*) of schedule 11 (*Mobilisation*);

"**Monitoring Lengths**" means the designated sub-division of the Project Network into sections for the purpose of measuring compliance of assessed condition as given in schedule 2 (*Output Specification*);

"**Monitoring Officer**" shall mean the officer of the Authority appointed pursuant to Section 5 of the Local Government and Housing Act 1989;

"**Month**" means any calendar month during the Term, save that the first Month shall start on the Service Commencement Date and end on the last day of the calendar month in which the Service Commencement Date falls and the final Month shall start on the first day of the Month in which this Contract expires or terminates and end on the earliest of the Expiry Date or Termination Date, and the term "**Monthly**" shall be construed accordingly;

"**Monthly Forecast Electricity Consumption**" means the figure for the forecast electricity consumption in kWh for the relevant month of the relevant Contract Year, as set out in schedule 8 (*Forecast Consumption*) as adjusted from time to time to take account of any Accruals and De-Accruals in accordance with paragraph 4 of schedule 4 (*Payment Mechanism*), divided by twelve (12);

"**Monthly Payment**" means the payment to be made by the Authority to the Service Provider in each Month pursuant to clause 56 (*Payment and Financial Matters*), and calculated in accordance with paragraph 3 of schedule 4 (*Payment Mechanism*);

"**Monthly Payment Meeting**" shall have the meaning given to it in clause 56.6 (*Monthly Payment Meeting*);

"**Monthly Project Meeting**" shall have the meaning given to it in clause 44.5.1 (*Monthly Project Meetings*);

"**Monthly Service Report**" means a document issued on a monthly basis containing at least the data and information as required in Performance Standard 10 Appendix PS10 of schedule 2 (*Output Specification*);

"**Monthly Unitary Charge**" means that part of the Annual Unitary Charge in respect of each Month, calculated in accordance with paragraph 2.3 of schedule 4 (*Payment Mechanism*);

"Monument" means a site or structure that is preserved because of its historic, cultural, or aesthetic importance;

"Movement Joint" means a device on a Structure, to permit the movement of such Structure, resulting from thermally induced expansion or contraction;

"National Indicators" or "NI" means the national indicators which the Authority is required to report on from time to time including NI 168, NI 169, NI 195 limbs (a) to (d) inclusive, NI 185, NI 186 and NI 196, as set out in the Department for Communities and Local Government document entitled "The New Performance Framework for Local Authorities and Local Authority Partnerships: Single Set of National Indicators" (and any update to such indicators or the introduction of any new or replacement indicators);

"Naturalised Bulb Areas" means those designated areas on the Project Network identified to allow the naturally occurring bulbs to complete their flowering cycle and subsequent flowering cycles;

"Necessary Consents" means all permissions, consents, approvals, certificates, permits, licences and authorisations, whether statutory or otherwise, (including, where appropriate, any licence or consent under NRSWA) required for the performance of any of the Service Provider's obligations under this Contract (and whether required in order to comply with Legislation or as a result of the rights of any third party);

"Net Present Value" means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"Network Integrity Inspection" means those inspections to be carried out by the Service Provider in accordance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"Network Integrity Inspections and Safety Assessment Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all network integrity inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Network Integrity Report" means the report to be issued pursuant to Performance Standard 10 Appendix PS10 of schedule 2 (*Output Specification*) in relation to the integrity of the network;

"Network Safety Improvement Assessment" means the review of the Project Network to identify improvements in the asset, the operation of the asset and methods of working on the asset to reduce the risk of accidents and incidents and therefore improve the safety record of the Project Network;

"Network Safety Improvement Assessment Report" means the report to be issued pursuant to Performance Standard 10 Appendix PS10 of schedule 2 (*Output Specification*) in relation to any improvement that the Service Provider considers will improve the safety of use of or operation of or execution of works on the Project Network, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"New Apparatus" means all Apparatus but excluding the Existing Apparatus;

"New Build" means all works of a capital nature, carried out or procured to be carried out by the Authority in its capacity as Highway Authority (including any works carried out pursuant to clause 48 (*Authority Highway Works*));

"New Contract" means an agreement on the same terms and conditions as this Contract at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Service Commencement Date, then the Service Commencement Date shall be extended by a period to allow a New Service Provider to achieve Service Commencement;
- (b) if this Contract is terminated prior to the completion of the Core Investment Period Programme, then the Core Investment Period and the date for completion of any applicable Milestones shall be extended by a period to allow a New Service Provider to achieve completion of the Core Investment Period Programme and any applicable Milestones;
- (c) any accrued Milestone Default Termination Points and Service Default Termination Points pursuant to the provisions of schedule 4 (*Payment Mechanism*) and/or any warning notices and/or Final Warning Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make Performance Adjustments, be cancelled and any ratchets applied in accordance with paragraph 8 of schedule 4 (*Payment Mechanism*) shall be reset to 1;
- (d) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
- (e) any other amendments which do not adversely affect the Service Provider;

"New Employees" means those new employees employed by the Service Provider to provide the Service who will be working alongside the Transferring Employees;

"New Employer" shall have the meaning given to it in clause 71.16 (*Transfer of Employment of Transferring Employees*);

"New Joiners" means persons other than the Transferring Employees who have been employed by the Service Provider (or the relevant Service Provider Party) following the date of this Contract to work for the whole or any part of their time in the Undertaking alongside the Transferring Employees other than:

- (a) the Transferring Employees;
- (b) persons employed following the date of this Contract to provide the Core Investment Works; and
- (c) any employees of the Service Provider (or the relevant Service Provider Party) who are employed in another part of the business of the Service Provider (or the relevant Service Provider Party) and who are seconded to work in connection with the Project;

"New Works" means AHW Works and/or Third Party Works;

"New Works Notice" shall have the meaning given to it in clause 49.3 (*Maintainability Assessment*);

"New Service Provider" means the person who has entered or who will enter into the New Contract with the Authority;

"NJUG10 Guidelines" means Guidelines for the Planning, Installation and Maintenance of Utility Services in Proximity to Trees produced by the National Joint Utilities Group as updated or amended from time to time;

"Node" means a five figure identifier which identifies the beginning, intermediate and end parts of a Monitoring Length;

"Non-Contestable Works" means any works upon or connections to the distribution system of a DNO, which are not Contestable Works;

"Non-Contestable Works Saving" shall mean [REDACTED] of the reduction of the amount of price of the Original Non-Contestable Works as set out in Table 1 of paragraph 3 of schedule 16 (Original Non-Contestable Works prices);

"Non-Illuminated Bollard" means a non-illuminated traffic delineator which is not a Traffic Sign, which is base mounted, carrying one or more diagrams from the Traffic Signs Regulations and Directions (2002), or occasionally the same type of unit with all plain aspect as set out in schedule 30 (*Project Network/Technical Information*);

"Non-Illuminated Traffic Sign" means any non-illuminated directional sign required by the Traffic Signs Regulations and Directions (2002);

"Non-Powered Apparatus" means Fixing Points, Traffic Counters, Non-Illuminated Bollards, Non-Illuminated Traffic Signs and Street Name Plates, and Lighting Columns;

"Non-Structural Wall Panel" means a facing on a Structure which does not serve any structural purpose;

"Non Standard Street Lighting" means those elements of Street Lighting that are:

- (a) listed status structures;
- (b) heritage or heritage style lighting;
- (c) contemporary style lighting;
- (d) historical lighting of civic importance; or
- (e) wall mounted lighting;

and which are identified in schedule 30 (*Project Network/Technical Information*);

"Non Working Time" means an Unavailable Period when Service Provider Equipment is permitted to be stored on a Project Network Part;

"Notes for Guidance" means the Notes for Guidance on the Specification for Highway Works, published by The Stationery Office as Volume 2 of the Manual of Contract Documents for Highways Works as updated or amended from time to time;

"**Notice Date**" means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the parties pursuant to clause 80.2.3 (*No Retendering Procedure*);

"**Notice of Rejection**" has the meaning given to in paragraph 2.4 of part 3 (*Medium Value Change*) of schedule 17 (*Change Protocol*);

"**Notice of Service Commencement**" means the notice provided by the Service Provider to the Authority pursuant to clause 8.3.1 (*Mobilisation*);

"**Notifiable Financing**" means any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Service Provider's or any Service Provider's Associated Company's ability to carry out any such refinancing or other arrangements which would have a similar effect;

"**Notifiable Weeds**" means any Weeds which are listed as notifiable under legislation;

"**Noxious Plants**" means those plants listed as injurious/noxious in the Weeds Act 1959, and those weeds listed in part II of schedule 9 of the Wildlife and Countryside Act 1981;

"**NRSWA**" means the New Roads and Street Works Act 1991;

"**NRSWA Inspection and Management Strategy**" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all NRSWA Inspections;

"**NRSWA Inspections**" means the processes carried out by the Service Provider to monitor any works undertaken through the Codes of Practice of NRSWA as required by Performance Standard 9 (Network Management) of schedule 2 (*Output Specification*);

"**NRSWA Payments**" has the meaning given to it in clause 5.16.3.1 (*Financial Provisions*);

"**NRSWA Shortfall**" has the meaning given to it in clause 5.16.3.3(d) (*Financial Provisions*);

"**NRSWA System and the Street Works Register**" means any prescribed process including Electronic Transfer of Notices (ETON) for management of works carried out under NRSWA;

"**Occurrence**" means any full or partial hour where Service Provider works are being undertaken on a Monitoring Length deemed Traffic Sensitive in either the Base Case Summer Deduction Matrix, Base Case Winter Deduction Matrix, Traffic Sensitive GIS Layer Summer (Weekday, Saturday, Sunday), Traffic Sensitive GIS Layer Winter (Weekday, Saturday, Sunday) and Category A Special Events GIS Layer;

"**Offensive Graffiti**" means any images or lettering scratched, scrawled, painted or marked in any matter on any Project Network Part which is considered by the Authority to be offensive in its nature;

"**Offensive Unauthorised Attachments**" means any item fixed to or resting on any part of the Project Network that has not been authorised to be at that location and is offensive to any person or persons;

"**Office of Government Commerce**" means the department of the Government of the United Kingdom which is part of the Efficiency and Reform Group of the Cabinet Office, that supports the procurement and acquisition process of public sector organisations in the United Kingdom;

"**Office Hours**" means between 0845 hours and 1715 hours from Monday to Thursday and between 0845 hours and 1615 hours on a Friday;

"**Official Journal**" means the Official Journal of the European Union;

"**Official Secrets Act**" means the Official Secrets Act 1989;

"**Off-Street Car Parking, Cycleway and Cyclepath Area**" means those areas designated by schedule 30 (*Project Network/Technical Information*) as remote from the Project Road but connected to the Project Road;

"**Off-Street Car Parks**" means those car parks open to the public which are remote from the Project Road but connected to the Project Road;

"**OH SAS 18001 (Health and Safety)**" means an international occupational health and safety management system;

"**OpCo**" means Ringway Island Roads Limited (Company No. 8108944) whose registered office is at Albion House, Springfield Road, Horsham, West Sussex, RH12 2RW;

"**Operation and Maintenance**" means the activities required for the Project Network as defined in schedule 2 (*Output Specification*) with the exception of life cycle replacement;

"**Operational Carbon**" means the carbon produced in relation to the operational elements of the Services;

"**Operational Panel**" shall have the meaning given to it in clause 83.2.1.1 (*Adjudication*);

"**Operational Water**" means the water used in relation to the operational elements of the provision of the Services;

"**Option Period**" shall have the meaning given to it in clause 68.15;

"**Order Failure**" shall have the meaning given to it in clause 5.8.2 (*Total Cessation of Orders*);

"**Original Employee**" means those employees of the Authority who as a result of the application of the Regulations, in relation to what was done for the purposes of carrying out the contract between the Authority and the First Contractor, became employees of someone other than the Authority;

"**Original Non-Contestable Works**" means Non-Contestable Works which the Base Case assumes will be undertaken pursuant to this Contract, the prices for which are

set out in table 1 of paragraph 3 of schedule 16 (*Original Non-Contestable Works Prices*);

"Original Non-Contestable Works Prices" means those prices set out in Table 1 of paragraph 3 of schedule 16 (*Original Non-Contestable Works Prices*);

"Original Senior Commitment" means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);

"OS Grid Range Reference" means the site extents which shall be given in northings and eastings grid reference contained within Ordnance Survey mapping;

"Outage Detection Cycle" means the process and procedure used by the Service Provider to check on Lighting Points to ensure that they are In Light;

"Outage Detection Cycle Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all outage detection operations, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Out of Hours Emergency Contact Number" means that telephone number which the Service Provider is obliged to ensure Out of Hours Callers are notified of, in accordance with Performance Standard 10 Appendix PS 10 of schedule 2 (*Output Specification*);

"Out of Hours Emergency Liaison Officer" means that person appointed by the Service Provider to answer calls placed to the Out of Hours Emergency Contact Number, in accordance with Performance Standard 10 Appendix PS 10 of schedule 2 (*Output Specification*);

"Outstanding Principal" means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Credit Agreement;

"Overrun" shall have the meaning ascribed to it within the New Roads and Street Works Act 1991;

"Overrun Deduction" means the deduction levied if an Overrun on an agreed Service Provider Programme occurs;

"Owners" shall have the meaning given to it in section 45(9) of the Public Health Act 1961;

"Parapets" means a low wall, rail and/or fence that runs along the outside edges of a Structure to prevent vehicles or pedestrians falling from such Structure;

"ParentCo 1" means Vinci Infrastructures S.A.S (Nanterre Corporate Register Number: 433 636 461, Registered Office: 1 Cours F.de Lesseps 92500 Rueil-Malmaison, France);

"ParentCo 2" means Meridiam Infrastructure Finance II, a private limited liability company (société à responsabilité limitée) incorporated in the Grand-Duchy of Luxembourg (registered with R.C.S. Luxembourg under number B 149213) having

its registered office at 5 Allée Scheffer, L-2520 Luxembourg, Grand-Duchy of Luxembourg;

"**Parish Council**" means a council of members of a particular town or civil parish located on the Project Area, having responsibility for the administration of the affairs of that town or civil parish;

"**Parish Council Indicative Annual Festive Decorations Programme**" shall have the meaning given to it in paragraph 2.1 of part 2 of schedule 13 (*Call-Off Services*);

"**Part 1 Authority Predicted Works**" means the AHW Works, the Third Party Works and the Authority's Programmed Maintenance as set out in part 2 of schedule 32 (*Authority Predicted Works*);

"**Part 2 Authority Predicted Works**" means the AHW Works, Authority Programmed Maintenance and the Third Party Works as set out in part 3 of schedule 32 (*Authority Predicted Works*);

"**Parties**" shall mean the parties to this Contract and "**Party**" shall be construed accordingly;

"**Paved Areas**" means any area which has a bound or solid surface;

"**Paved Verge**" means any area adjacent to the Carriageway, Footway, Urban Footpath, Cycleway or Cyclepath that is a Paved Area;

"**Pavement Management System**" means the database in which all details of the Carriageways and all other Paved Areas (including Footways) are recorded and can produce a programme of Services for these Project Network Parts to be maintained in accordance with schedule 2 (*Output Specification*);

"**PECU**" or "**Photo-Electronic Control Unit**" means a device used for the control of Lighting Activation Levels by the Authority to confirm to the DNO the timing of switching on and off for various light sources through out the Project Network;

"**PECU Array**" means a unit containing thirty (30) photocells which are representative of the Street Lighting photocells used across the Project Network to calculate energy consumption;

"**Pedestrian Barrier**" means any barrier designed to separate pedestrians from vehicular areas or other hazards;

"**Pedestrian Crossing**" means a dedicated provision for pedestrians giving them priority to cross a Carriageway where priority is given through signalisation and designated as puffin, pelican and toucan dependant on the design standard type adopted;

"**Pedestrian Lengths**" means those Footway Monitoring Lengths identified in schedule 30 (*Project Network/Technical Information*) which are to be treated as part of the Winter Service;

"**Pedestrian Precautionary Routes**" means those Footway Monitoring Lengths to be treated in accordance with paragraph PS7.4.1 of Appendix PS7 of schedule 2 (*Output Specification*) and as identified in schedule 30 (*Project Network/Technical Information*);

"Pension Regulations" means the Local Government Pension Scheme (Administration) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;

"Pension Scheme" shall have the meaning given to it in clause 71.5 (*Alternative Pension Scheme*);

"Performance Adjustment" means the adjustment calculated in accordance with paragraph 5 of schedule 4 (*Payment Mechanism*);

"Performance Requirement" means minimum standards of service provision relating to each Performance Standard as set out in schedule 2 (*Output Specification*);

"Performance Requirement Benchmarking Exercise" means a benchmarking exercise carried out by the Authority the purpose of which is to obtain a comparison between the performance of the Services by the Service Provider and how other local authorities are performing the same or similar services in each case in the context of relevant National Indicators;

"Performance Requirement Quality Plan" means the written statement to be produced by the Service Provider to the Authority pursuant to clause 42.8.4 (*Performance Requirement Benchmarking*);

"Performance Standards" means those performance standards set out in schedule 2 (*Output Specification*);

"Performance Standard 1" or **"APPENDIX PS1"** means the provisions of part 1 (Network Performance) of schedule 2 (*Output Specification*);

"Performance Standard 2" or **"APPENDIX PS2"** means the provisions of part 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"Performance Standard 3" or **"APPENDIX PS3"** means the provisions of part 3 (Core Investment Period) of schedule 2 (*Output Specification*);

"Performance Standard 4" or **"APPENDIX PS4"** means the provisions of part 4 (Network Standard) of schedule 2 (*Output Specification*);

"Performance Standard 5" or **"APPENDIX PS5"** means the provisions of part 5 (Environmental) of schedule 2 (*Output Specification*);

"Performance Standard 6" or **"APPENDIX PS6"** means the provisions of part 6 (Emergency and Response) of schedule 2 (*Output Specification*);

"Performance Standard 7" or **"APPENDIX PS7"** means the provisions of part 7 (Winter Service) of schedule 2 (*Output Specification*);

"Performance Standard 8" or **"APPENDIX PS8"** means the provisions of part 8 (Authority's Policies) of schedule 2 (*Output Specification*);

"Performance Standard 9" or **"APPENDIX PS9"** means the provisions of part 9 (Network Management) of schedule 2 (*Output Specification*);

"Performance Standard 10" or "APPENDIX PS10" means the provisions of part 10 (Contract Management and Customer Interface) of schedule 2 (*Output Specification*);

"Permitted Borrowing" means, without double-counting, any:

- (a) advance to the Service Provider under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 87.2.1 (*Changes to Financing Agreements, Project Documents and Supplemental Agreements*)), provided that such advance is not made under any Committed Standby Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to the Service Provider under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Service Provider incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and
- (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of clause 87.2.1 (*Changes to Financing Agreements, Project Documents and Supplemental Agreements*)) other amounts accrued or payable under the terms of the Senior Financing Agreements;

except where the amount referred to in paragraphs (a) to (d) above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

"Permitted Purposes" shall have the meaning given to it in clause 84.9 (*Licence to use Trade Marks and Data*);

"Permitted Use" shall have the meaning given to it in clause 17.9.1 (*Smallbrook Depot and Stag Lane Depot*);

"Persistent Breach" means a breach for which a Final Warning Notice has been issued, which has continued for more than twenty (20) days or recurred in three (3) or more Months within the six (6) Month period after the date on which such Final Warning Notice is served on the Service Provider;

"Personal Data" means personal data as defined in the Data Protection Act which is supplied to the Service Provider by the Authority or obtained by the Service Provider in the course of performing the Services;

"Personnel" means the employees, servants, agents, sub-contractors or other representatives, of the Service Provider, or of any Sub-Contractor or other Key Sub-Contractor involved directly, or indirectly, in the provision of the Services;

"PFI" means the United Kingdom's Private Finance Initiative;

"PFI Contractor" means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;

"PFI District" means any of, or all of the PFI districts set out in PS1 of schedule 2 (*Output Specification*);

"Photometric Performance" means the light output of the Lighting Point as designated by Performance Standard 4 (Network Performance);

"Photometric Performance Inspection" means the inspection carried out to assess the photometric performance of any Lighting Point;

"Photometric Performance Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all photometric performance inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Physical Layout" means the position of the carriageway and its associated structure, Footways etc;

"Pier" shall have the meaning ascribed to it in the Executive Summary and Glossary of the Management of Highways Structures - A Code of Practice;

"Place of Worship" means any church, mosque, synagogue, temple or building used and designated as a place for religious worship;

"Planned Core Investment Period Completion Date" means 31 March 2020 as may be amended from time to time in accordance with the provisions of this Contract;

"Planned Maintenance Strategy" means the Service Provider's design process installation process and maintenance regime that the Service Provider intends to adopt for any asset identifying the anticipated life of the relevant Project Network Part;

"Planned Milestone Completion Date" means, in respect of each Milestone, the corresponding date set out in column 2 of the table in clause 27.1 (*Milestones*) or such revised date as may be fixed in accordance with clauses 45 (*Relief Events*), 46 (*Compensation Events*) and 47 (*Excusing Causes*) and/or clause 78 (*Termination following a Force Majeure Event*);

"Planned Road Closures" means the closure of any Project Road through the provision of a Traffic Regulation Order;

"Planned Service Commencement Date" means 1 April 2013 as may be amended from time to time in accordance with the provisions of the Contract;

"Planning Application" means an application made to the Authority requesting planning permission;

"Planning Committee" means the Authority's committee of that name;

"Planning Proposal Notice" has the meaning given to it in clause 49.1(*Planning Proposals*);

"Planning Services" shall mean the Authority department of that name;

"Portfolio Cost Saving" means any insurance cost saving which arises from the Service Provider changing the placement of the Required Insurances from being on a stand-alone project-specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit

from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

"Post Termination Service Amount" means for the purposes of clause 80.2.2 (*Retendering Procedure*), for the whole or any part of a Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that Month under the Contract had the Contract not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Availability Deduction Amount for that Month;
- (b) the Rectification Costs incurred by the Authority in that Month; and
- (c) (where relevant), the amount by which the Post Termination Service Amount for the previous Month was less than zero;

"Post Treatments" means operations carried out as part of Winter Service after snow has fallen or ice/hoar frost formed as required by Performance Standard 7 (Winter Service) of schedule 2 (*Output Specification*);

"Post Treatment Operations" means those treatments to be undertaken by the Service Provider when ice, hoar frost or snow has already formed on the surface of a Project Road, by the use of anti-icing product (which shall include, without limitation, the use of salt and/or acetate) in order to comply with section 41(A) of the Highways Act;

"Potential Financing Default" shall have the meaning given to it in the Senior Financing Agreement;

"Powered Apparatus" means those Project Network Parts that are:

- (a) Feeder Pillars;
- (b) External Power Supply Points;
- (c) Illuminated Bollards;
- (d) Illuminated Centre Island Beacons;
- (e) Illuminated Traffic Signs;
- (f) Lighting Point(s);
- (g) Private Cable Network;
- (h) Traffic Signal Point(s);
- (i) CCTV Point(s);
- (j) Belisha Beacons;
- (k) PECU Array;
- (l) Traffic Signal Loop(s);
- (m) fixed Festive Decorations;

- (n) Underground Apparatus;
- (o) VMS;
- (p) UTC;
- (q) Urban Traffic Control Monitoring System;
- (r) Traffic Signals;
- (s) Traffic Signal Monitoring System;
- (t) Street Lighting;
- (u) Signalised Pedestrian Crossings;
- (v) Lanterns;
- (w) Luminaires; and
- (x) CCTV Systems

and any components included in all of the above;

"Powered Apparatus Inspection" means the inspections carried out to confirm the condition of electrical apparatus;

"Powered Apparatus Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of all Powered Apparatus Inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Powered Apparatus Inventory" means an electronic records system which records the following information in respect of all Powered Apparatus:

- (a) data in relation to the nature of all current and historical faults and details of the steps taken in relation to the repair of such faults and all relevant response times;
- (b) full details for each item of Powered Apparatus including, where appropriate, those details required in accordance with Appendix B of the DTLR Inventory of Road Lighting Stock;
- (c) all electrical load details (including kwh and burn hours) required by the Authority for Monthly energy returns in accordance with BSCP 520;
- (d) details of all electrical testing of Powered Apparatus (whether or not such electrical testing is programmed or of an ad hoc nature);
- (e) all other information which may be of relevance to the Authority having regard to any of its statutory responsibilities and functions (whether as Highway Authority and/or Lighting Authority under the Highways Act 1980, Best Value Authority under the Local Government Act or otherwise); and

- (f) all other information required in accordance with Performance Standard 10 (*Contract Management and Customer Interface*) of schedule 2 (*Output Specification*);

"Pre-Action Protocol" means the pre-action protocols applying from time to time to the administration of Highway Claims;

"Pre-Commencement Survey Date" means 31 October 2011;

"Pre-Refinancing Equity IRR" means the nominal post tax (ie post Service Provider tax pre Shareholder tax for the Service Provider but pre-tax for the Shareholders) Equity IRR calculated immediately prior to the Refinancing;

"Precautionary Treatments" means treatments such as gritting to be undertaken by the Service Provider when surface temperatures of a relevant carriageway or pedestrian length are expected to fall below zero degrees Celsius or when ice, hoar frost or snow is expected to form on the surface of a relevant length, to prevent such formation in order to comply with section 41(1A) of the Highways Act;

"Premium Deductions Matrix" means the Premium Deduction Matrix contained at Attachment 2 to Schedule 4 (*Payment Mechanism*);

"Prescribed Rate" means two per cent (2%) above the base interest rate from time to time of the Bank of England;

"Primary Footway" means the network of Footways designated in the Pavement Management System, in schedule 30 (*Project Network/Technical Information*) as primary;

"Principal Depot" means the principal depot located at Daish Way, Newport as identified in Schedule 19 (*Land/Plans*) within the Project Area for the carrying out of the Services;

"Principal Inspection" means an inspection which comprises a close examination (within touching distance) of all accessible parts of a Structure including, where relevant, underwater parts and adjacent Earthworks and waterways in compliance with Management of Structures Code of Practice and the Design Manual for Roads and Bridges Volume 3 BD 63;

"Principles of Good Employment Practice" means either:

- (a) the Cabinet Office Principles of Good Employment Practice dated December 2010 (as amended and replaced from time to time by the Cabinet Office and/or the Department for Communities and Local Government or its successors); or
- (b) where any similar or equivalent principles for good employment practice are introduced in respect of local authority service contracts, such similar or equivalent principles (as amended or replaced from time to time);

"Priority 1 Pedestrian Routes" means those designated Footways and Urban Footpaths in schedule 30 (*Project Network/Technical Information*) that are to be treated as part of Winter Service;

"Priority Carriageway Lengths" means those Monitoring Lengths of Carriageways identified in schedule 30 (*Project Network/Technical Information*) to which the Winter Service is required to be provided;

"Priority Rating" means the assessment against set criteria;

"Priority Snow Zone Lengths" means the Category A Routes and Category B Routes which shall be treated in accordance with Performance Requirement 7.4.6 of Performance Standard 7 (Winter Services) of schedule 2 (*Output Specification*);

"Private Cable Network" means those electrical service cables on the Project Network not owned by and/or the responsibility of, the DNO;

"Privately Maintainable Public Rights of Way" means public rights of way listed in the Highways Register as maintainable by a Third Party;

"Proceeds Account" has the meaning given to such term in the Senior Financing Agreements;

"Programmed Maintenance" means the pre-emptive refurbishment, maintenance and life cycle replacement of Project Network Parts so that they meet the requirements of Performance Standard 4 (Network Standards) of schedule 2 (*Output Specification*) and other relevant provisions of this Contract;

"Programmed Maintenance Services/Works" shall have the same meaning as the definition for "Programmed Maintenance Works" as referred to in this schedule 1 (*Definitions*);

"Programmed Maintenance Works" means those works and/or services to be carried out (or procured to be carried out) by Service Provider in order to meet the requirements of this Contract in respect of Programmed Maintenance;

"Prohibited Act" means:

- (a) offering, giving or agreeing to give to any servant of the Authority (or any person employed by or on behalf of the Authority) any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (b) entering into the Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Service Provider or on its behalf, or to its knowledge unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;

- (ii) under Legislation creating offences in respect of fraudulent acts; or
- (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

"Project" means the rehabilitation and maintenance of the Project Network and all Project Network Parts as contemplated by this Contract (including the carrying out of the Services) for a period of twenty five (25) years;

"Project Accounts" means accounts referred to in and required to be established under the Senior Financing Agreements;

"Project Area" means the Isle of Wight, more particularly defined in schedule 30 (*Project Network/Technical Information*);

"Project Documents" means the documents entered into by the Authority for the performance of its obligations under this Contract which are listed in annexure 2 (*Project Documents*) copies of which have been initialled by the Parties for the purposes of identification;

"Project Facilities" means the Depot and any other buildings or land within the Project Area, used by the Service Provider or sub-contractors primarily for the provision of the Services;

"Project Insurance Change" means any net increase (which shall be expressed as a positive number) or net decrease (which shall be expressed as a negative number) in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

- (a) the claims history or re-rating of the Service Provider or any Service Provider Party;
- (b) the effect of any change in deductible unless the following applies:
 - (i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and
 - (ii) the deductible, further to such change, is either greater than or equal to the maximum in schedule 6 (*Insurance*);
- (c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving,

for the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value;

[REDACTED]

[Handwritten signatures]

"Project Management Fee" means a fee in respect of project management services calculated in accordance with paragraph 2.6 of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*) and part 3 of appendix 1 of schedule 17 (*Change Protocol*);

"Project Network" means the network identified in the document titled ProjectNetwork.xls contained in schedule 30 (*Project Network/Technical Information*) as varied in accordance with this Contract;

"Project Network Attachments" means any notices or other equipment and items attached as at the Service Commencement Date or to be attached by the Service Provider from the Service Commencement Date to Project Network Parts, including:

- (a) dog fouling notices;
- (b) litter prevention notices;
- (c) notices required by Legislation;
- (d) any environmental monitoring equipment the Authority considers is necessary or desirable;
- (e) alcohol prohibition and other by-law signs;
- (f) privilege direction signs;
- (g) general and local political signage;
- (h) signs and/or notices associated with local or national elections;
- (i) Hanging Baskets
- (j) Advertising;
- (k) crime prevention equipment or items (including, without limitation, CCTV cameras);
- (l) pennants;
- (m) authority festive decorations;
- (n) other information (including notices or signs) which the Authority wishes to attach pursuant to its statutory powers; and
- (o) Banners,

but shall not include Authority Attachments or Third Party Attachments;

"Project Network Festive Decorations" means those festive decorations existing as at the Pre-Commencement Survey Date and listed in schedule 30 (*Project Network/Technical Information*);

"Project Network Inventory" means an electronic records system to the Highways Agency NMM standard which records the information in respect of all Project Network Parts (with the exception of Powered Apparatus and/or Underground

Apparatus) and all other assets pertaining to the Project Roads (whether maintained by the Service Provider or otherwise or owned by the Authority or a Third Party):

- (a) data in relation to the nature of all current and historical faults and details of the steps taken in relation to the repair of such faults and all relevant response times;
- (b) all other information which may be of relevance to the Authority having regard to any of its statutory responsibilities and functions (whether as Highway Authority and/or Lighting Authority under the Highways Act 1980, Best Value Authority under the Local Government Act or otherwise); and
- (c) all other information required in accordance with this Contract

"Project Network Materials" shall have the meaning set out in clause 19.5.1 (*Disposal of Materials*);

"Project Network Model" means the document in schedule 30 (*Project Network/Technical Information*) which provides information in respect of the Project Roads including Monitoring Lengths, numbering, length, hierarchy allocation and preferred direction of survey and inspection and digitised geographical centreline representation;

"Project Network Part" means any:

- (a) Project Road;
- (b) Structure;
- (c) Apparatus;
- (d) Furniture;
- (e) Vegetation; and
- (f) Off-Street Car Parks

on the Project Network;

"Project Network Part Waste or Scrap" means such waste or scrap materials produced by the Service Provider from carrying out the Services;

"Project Road" means those:

- (a) Carriageways;
- (b) Footways;
- (c) Cycleways;
- (d) Kerbs and Channel Blocks;
- (e) Paved Verges;
- (f) Cyclepaths;

- (g) Drainage Systems;
- (h) Earthworks;
- (i) Safety Fences, Vehicle Barriers and Pedestrian Barriers;
- (j) Footpaths;
- (k) Verge Crossings; and
- (l) Fords; on the Project Network;

"Property Damage Insurance" shall have the meaning given in paragraph 1 of Part 2 of schedule 6 (*Insurance*);

"Property Damage Proceeds" shall have the meaning given in clause 68.11A.3 (*Insurance*);

"Proportion of Failed Monitoring Lengths" means the percentage of the total number of Monitoring Lengths in any PRI District that are below the value designated in Performance Standard 4 of schedule 2 (*Output Specification*);

"Proposed Latent Defect Solution" means the solution proposed by Service Provider and contained within the Latent Defect Report;

"Proposed Latent Defect Target Cost" means the target cost for implementing the Proposed Latent Defect Solution as contained within the Latent Defect Report;

"Proposed Project Network Part" means either:

- a) a Project Network Part which has been modified as part of some New Works; or
- b) a new addition to the Project Network which the Authority proposes to Accrue in accordance with the provisions of schedule 18 (*Accruals and De-Accruals*);

"Proposed Workforce" has the meaning given to it in clause 70.10.1 (*Workforce Information*);

"Protective Paint System" means a coating or other method that provides a means of preventing the deterioration of the asset that the system is designed to protect;

"Protective Paint System Inspection and Testing" means an inspection and testing to evaluate condition of the Protective Paint System applied to Apparatus in accordance with the requirements of paragraph 2.4.17.1 of Performance Standard 2 of schedule 2 (*Output Specification*);

"Protective Paint System Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of the inspections of the Protective Paint System, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Protective Paint System Integrity" means the acceptability of the standard of the protection provided by the Protective Paint System;

"**Protestor**" means any person engaged in a public organised demonstration of objection upon the Project Network;

"**Public Health Act**" means the Public Health Act 1936;

"**Public Holiday Periods**" shall have the meaning ascribed to it in Table 17 of the Availability Matrix contained at Attachment 2 to schedule 4 (*Payment Mechanism*);

"**Public Rights of Way**" means public rights of way listed in the Highways Register as maintainable by the Authority;

"**Pumping Stations**" means locations and or structures for the collection of liquid and its forced movement by mechanical means against the action of gravity;

"**Qualifying Bank Transaction**" means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above, in respect of the Senior Financing Agreements in favour of:
 - (i) any other Senior Lender;
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
 - (iii) a local authority or public authority;
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least [REDACTED] (Indexed) (or its equivalent in any other currency at the relevant time);
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least [REDACTED] (Indexed) (or its equivalent in any other currency at the relevant time);
 - (vi) an EEA or Swiss Insurance Undertaking;
 - (vii) a Regulated Collective Investment Scheme; or
 - (viii) any other institution in respect of which the prior written consent of the Authority has been given; and/or

- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Service Provider, whether by way of security or otherwise, in favour of:
 - (i) any other Senior Lender;
 - (ii) any institution specified in paragraphs (b)(ii) to (vii) above; or
 - (iii) any other institution in respect of which the prior written consent of the Authority has been given;

"Qualifying Change in Law" means;

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law;
- (c) a General Change in Law which comes into effect three (3) years following the Service Commencement Date and which involves Capital Expenditure,

which was not foreseeable at the date of this Contract; and/or

- (d) a change to the Balancing and Settling Code Procedure (BSCP 520) or any successor procedure which specifically relates to the re-rating of electricity consumption of any item of Powered Apparatus;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

"Qualifying Variation" means, either:

- (a) a change in the Services in respect of which either an Authority Change Notice or a Service Provider Change Notice has been served and, in the case of:
 - (i) an Authority Change Notice, the Authority have issued a Confirmation Notice and, where the Service Provider is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and
 - (ii) a Service Provider Change Notice, the change has been accepted by the Authority; or
- (b) a Qualifying Change in Law,
and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in Services or Qualifying Change in Law have become unconditional in all respects;

"Quality Management System" means the processes and procedures necessary to ensure compliance with ISO 9000/9001 2000;

"Quality Manager" means such person appointed by the Service Provider pursuant to clause 33.5 (*Quality Manager*);

"Quality Manual" means the quality assurance manual to be generated and maintained by the Service Provider pursuant to clause 33 (*Quality Management*);

"Quality Plans" means the Design Quality Plan and the Service Quality Plan;

"Quartering" means the removal of earth and plants not required at the location that encroach over any paved area, leaving a stable edge to the unsupported earth face;

"Rail Access Protocol" shall mean the access protocol to be entered into by the Authority with the Isle of Wight Railway Company;

"Rail Bridge" means any Bridge on the Project Network in the ownership of a Third Party carrying a Project Road over a railway line;

"Railway Structures" means each and all of the Structures:

- (a) on Station Road, Havenstreet;
- (b) on Deacons Lane;

- (c) on Rowlands Lane;
- (d) on Ashley Road,

as are identified in the agreement between the Authority and the Isle of Wight Railway Company dated 15 August 2012; and

- (e) the footbridge at Ryde;
- (f) the footbridge at Shanklin; and
- (g) the footbridge at Lake;

"Railway Third Party" means:

- (a) in respect of the Structures set out in limbs (a) to (d) inclusive of the definition of Railway Structures, Isle of Wight Railway Company; or
- (b) in respect of the Structures set out in limbs (e) to (g) inclusive of the definition of Railway Structures, Network Rail;

"Reactive Response" means the actions necessary to deal with any call or notification for incidents or conditions realised on the Project Network or through Civil Emergency;

"Reactive Maintenance" means the maintenance required to remedy an urgent or safety related incident on the Project Network;

"Recipient" shall have the meaning given to it in clause 63.2 (*Value Added Tax*);

"Recruitment and Selection Policy" means the policy produced by the Service Provider under the provisions of clause 34.9 (*Recruitment and Selection Policy*) and which is contained in schedule 35 (*Workforce Policies*);

"Rectification" means measures taken by the Service Provider to remedy the failure to meet a Performance Requirement so that the relevant Service is performed to the relevant Performance Requirements and "Rectify" will be construed accordingly;

"Rectification Costs" means, for the purposes of any Termination Date that occurs during the Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in ensuring that the Service is available;

"Rectification Period" means the time period relating to each Performance Requirement as set out in Performance Standards 1 to 10 of schedule 2 (*Output Specification*), which elapses from the point when the Service Provider becomes aware of a failure, or should have become aware of the failure had it been carrying out Services and its other obligations of the Contract in accordance with the requirements of the Contract, and during which the Service Provider must rectify fully the failure in order to avoid incurring a Performance Adjustment and/or Service Default Termination Point;

"Rectification Plan" shall bear the meaning given thereto in clause 13.4.6.1 (*Latent Defect Report*);

"Red Zone" shall mean those Geotechnical Sites listed in table 1 of part 1 of schedule 9 (*Geotechnical and Geological Zones*) as Capital Schemes where the Service Provider shall undertake a Long Term Solution or Short Term Solution in accordance with parts 4 and 5 of schedule 9 (*Geotechnical and Geological Zones*);

"Red Zone Failure" shall bear the meaning given thereto in clause 12.3 (*Red Zone Failure*);

"Register of Emergencies" means the register maintained by the Service Provider in accordance with PS10.8.1.1 of Appendix PS10 of schedule 2 (*Output Specification*) recording all Emergencies;

"Register of Special Engineering Difficulties" means the register maintained by the Service Provider in accordance with PS10.8.1.1 of Appendix PS10 of schedule 2 (*Output Specification*) recording any special engineering difficulties affecting Project Network Parts;

"Register of Traffic Sensitive Routes with Associated Street Works Data" means the register maintained by the Service Provider in accordance with PS10.8.1.1 of Appendix PS10 of schedule 2 (*Output Specification*) recording the effect of the Street Works Register on Traffic Sensitive Carriageways;

"Regulations" means regulations issued pursuant to Part III of NRSWA;

"Reinstatement Plan" shall bear the meaning given thereto in clause 68.12.2.1 (*Reinstatement*);

"Reinstatement Works" shall bear the meaning given thereto in clause 68.12.2.1 (*Reinstatement*);

"Reinstatement Works Direct Costs" means the Service Provider's assessment (acting reasonably) of the costs it expects to be reasonably and properly incurred as a direct consequence of implementing the Reinstatement Works required as a result of the occurrence of the Relevant Incident, and after deducting (without double counting):

- (a) any savings achieved by the Service Provider in the costs of any Service which the Service Provider would have been required to carry out in respect of the affected Project Network Parts but which the Service Provider is now unable to carry out due to the occurrence of the Relevant Incident; and
- (b) any savings achieved by the Service Provider to the extent that the carrying out of the Reinstatement Works will replace the carrying out of any planned Services;

"Reference Price" means a high level price calculated by the Independent Technical Adviser which is his estimate of the cost of implementing a proposed High Value Change and which shall include and show separately the information specified in paragraph 10 (*Independent Technical Adviser*) of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);

- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements (other than the Subordinated Financing Agreements) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Service Provider whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Service Provider or another person which has an effect which is similar to any of paragraphs (a) to (c) above or which has the effect of limiting the Service Provider's or any Associated Company's ability to carry out any of paragraphs (a) to (c) above;

"Refinancing Gain" means an amount equal to the greater of zero and $((A - B) - C)$, where:

- A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing;
- B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing; and
- C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

"Refinancing Notice" shall have the meaning given to it in clause 105.9.1 (*Authority Right to Request Refinancing*);

"Regulated Collective Investment Scheme" has the meaning given in the rules from time to time of the Financial Services Authority;

"Relevant Agreement" has the meaning given to it in clause 49.23 (*Maintainability Assessment*);

"Relevant Assumptions" means the assumptions that the sale of the Service Provider is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of the Service Provider and the Project is taken into account;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official

or public or statutory person of the government of the United Kingdom or of the European Union;

"Relevant Event" means an Authority Change, a Qualifying Change in Law, a Compensation Event or any other matter as a result of which there may be an adjustment to the Annual Unitary Charge in accordance with clause 65 (*Financial Adjustments*);

"Relevant Electrical Codes of Practice" means the published Codes of Practice relevant to the condition and operation of Street Lighting and Powered Apparatus;

"Relevant Employees" means the employees who are the subject of a Relevant Transfer;

"Relevant Incident" shall bear the meaning given to it in clause 68.11B.1 (*Reinstatement*);

"Relevant Insurance" means the Required Insurances and any other insurances as may be required by law;

"Relevant Insurance Inception Date" means the date on which the Relevant Insurance is first providing active insurance cover to the Service Provider, being a date no earlier than the Service Commencement Date;

"Relevant Insurance Market" means the insurance market which insures the majority of all PFI projects across all of the PFI sectors (as determined by the number of PFI projects). At the date of this Contract, the Relevant Insurance Market is in the United Kingdom;

"Relevant Insured Incident" shall have the meaning given to it in clause 68.12A.1 (*Reinstatement under Required Insurances*);

"Relevant Legislation" shall have the meaning given to it in clause 64.4 (*Sub-Contractors in the Construction Industry Scheme*);

"Relevant Lighting Standards" means:

- (a) Highways Standards to the extent that they relate to Powered Apparatus;
- (b) all relevant European and British Standards for road lighting including:
 - (i) BS EN 13201;
 - (ii) BS 5489;
 - (iii) BS EN 14001 for Environmental Management;
 - (iv) BS 7671 Requirements for Electrical Installations;
 - (v) BS EN 40;
 - (vi) BS EN 60598;
 - (vii) BS EN 12899-1;
 - (viii) prEN 12899-1;

- (ix) BS 873;
- (c) Institution of Electrical Engineers Wiring Regulations;
- (d) Institution of Electrical Engineers Codes of Practice;
- (e) Institution of Lighting Engineers Guidance Notes for the Reduction of Lighting Pollution;
- (f) Institution of Lighting Engineers Technical Reports and Guidance Notes;
- (g) Institution of Lighting Engineers and Lasers, Festival and Entertainment Lighting Code;
- (h) the CSS Road Lighting Maintenance Code of Good Practice;
- (i) Highways Lighting Code; and

all other relevant standards, codes of practice, government and national policies, industry guidelines and Good Industry Practice relating to any Powered Apparatus and all successor standards, publications of or to the above mentioned Relevant Lighting Standards;

"**Relevant Payment**" has the meaning given to it in clause 68.15 (*Insurance*);

"**Relevant Person**" means a Shareholder and any of its Affiliates;

"**Relevant Proceeds**" means any amount outstanding to the credit of the Joint Insurance Account;

"**Relevant Relief**" is a Relief which arises in connection with the Project, this Contract or any other Project Document or anything done in relation to the Project, or any other Project Document or anything done thereunder and includes any Relief arising as a result of:

- (a) the distribution or disbursement of any amount obtained or in relation to anything done under this Contract by the receiving Party (whether by way of interest, dividend or other distribution, repayment, reduction or redemption or capital or indebtedness or return of assets or otherwise) including any payment made or to be made as a result of the event or events giving rise to the amount payable under clause 61 (*Tax*); or
- (b) the Relevant Tax Liability or the payment or discharge of it;

"**Relevant Standards**" shall have the meaning given to it in schedule 2 (*Output Specification*);

"**Relevant Tax Liability**" means in respect of a Termination Payment or, where applicable, an Indemnity Payment to the extent that it has an Actual Liability or a Deemed Liability;

"**Relevant Transfer**" means a relevant transfer for the purposes of the Transfer Regulations;

"Relief" shall mean any relief, allowance or deduction in computing profits or Tax or a credit against, or right to repayment of, Tax granted or pursuant to any legislation for Tax purposes;

"Relief Event" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company, local authority (but excluding for the avoidance of doubt any failure by the Authority under this Contract) or other like body, to carry out works or provide services but not including any Service Provider Party or any DNO in respect of Contestable Works in connection with the Services;
- (c) any accidental loss, or damage to twenty (20) or more items of Powered Apparatus in any one event;
- (d) failure by a DNO for the area to carry out Non-Contestable Works or services within the meaning of the Electricity Act 1989;
- (e) any failure of or shortage of salt, power, fuel or transport;
- (f) any blockade or embargo which does not constitute a Force Majeure Event;
- (g) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow;
 - (iv) other dispute,
generally affecting means of transportation to the Project Area or the DNO, the highways industry, the street lighting industry, or a significant sector of these industries;
- (h) the discovery of Finds within the Project Network;
- (i) where the circumstances set out in clause 27.3.6 (Milestones) apply;
- (j) underground cable faults in respect of cables which do not form part of the Underground Apparatus and are not otherwise the responsibility of the Service Provider under this Contract;

unless any of the events listed in paragraphs (a) to (j) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Service Provider or any of the Service Provider Parties;

"Remedial Action Plan" means the corrective and/or preventative actions identified by the Service Provider that are required to be undertaken by the Service Provider in order to rectify weaknesses, causes of failure and non conformity, where necessary to comply with the Contract;

"Remote Monitoring System" or "RMS" means a computerized system located in the Control Room that monitors the operation and allows control over any Traffic Signal Site identified as a MOVA site in the Traffic Signal Inventory;

"Remuneration Costs" shall have the meaning given to it in clause 70.10.2 (*Workforce Information*);

"Reorganisation Costs" shall have the meaning given to it in clause 70.10.3 (*Workforce Information*);

"Replacement Network Rail Agreement" shall mean any agreement entered into by the Authority with Network Rail in replacement for an Expired BRB Agreement;

"Request for Information" shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

"Required Action" shall have the meaning given to it in clause 72.3 (*Step-In*);

"Required Insurances" means the insurances described in clause 68.1 (*Required Insurances*);

"Reserved Function" shall have the meaning given to it in clause 5.16.6.2 (*Assistance by the Service Provider*);

"Responsible Authority" has the meaning given to it in Section 90(4) of NRSWA;

"Retained Obligations" means:

- (a) the obligations of the Authority under the Third Party Agreements which are listed as being expressly excluded from being transferred or novated or from becoming the responsibility of the Service Provider under the terms of schedule 22 (*Third Party Agreements*);
- (b) any obligation under the Third Party Agreements or any other agreement, undertaking or commitment between the Authority and any Third Party, to acquire or not acquire, any estate or interest in land, or to pay compensation for the acquisition of such land which are agreed as such pursuant to Schedule 17 (*Change Protocol*);

"Retained Rights" means the rights and powers of the Authority under the Third Party Agreements which:

- (a) are not Delegated Rights; or
- (b) are listed as being expressly excluded from being transferred to, or from becoming the responsibility of, the Service Provider under the terms of schedule 22 (*Third Party Agreements*); or
- (c) confer any right to acquire land or an estate or interest in land;

"Retaining Walls" means a wall constructed to support a Project Road or to prevent ground from falling onto a Project Road, including Gabions, reinforced earth structures, anchored earth structures and crib wall systems with a slope between 70° and 90° to the horizontal, where the level of the fill at the back of the wall is greater

than 0.9 metres above the finished ground level as set out in schedule 30 (*Project Network/Technical Information*);

"Retendering Information" shall have the meaning given to it in clause 70.22.1 (*Retendering*);

"Retention Fund Account" shall have the meaning given to it in clause 82.4.2 (*Retention Fund Account*);

"Return Date" shall have the meaning given to it in clause 70.26 (*Transfer of Employment on Expiry/Termination*);

"Returning Employees" shall mean those employees assigned to the provision of the Services immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Service Provider pursuant to the Transfer Regulations;

"Revenue and Customs" or **"HMRC"** means HM Revenue and Customs (or any other successor body);

"Revenue Sharing Equity IRR" means the nominal post Service Provider tax pre shareholder tax blended rate of return to a shareholder or any of its Affiliates from the Service Commencement Date to the final day of the previous Contract Year having regard to Distributions made;

"Review Procedure" means the procedure set out in schedule 20 (*Review Procedure*);

"Reviewable Item" means those items to which the Authority could refuse to give its consent for any amendments, or to which it could agree an amendment subject to conditions, or those items upon which the Authority may only comment but cannot refuse to give consent, including:

- (a) the Method Statements;
- (b) the Service Provider Programmes;
- (c) the Highway Safety Inspection Strategy;
- (d) the Highway Condition Survey Strategy;
- (e) the Skid Resistance Survey Strategy;
- (f) the Highway Service Inspection Strategy;
- (g) the Geotechnical Inspection and Monitoring Strategy;
- (h) the Outage Detection Cycle Strategy;
- (i) the Powered Apparatus Inspection Strategy;
- (j) the Photometric Performance Inspection Strategy;
- (k) the CCTV Points Inspection Strategy;
- (l) the Apparatus Structural and Mechanical Inspection Strategy;

- (m) the Protective Paint System Inspection Strategy;
- (n) the Arboricultural Inspection Strategy;
- (o) the Structures Inspection Strategy;
- (p) the Structures Assessment Strategy;
- (q) the Scour Assessment and Inspection Strategy;
- (r) the Mechanical and Electrical Inspection Strategy;
- (s) the Quality Manual;
- (t) the Quality Plan; and
- (u) the Civil Emergency Plan;

"Reviewable Submitted Item" shall have the meaning given to it in paragraph 2.1 of schedule 20 (*Review Procedure*);

"Revised Senior Debt Termination Amount" means, subject to clause 87.2 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*):

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Service Provider to the Senior Lenders in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Service Provider to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Service Provider and the Senior Lenders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Service Provider on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Service Provider as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract;

(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Service Provider as a result of enforcing any other rights they may have; and

(v) all APB Distributions;

"Revoked Function" has the meaning given to it in clause 5.7.1.1 (1994 Act);

"RIDDOR" means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

"Risk Assessment" means a process of identifying, quantifying and recording risk;

"Risk Mapping" means the process and record of the severity of defect to any geotechnical element of the Project Network;

"Road Circulars" means guidance and advice notes issued from time to time by the Department for Transport;

"Road Closure" means the prevention of the movement of any traffic along any part of the Project Network;

"Road Closure Programme" means a programme of Services provided by the Service Provider pursuant to Performance Standard 1.1.5.1 in PS1 of schedule 2 (*Output Specification*) and as updated in accordance with clause 23 (*Updates and Changes to Service Provider Programmes*) setting out the details of Road Closures expected to occur during a Contract Year either as a result of the Service Providers or Third Party works;

"Road Marking" means any thermoplastic, paint and pre-formed marking on a Project Road;

"Road Marking and Road Studs Strategy" means the Service Provider's document that provides procedures, processes, timings, resources and controls with regard to the survey of Road Markings and Road Studs to ensure compliance with the requirements of schedule 2 (*Output Specification*) and in respect of Contract Year 1, as set out in schedule 21 (*Service provider Programmes and Quality Plans*);

"Road Studs" shall have the meaning given to it in regulation 4(1) of the Traffic Signs Regulations and General Directions 2002;

"Road Traffic Regulation Act" means the Road Traffic Regulation Act 1984;

"Root Pruning" means the operation which trims the length of tree roots to reduce their growth or improve their condition or reduce the possible damage to the Project Network;

"Routine Maintenance" means all Service Provider's works that are not Programmed Maintenance;

"Routine Maintenance Management System" means an electronic database designed in accordance with the Highways Agency Network Maintenance Manual used for storing information about, and not limited to records of inspections, record of

works and so forth and the requirements of Performance Standard 10 (Contract Management and Customer Interface) of schedule 2 (*Output Specification*);

"**RPI**" means the specific index as published by the Office for National Statistics on a monthly basis for RPIX or, failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"**Rural**" means those Carriageways with a speed limit designation in excess of 40 miles per hour with the exception of Medina Way which is classified as Urban;

"**Safety Condition Index**" means that part of the Wight Carriageway Condition Index which combines the Skid Resistance with texture Data as referred to in paragraph 4.1.2.2 of Appendix PS4 of schedule 2 (*Output Specification*);

"**Safety Fences**" means either a permanent or temporary structure, placed in any location to prevent vehicles or persons being exposed to an identified risk intending to prevent damage to either the vehicle, person or Structure being protected as set out in schedule 30 (*Project Network/Technical Information*);

"**Secretary of State**" means any secretary of state of any Government ministry;

"**SCANNER Surveys**" means the such named survey for the measurement of the condition of the carriageway by mechanical and electronic methods required to be undertaken by the Service Provider by paragraph 2.4.2.1 of the Performance Standard 2 of schedule 2 (*Output Specification*);

"**Scheme**" means the Service Provider's scheme for the maintenance and/or improvement of a Project Network Part or Project Network Parts;

"**School Easter Holiday**" means a twenty three (23) day period that begins at 00:00 on the Friday of the week that Isle of Wight schools finish the spring term;

"**Scour Assessment**" means the process, procedure, and recording of the condition of Structures that sit in a watercourse and risk of deterioration;

"**Scour Assessment and Inspection Strategy**" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of scour assessments, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"**Scour Assessment Programme**" means a programme provided by the Service Provider detailing the extent, resource and timing of the Service Provider's execution of Scour Inspections in respect of each Contract Year;

"**Scour Inspection**" means an inspection and testing to evaluate the condition of the relevant sections of Structures that sit in a watercourse and risk of deterioration (refer to output spec and amend so consistent with scour assessment);

"**SCRIM Survey**" means the such named survey for the measurement of the skid resistance of the surface of the Carriageway by mechanical and electronic means

required to be undertaken by the Service provider in accordance with schedule 2 (*Output Specification*);

"**SDTP Threshold 1**" means [REDACTED] Service Default Termination Points, being the level of Service Default Termination Points above which the Service Provider is required to develop a remedial plan detailing the steps to be taken to Rectify;

"**SDTP Threshold 2**" means [REDACTED] Service Default Termination Points, being the level of Service Default Termination Points above which the Service Provider is required to develop a second remedial plan prepared with an independent expert advisor detailing the steps to be taken to Rectify;

"**SDTP Termination Threshold**" means [REDACTED] Service Default Termination Points, being the level of Service Default Termination Points above which a termination for Service Provider Default is triggered in accordance with clause 75 (*Service Provider Default*) of this Contract;

"**Searches**" means the Services undertaken by the Service Provider pursuant to Performance Standard 10 (Contract Management and Customer Interface) paragraph 10.4.25;

"**Seat**" means any street furniture designed for sitting on as set out in schedule 30 (*Project Network/Technical Information*);

"**Section 38 Agreement**" means a contract between a Third Party Developer and the Authority under which the Authority agrees, pursuant to section 38 of the Highways Act, to adopt highways as maintainable at public expense;

"**Section 278 Agreement**" means a contract between a Third Party Developer and the Authority under which the Authority agrees, pursuant to Section 278 of the Highways Act, to the execution of highway works;

"**Section 278 Works Meeting**" shall have the meaning given to it in paragraph 1.3 of part 4 of schedule 13 (*Call-off Services*);

"**Section 278 Works Notification**" shall have the meaning given to it in paragraph 1.1 of part 4 of schedule 13 (*Call-off Services*);

"**Section 278 Works**" means any works required to be executed by or on behalf of the Authority pursuant to section 278 of the Highways Act;

"**Senior Credit Agreement**" means the credit agreement between the Service Provider, HoldCo, InvestCo, the Arrangers, the Account Bank, the Facility Agent, the Security Agent (each as defined therein) and the financial institutions listed therein as lenders as at the Contract Date or as amended with the prior written approval of the Authority pursuant to clause 87.2;

"**Senior Debt**" means the financing provided by the Senior Lenders under the Senior Financing Agreements;

"**Senior Debt Rate**" means the rate of interest in the amount calculated in accordance with clause 6.1 of the Senior Credit Agreement;

"**Senior Financing Agreements**" means those of the Financing Agreements listed in annexure 4 (*Financing Agreements*) as at the date of this Contract without prejudice

to clause 87.2.1, as the same may be amended as allowed by clause 87 (*Changes to Financing Agreements, Project Documents and Supplemental Documents*);

"Senior Lender" means a person providing finance to the Service Provider under the Senior Financing Agreements;

"Service Commencement" means the commencement of the Services as determined in accordance with the procedure in clause 8 (*Mobilisation*);

"Service Commencement Date" means the date on which the Service Commencement occurs as determined in accordance with the procedure in clause 8 (*Mobilisation*);

"Service Default Termination Point" or "SDTP" means a point accrued for a failure relating to a Performance Requirement in accordance with Performance Standards 1 to 10 in schedule 2 (*Output Specification*);

"Service Default Termination Type" means in respect of each Performance Requirement the corresponding type of Service Default Termination Points (as set out in Table 6 of schedule 4 (*Payment Mechanism*)) to be applied in respect of each failure to comply with such Performance Requirement as set out in Performance Standards 1 to 10 of schedule 2 (*Output Specification*);

"Service Improvement Plan" means the plan to be produced by the Service Provider in accordance with Performance Standard 10;

"Service Inspections" shall have the same meaning as the definition for **"Highway Service Inspections"**;

"Service Meeting" shall have the meaning given to in paragraph 2.1 of schedule 10 (*Monitoring*);

"Service Period" means the period between the Service Commencement Date and the earlier of the Expiry Date or the Termination Date;

"Service Provider Administered Highway Claims" shall have the meaning given to it in paragraph 1.2 of schedule 26 (*Administration of Highway Claims*);

"Service Provider Assumptions" shall mean the Service Provider assumptions set out in Part 3 (*Service Provider's Assumptions*) of schedule 18 (*Accruals and De-Accruals*);

"Service Provider Breach Rectification Plan" has the meaning set out in clause 15.2.7.1 (*Authority Monitoring of Service Provider's Obligations*);

"Service Provider Category C Special Event Proposals" shall have the meaning given to it in paragraph 1.5 of part 3 of schedule 13 (*Call-off Services*);

"Service Provider Change" means a Change that is initiated by the Service Provider by submitting a Service Provider Change Notice to the Authority;

"Service Provider Change Notice" means a written notice submitted by the Service Provider requesting a change and setting out the information required by the relevant paragraph of schedule 17 (*Change Protocol*);

"Service Provider Default" means one of the following events:

- (a) a breach by the Service Provider of any of its obligations under this Contract which materially and adversely affects the performance of the Services (other than in respect of the Core Investment Works);
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Service Provider or Holdco be wound up or a resolution for voluntary winding up of the Service Provider or Holdco is passed;
- (d) any receiver or manager in respect of the Service Provider or Holdco is appointed or possession is taken by or on behalf of any creditor of any property of the Service Provider or Holdco that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act in respect of the Service Provider or Holdco;
- (f) an administration order is made or an administrator is appointed in respect of the Service Provider or Holdco;
- (g) a breach by the Service Provider of clause 85.2 (*Assignment and Sub-Contracting*) occurs;
- (h) a breach of clause 86.1 (*Limitation of Transfers of Shares in the Service Provider*) occurs;
- (i) the abandonment of the Contract by the Service Provider;
- (j) the Service Provider fails to complete the Conditions to Service Commencement by the Long Stop Date;
- (k) a breach of the MDTP Termination Threshold;
- (l) a breach of the SDTP Termination Threshold;
- (m) a breach by the Service Provider of its obligation to take out and maintain the Required Insurances;
- (n) at any time after the Service Commencement Date, the Service Provider commits a breach of its obligations under this Contract (other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Service Provider or any Service Provider Party or the Authority under the Health and Safety Regime (a "H&S Conviction") provided that:
 - (i) a H&S Conviction of a Service Provider Party or the Authority shall not constitute a Service Provider Default Event if, within sixty (60) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Service Provider Party (which in the case of an individual director, officer or

employee shall be deemed to include the Service Provider Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Service Provider in accordance with clause 85 (*Assignment and Sub-Contracting*); and

(ii) in determining whether to exercise any right of termination or right to require the termination of the engagement of a Service Provider Party under this limb (n), the Authority shall:

(a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and

(b) give all due consideration, where appropriate, to action other than termination of this Contract; and

(o) a failure to satisfy the Milestone Completion Criteria for all Milestones by the Core Investment Period Longstop Date;

"Service Provider Equipment" shall mean all equipment, plant and other things owned by or leased to the Service Provider and used exclusively for the purposes of providing the Service whether in relation to the installation or maintenance of Project Network Parts or otherwise;

"Service Provider First Alternate Representative" has the meaning set out in clause 31.4 (*Service Provider Alternate Representatives*);

"Service Provider Health and Safety Manual" means the document required pursuant to clause 35.1.3 (*Health and Safety*) in the Agreed Form;

"Service Provider Initial Response" means the written response of the Service Provider referred to in paragraph 2.1 of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Service Provider LTP Works Proposals" shall have the meaning ascribed in paragraph 1.2 of part 5 of schedule 13 (*Call-Off Services*);

"Service Provider Materials" means all or any programmes, software, code, databases, data, materials, works (whether literary, artistic or otherwise), know how and/or information, including any Intellectual Property Rights, which are used from time to time by the Service Provider and/or any Service Provider Party, or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the Project Network and/or the Service;

"Service Provider Party" means the Service Provider's agents and contractors (including the Sub-Contractors) and its or their sub-contractors and its or their directors, officers, employees and workmen in relation to the Project and any person on or at any part of the Project Facilities at the express or implied invitation of the Service Provider (other than the Independent Certifier, Authority or any Authority Party);

"Service Provider Party Equipment" shall mean all equipment, plant and other things owned by or leased to the Service Provider Party and used exclusively for the purposes of assisting the Service Provider to provide the Services whether in relation to the installation or maintenance of Apparatus or otherwise;

"Service Provider Programmes" means any or all of the Core Investment Period Programme, the Annual Programme, the Lifecycle Replacement Programme, the Full Term Indicative Programme and any programme produced by the Service Provider or their Sub Contractors for the execution of the Services;

"Service Provider Representative" means the Project Director of the Service Provider or such other person as the Service Provider shall from time to time appoint and notify to the Authority in writing, subject to the approval of the Authority as set out in clause 31 (*Representatives*);

"Service Provider Response" means the written response of the Service Provider to an Authority Change Notice which shall include:

- (a) in the case of a Low Value Change, the information listed in paragraph 2 (*Service Provider Response*) of part 2 (*Low Value Change*) of schedule 17 (*Change Protocol*);
- (b) in the case of a Medium Value Change, the information listed in paragraph 2 (*Service Provider Response*) of part 3 (*Medium Value Changes*) of schedule 17 (*Change Protocol*);

"Service Provider Second Alternate Representative" has the meaning set out in clause 31.4 (*Service Provider Alternate Representatives*);

"Service Provider Section 278 Works Proposals" shall have the meaning given to it in paragraph 1.2 of part 4 of schedule 13 (*Call-off Services*);

"Service Provider's Festive Proposals" shall have the meaning given to it in paragraph 2.3 of part 2 of schedule 13 (*Call-Off Services*);

"Service Provider's Head Office" means the office established by the Service Provider at Daish Way, Newport from which it will participate in the Project;



"Service Provider's Snagging List" shall have the meaning given to it in clause 28.7.4 (*Inspections in relation to Powered Apparatus*);

"Service Provider Stage 1 Response" shall have the meaning given in paragraph 3 (*Service Provider Stage 1 Response*) of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Service Provider Stage 2 Response" shall have the meaning given in paragraph 5 (*Service Provider Stage 2 Response*) of part 4 (*High Value Changes*) of schedule 17 (*Change Protocol*);

"Service Quality Plan" means a quality plan to be submitted by the Service Provider pursuant to clause 33 (*Quality Management*) in relation to the provision of the Services;

"Services" means the works and services which are necessary for the Service Provider to undertake (or to procure the undertaking of) in order to comply with the provisions of schedule 2 (*Output Specification*) and the other provisions of this Contract;

"Services/Works" shall have the same meaning as the definition for "Services" as referred to in schedule 1 (*Definitions*);

"Shareholder" means any person from time to time holding share capital in the Service Provider or Holdco from time to time;

"Shareholder Loan" means a loan made to the Service Provider or Holdco by any Holding Company of either of them, including but not limited to the loan made to the Service Provider under the Subordinated Financing Agreements;

"Shareholder Loan Holder" means the holder of a Shareholder Loan;

"Shareholder Loan Transfer" means:

- (a) any sale, transfer, assignment or disposal of any legal, beneficial, equitable or other interest or the creation of a trust or encumbrance over any or all of the Shareholder Loans; and/or
- (b) any arrangements which have or may have the effect of a sale, transfer, assignment or disposal of any legal, beneficial, equitable or other interest or the creation of a trust or encumbrance over any or all of the Shareholder Loans; and
- (c) the entry by the Shareholder Loan Holder into any financial instrument whose value is derived from any or all of the Shareholder Loan;

"Shareholders Agreement" means the shareholders agreement in respect of the Service Provider dated on or around the date of this Contract made between the Shareholders of HoldCo;

"Short Notice Category C Special Event" means a Non-Key Special Event where the notification period for such non-Key Special Event is less than two (2) Months prior to the date on which the Non-Key Special Event shall commence;

"Short Notice Category C Special Event Meeting" shall have the meaning given to it in paragraph 1.9 of part 3 of schedule 13 (*Call-off Services*);

"Short Notice Category C Special Event Plan" shall have the meaning given to it in paragraph 1.7 of part 3 of schedule 13 (*Call-off Services*);

"Short Term Solutions" or "STS" means any design and works that following construction has less than a twenty-five (25) year total design life;

"Shrub, Rose and Bedding Plant Areas" means designated locations, as set out in Performance Standard 5 Appendix PS05 of schedule 2 (*Output Specification*) for the planting and growth of any shrub, rose and bedding plant;

"Signalised Pedestrian Crossing" means a facility for pedestrians to cross a Highway where the control of movement of vehicles and pedestrians is by Traffic Signals;

"Signalised Pedestrian Crossing Equipment" means the equipment associated with a Signalised Pedestrian Crossing;

"**Site Control Strategy**" means the strategy developed by the Service Provider with regard to the sequence of operation of a Traffic Signal Site;

"**Site of Biological Interest**" means a location prescribed in schedule 30 (*Project Network/Technical Information*) as holding flora or fauna designated as of particular interest;

"**Site of Special Scientific Interest**" means those areas of the Isle of Wight designated on the plan contained in schedule 30 (*Project Network/Technical Information*) as Sites of Special Scientific Interest;

"**Site Specific Traffic Signal Risk Assessment**" means an assessment of the operation of a traffic signal site to identify all risks and how they are to be managed or avoided;

"**Site Specific Traffic Signal Risk Assessment Strategy**" means the Service Provider's strategy for ensuring that Site Specific Traffic Signal Risk Assessment are carried out on the Project Network in accordance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*) as set out in schedule 21 (*Service Provider Programmes and Quality Plans*) in respect of the first Contract Year and as updated pursuant to PS2 of schedule 2 (*Output Specification*);

"**Skid Resistance Survey**" means a survey for determining the Skidding Resistance of the Carriageway on the Project Network to be carried out by the Service Provider in accordance with Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"**Skid Resistance Survey Strategy**" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of the Skid Resistance Survey, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"**Skidding Resistance**" means the frictional resistance offered by a surface of a Carriageway;

"**Small AHW Works**" means those works undertaken by the Authority acting in its capacity as Highway Works Authority that do not constitute either Major AHW Works or Standard AHW Works or Street Cleansing and have a planned duration which does not exceed three (3) days;

"**Smallbrook Access Date**" shall have the meaning given in clause 8.3A (*Mobilisation*);

"**Smallbrook Depot**" means the Depot identified as Smallbrook Depot in schedule 19 (*Land/Plans*);

"**Smallbrook Depot Lease**" means the lease in respect of the Smallbrook Depot between (1) the Authority and (2) the Service Provider, in the form set out in Annexure 6 (*Property Licences/Leases*);

"**Smallbrook Depot Licence**" shall have the meaning given in clause 8.3B (*Mobilisation*);

"**Snagging List**" means a list of relevant Minor Snagging Items;

"**Snagging Programme**" shall have the meaning given to it in clause 28.3.1.3 (*Minor Snagging Items*);

"**Snow Clearing Operations**" means the Services to be undertaken by the Service Provider to clear snow from the surface of the Priority Snow Zone Lengths;

"**Snow Event**" means a single instance or a period when snow falls;

"**Soffit**" means the undersides of a structural element that is exposed in any Structure;

"**Soffit Clearance**" means the dimension from the Project Road to the Soffit;

"**Soft Estate**" means the elements of the Project Network that are required to support the growth of flora;

"**Soft Landscaping Vegetation**" means all plant life, other than Highway Trees, to which PS5.2 of schedule 2 (*Output Specification*) applies including grass, Hedges, shrubs, Weeds, bedding plants and roses arising on Soft Landscaping Areas;

"**Special Event**" means any Category A Special Event, Category B Special Event, Category C Special Event or Short Notice Category C Special Event;

"**Special Event Closure**" means the period of any closure of the Project Network arising as a direct consequence of a Special Event;

"**Special Events Services**" means those services set out in PS9 of schedule 2 (*Output Specification*);

"**Special Event Services Specification**" shall have the meaning given to it in clause 26.3.8 (*Special Events*);

"**Special Inspection**" means an inspection which concentrates on the condition of a particular part of a Structure to be carried out by the Service Provider in accordance with Performance Standard 2 (Survey and Inspections) of schedule 2 (*Output Specification*);

"**Special Inspection Strategy**" means the Service Provider's procedures, processes, timings, resources and controls relating to the management of and execution of Special Inspection in accordance with Performance Standards 2 (Survey and Inspections) of schedule 2 (*Output Specification*);

"**Specific Change in Law**" means any Change in Law which specifically refers to the provision, in relation to highways or street lighting, of services the same as or similar to the Services or to the holding of shares in companies whose main business is providing, in relation to highways or street lighting, services the same as or similar to the Services;

"**Specific Lighting Design Standard**" means the standards set out in Performance Standard 4 Appendix PS 04 (Specific Lighting Design Standards) of schedule 2 (*Output Specification*);

"**Specification for Highway Works**" means the Specification for Highway Works, published by the Stationery Office as Volume 1 of the Manual of Contract Documents for Highways Works as updated or amended from time to time;

"Specified Criteria" has the meaning given to it in clause 27.3.1.1 (*Inability to complete milestone*);

"Specified Licence" shall have the meaning given to it in PS9.3.2 of schedule 2 (*Output Specification*) and Specified Licensor and Specified Licensee shall be construed accordingly;

"Specified Licences Inspections" means inspections carried out to check on compliance with the rules and regulations that apply to specific licences issued to persons or companies related to prescribed operations on the Project Network;

"Specified Licences Management and Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the management of and execution of the Specified Licence Inspections;

"Speed Cameras" means a camera and/or a vehicle monitoring device, used to detect and monitor vehicular compliance with speed limits, Laws and Legislation on the Project Network;

"Spillage" means the unintentional release of any solid, liquid or gas from a container onto the Project Network;

"Stag Lane Access Date" shall have the meaning given in clause 8.3A (*Mobilisation*);

"Stag Lane Depot" means the Depot identified as Stag Lane Depot in schedule 19 (*Land/Plans*);

"Stag Lane Depot Lease" means the lease in respect of the Stag Lane Depot between (1) the Authority and (2) the Service Provider, in the form set out in Annexure 6 (*Property Licences/Leases*);

"Stag Lane Depot Licence" shall have the meaning given in clause 8.3C (*Mobilisation*);

"Stakeholder Management Tool" means the Authority's stakeholder management tool;

"Stakeholder Management Plan" means the document and system prepared by the Service Provider for control, guidance and reporting of all aspects in relation to interaction with stakeholders;

"Standard Works" means any Services that have a planned duration of between four (4) and ten (10) days inclusive;

"Standard AHW Works" means those works undertaken by the Authority acting in its capacity as Highway Works Authority where such works are street works other than Major AHW Works and the planned duration of which exceeds three (3) days but does not exceed ten (10) days;

"Standard Street Lighting" means Street Lighting which is not Non-Standard Street Lighting or Deemed to Comply Street Lighting;

"Standing Water" means water that remains static at a location and does not appear to flow along a drainage;

"**Strategic Assistance**" means such reasonable assistance to be provided by the Service Provider to the Authority within timescales to be agreed in the performance of its duties and obligations that are not delegated to the Service Provider in accordance with the provisions of Performance Standard 10 (Contract Management and Customer Interface) of schedule 2 (*Output Specification*);

"**Stationery Office**" means Her Majesty's Stationery Office having responsibility for the publication of legislation and the management of Crown copyright;

"**Statutory Undertakers**" means an undertaker for the purposes of Part III of NRSWA as defined in section 48(4) of NRSWA;

"**Step**" means a Project Network Part which allows the change of level of a Footway or Urban Footway by incremental changes of level, each of which is horizontal;

"**Step-in Event**" means those events referred to in clauses 72 (*Step-In*) and 26.2 (*Step-In to protect the delivery of a Category A Special Event*);

"**Step Out**" means on the completion of a Required Action pursuant to clause 72.2 (*Step-In*) or the completion of a relevant Step-In Event pursuant to clause 26.2.1 (*Step-In to protect the delivery of a Category A Special Event*), the Authority shall notify the Service Provider as soon as reasonably practicable that it shall resume the provision of the services in relation to that part of the Services affected by the Step-In Event and the Authority shall cease all action undertaken pursuant to clause 72.3 (*Step-In*) or clause 26.2 (*Step-In to protect the delivery of a Category A Special Event*) in respect of the Step-In Event;

"**Stock**" means the list of stock set out in schedule 33 (*Stock*) but excluding any assets and rights in respect of which the Authority is the full legal and beneficial owner;

"**Street Authority**" has the meaning given in Section 49(1) of NRSWA;

"**Street Cleansing**" means the street sweeping and cleansing as required by the Environmental Protection Act 1990;

"**Street Cleansing Strategy**" means the Service Provider's document that provides procedures, processes, timings, resources, controls with regard to the execution of street cleansing;

"**Street Furniture**" shall include Amenity Shelters, Bus Shelters, Seats, Litter and Dog Bins, Flagpoles, Highway Artworks, environmental barriers, noise attenuation barriers, screens and fences, Car Parking Tariff Boards, Car Parking Ticket Machine posts and cases, Boxes and Planters and such equipment not required for the movement of vehicles on the Project Network;

"**Street Lighting**" means the infrastructure and equipment installed solely for the purpose of providing light on the Project Network including Lighting Columns;

"**Street Name Plate**" means a plate that identifies the street name on or next to which it is mounted, placed or allocated as set out in schedule 30 (*Project Network/Technical Information*);

"Street Naming and Numbering" means the Services undertaken by the Service Provider pursuant to Performance Standard 10 (Contract Management and Customer Interface) paragraph 10.4.26;

"Street Scene" means the environment that you see and experience when travelling along streets and public spaces and produced under the guidance of schedule 2 (Output Specification), Performance Standard 8 (Authority's Policies) 8.4.9 (Guidance for Works on the Highways and Public Realm);

"Street Works Licence" has the meaning given in Section 50(1) of NRSWA;

"Street Works Management System" means the database that holds all data on Street Works and is capable of providing a Programme of Services to ensure Compliance with schedule 2 (*Output Specification*);

"Street Works Promoter" means any third party licensed or authorised to place or maintain utility apparatus in the road;

"Street Works Register" means the register referred to in Section 53(1) of NRSWA;

"Structural Assessments" means a process of confirming the adequacy of any Structure to support specified loads and determining appropriate remedial actions;

"Structural and Mechanical Inspection" means an inspection and testing to evaluate the mechanical and structural integrity of the Apparatus required to be carried out by the Service Provider in accordance with the requirements of Performance Standard 2 (Surveys and Inspections) of schedule 2 (*Output Specification*);

"Structural and Mechanical Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of Structural and Mechanical Inspections;

"Structural Defect" means any fault that causes a reduction in the structural integrity of a structure;

"Structural Management System" means an electronic database specifically designed to record information relating to Structures including construction details, maintenance history and records of General Inspections, Principal Inspections, Special Inspections, and Structural Assessments in accordance with Section 10 of the Structures Maintenance Code; and be used to provide a Programme of Services also to ensure compliance with Performance Standard 10 (Contract Management and Customer Interface) of schedule 2 (*Output Specification*);

"Structural Review" means a review of an individual Structure, or group of Structures, to establish or confirm the validity of its latest Structural Assessment or if no Structural Assessment has taken place, its original design;

"Structural/Surface Condition Index" means that part of the Wight Carriageway Condition Index which looks at the surface condition through the rutting, cracking and profile Data to identify the structural condition as referred to in paragraph 4.1.2.2 of Appendix PS4 of schedule 2 (*Output Specification*);

"Structurally Sound" means capable of taking the loads that object is to be subject to and showing no signs of deterioration;

"Structure" means any temporary or permanent structure within the Project Network including all substructures and superstructures (but excluding any other Project Network Parts which are attached to or are placed on the relevant structure) thereof as applicable comprising any:

- (a) Bridge;
- (b) Subway or Cattle Creep;
- (c) Culverts over 900 mm in diameter;
- (d) Retaining Wall;
- (e) Gabions; and
- (f) Accommodation Structures,

provided always that such Structure is owned by the Authority or is a Railway Structure;

"Structures Assessment Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of Structural Assessments, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"Structures Inspection and Monitoring Strategy" shall have the same meaning as the definition for "Structures Inspection Strategy";

"Structures Inspection Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of Structures Inspections, and in respect of Contract Year 1, as set out in schedule 21 (*Service Provider Programmes and Quality Plans*);

"STS Cap" means the figure set out in column 4 of Table 1 of part 1 of schedule 9 (*Geotechnical and Geological Zones*), which shall be Indexed;

"STS Interventions" means in respect of an STS Scheme, those works which are supplementary to such STS Scheme, as are identified in Part 5 to Schedule 9 (*Geotechnical and Geological Zones*) in respect of such STS Scheme;

"STS Red Zones" means the Red Zones set out in Table 1 of schedule 9 (*Geotechnical and Geological Zones*);

"STS Scheme" means the works the Service Provider shall undertake (as set out in part 5 of schedule 9 (*Geotechnical and Geological Zones*)) in respect of STS Red Zones;

"STS Scheme Programme" means the programme of works to be undertaken by the Service Provider in connection with an STS Scheme;

"Sub-Contractor Breakage Costs" means Losses that have been or will be reasonably and properly incurred by the Service Provider as a direct result of the termination of this Contract, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of Services or the completion of works, including:
- (i) any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and
 - (iv) redundancy payments; and
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Service Provider and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

"Sub-Contractors" means each of the counterparties of the Service Provider to a first-tier sub-contract or any person engaged by the Service Provider from time to time as may be permitted by this Contract to procure the provision of the Works and/or Services (or any of them). References to subcontractors means sub-contractors (of any tier) of the Service Provider;

"Sub-Contractor Direct Agreement" means each and any agreement entered into between the Authority, the Service Provider and a Sub-Contractor in the Agreed Form set out in annexure 7 (*Form of Sub-Contractor Direct Agreement*) or substantially in that form or such other form as is agreed between the Parties;

"Sub-Contracts" means any contracts entered into between the Service Provider and the Sub-Contractors;

"Subject Access Requests" means a request from any person who has been recorded on the Authority's CCTV to view the relevant recording;

"Subordinated Financing Agreements" means the ProjectCo Loan Note Instrument and the InvestCo Loan Note Instrument (as defined in the Senior Credit Agreement) as at the date of this Contract or as amended with the prior written approval of the Authority;

"Subordinated Lender" means a person providing finance under a Subordinated Financing Agreement;

"Subsidiary" shall have the meaning given to it in Section 1159 of the Companies Act, but for the purposes of Section 1159(1) a company shall be treated as a member of another company if any shares in that other company are registered in the name of (i) a person by way of security (where the company has provided the security) or (ii) a person as nominee for the company save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

"Subway" means a structure provided to allow pedestrians to pass beneath a Project Road, railway or other obstruction to gain access from one side to the other as set out in schedule 30 (*Project Network/Technical Information*);

"Successor Service Provider" means a person who is employed or engaged by the Authority to perform a service similar to the Services after the Expiry Date or the Termination Date;

"Suitable Substitute Service Provider" means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Service Provider under the Contract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Service Provider under the Contract;

"Sundry Adjustments" means the Sundry Adjustments calculated in accordance with paragraph 3.1 of schedule 4 (*Payment Mechanism*);

"Supervision Period" means:

- (a) where a Section 38 Agreement applies, the period from the date the Part 2 Certificate (as defined under the relevant Section 38 Agreement) is issued until the date the Final Certificate (as defined under the relevant Section 38 Agreement) is issued in respect of the New Works;
- (b) where a Section 278 Agreement applies, the period from the date the Section 278 Certificate (as defined under the relevant Section 278 Agreement) is issued until the date the Final Certificate (as defined under the relevant Section 278 Agreement) is issued in respect of the New Works; or

any other period of supervision of the New Works before they are accepted as Highways Maintainable at Public Expense by the Authority, as defined under any other Relevant Agreement;

"Supplemental Documents" means the documents entered into by the Service Provider or a Service Provider Party for the performance of its obligations under this Contract which are listed in annexure 3 (*Supplemental Documents*);

"Supplier" shall have the meaning given to it in clause 63.2 (*Value Added Tax*);

"Supply End Date" shall mean:

- (a) 23.59.59 on 31 March 2013 in respect of the first Electricity Contract; and
- (b) the date on which the supply of electricity shall end in respect of each subsequent Electricity Contract;

"Supports" shall have the meaning ascribed to it in the Executive Summary and Glossary of the Management of Highways Structures - A Code of Practice;

"**Target for Milestone Completion**" means, in respect of each Milestone, the targets for each Project Network Part set out in Performance Standard 3 (Core Investment Period and Handback Expiry Conditions) and "**Targets for Milestones**" shall be construed accordingly;

"**Tax**" means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and imposed by a Relevant Authority;

"**TC 1990**" means the Town and Country Planning Act 1990;

"**Technical Approval Authority**" means the individual or organisation employed by the Service Provider to undertake the duties set out in annexure 14 (*Technical Approval Authority Scope of Duties and Responsibilities*);

"**Technical Model**" shall mean the program or programs used to calculate the Wight Condition Index from the original and subsequent survey data such that compliance with schedule 2 (*Output Specification*) can be achieved during the CIP and Lifecycle Works period of the Contract;

"**Temporary Traffic Signals**" means any Traffic Signal which is not permanently installed within the Project Network and is required to control traffic during the execution of works;

"**Tender Costs**" means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

"**Tender Process**" means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a New Service Provider, in accordance with clause 80.2.2 (*Retendering Procedure*);

"**Tender Process Monitor**" means a third party appointed by the Service Provider pursuant to clause 80.2.2.1(e) (*Retendering Procedure*);

"**Tendering Report**" means a report prepared by the Service Provider which shall include the information required by paragraph 8.5 of part 4 (*High Value Changes*) of schedule 17 Change Protocol;

"**Term**" shall have the meaning given to it in clause 2.2 (*Term of this Contract*);

"**Termination Date**" means any date of early termination of this Contract in accordance with clause 73 (*Termination*);

"**Termination Date Discount Rate**" means a discount rate expressed as $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1$

where:

"**real base case project IRR**" is the real pre-tax Project IRR as set out in the Base Case;

"**i**" is the agreed assumed forecast rate of increase in the index RPIx (as set out in the Base Case for the remaining term of the Contract);

"Gilt A" is the real yield to maturity as at Financial Close on a benchmark government Gilt instrument of the same maturity as the average life, as determined from the Base Case as at Financial Close of the Senior Debt;

"Gilt B" is the real yield to maturity as at the Termination Date on a benchmark government Gilt instrument of the same maturity as the average life, as determined from the Base Case as at the Termination Date, of the Senior Debt outstanding on that date;

"Termination Notice" means a notice served by either Party (as the case may be) under clauses 68 (*Insurance*), 74 (*Termination by the Authority*), 75 (*Service Provider Default*), 76 (*Termination by the Service Provider*), 77 (*Termination for Corruption, Negligence and Fraud*), 78 (*Termination following a Force Majeure Event*) and 3 (*Local Government (Contracts) Act*) 1997;

"Termination Payment" shall have the meaning given to it in clause 61.1.1 (*Tax*);

"Termination Sum" means any compensation payable by the Authority to the Service Provider on an early termination of the Contract under clause 80 (*Compensation on Termination*) excluding the Adjusted Highest Compliant Tender Price payable as a result of termination of the Contract under clause 76 (*Termination by the Service Provider*);

"Texture Measurement Levels" means the threshold values for texture measurement as indicated in Table 4.4 of paragraph PS 4.1.4.3 of Appendix PS4 of schedule 2 (*Output Specification*);

"Third Party" means a person who is not:

- (a) a Party to this Contract;
- (b) an Authority Party; or
- (c) a Service Provider Party;

"Third Party Agreements" means the undertakings, letters, deeds, and agreements listed in Table 1 of schedule 22 (*Third Party Agreements*);

"Third Party Attachments" means attachments owned by a Third Party Authority which are attached to or are to be attached to Project Network Parts, including:

- (a) fire hydrant signs;
- (b) bus stop signs and timetables;
- (c) any special event signage or advance direction signage;
- (d) neighbourhood watch signs;
- (e) blind persons referencing points;
- (f) direction signage;
- (g) flower baskets; and
- (h) statutory undertakers apparatus reference data,

provided that Third Party Attachments shall not include any electronic or electrical connections save those which constitute Third Party Attachments at the Service Commencement Date;

"Third Party Authority" means a third party statutory authority, a statutory undertaker or other persons authorised by the Authority;


"Third Party Costs" means the costs incurred by a third party which shall include any Sub-Contractor, consultant or adviser which shall, wherever possible, be set out in, or based on rates set out, in the Catalogue but excludes the costs of any Key Sub-Contractors;

"Third Party Claims Register" means the register maintained by the Service Provider in accordance with PS10.8.1.1 of Appendix PS10 of schedule 2 (*Output Specification*) recording all Third Party Claims;

"Third Party Developer" means any Third Party carrying out-Third Party Works;

"Third Party Liability Insurance" shall have the meaning given in clause 68.14.1 (*Insurance*);

"Third Party Works" means any works carried out by a Third Party which involves development as defined under section 55 of the TC 1990 (including works carried out pursuant to sections 38 or 278 of the Highways Act or section 106 of the TC 1990 and any other works carried out with statutory authority);


"TMA Services" means those parts of the Service provided by the Service Provider in accordance with Performance Standard 9 (*Network Management*);

"Town Police Clauses Act" means the Town Police Clauses Act 1847;

"TPL Risks" means a risk that is required to be insured under the third party liability insurance policy;

"Trade Marks" means those registered trade marks of the Authority, as more particularly listed in schedule 24 (*Trade Marks*) (whether unregistered or registered and including any applications for registration) and other Intellectual Property Rights subsisting in such trade marks from time to time;

"Traffic Authority" has the meaning given in Section 121A of the Road Traffic Regulation Act 1984;

"Traffic Count Data" means all data recorded by a Traffic Counter;

"Traffic Counter" means equipment either fixed or movable, for the measurement of the number of and types of vehicles on any Monitoring Length passing within defined timescales as set out in schedule 30 (*Project Network/Technical Information*);

"Traffic Incident" means any injury or non-injury incident attended by or reported to the police on the Project Network that is not the result of a criminal act or public disturbance;

"Traffic Management Act" means the Traffic Management Act 2004;

"Traffic Management Plans" means the document that describes the layout, timing and method of setting up, maintenance and removal of traffic management equipment and assets;

"Traffic Manager" means the person employed by the Authority to hold the stated position required by the Traffic Management Act;

"Traffic Observation Camera" means a camera used specifically for monitoring traffic movements at a signalised junction or other points on the Project Network;

"Traffic Regulation Order" means an order pursuant to Road Traffic Regulation Act 1984, which allows the Highways Authority to regulate the speed, movement and parking of vehicles or regulate pedestrian movement;

"Traffic Sensitive" means where there are restrictions on working times as identified in the Traffic Sensitive GIS Layer Summer Weekday/Saturday/Sunday and Traffic Sensitive GIS Layer Winter Weekday/Saturday/Sunday;

"Traffic Sensitive Deduction Matrix" means the matrix set out in Table 13 of schedule 4 (*Payment Mechanism*);

"Traffic Sensitive GIS Layer Summer Saturday" shall have the meaning ascribed to it in Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Traffic Sensitive GIS Layer Summer Sunday" shall have the meaning ascribed to it in Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Traffic Sensitive GIS Layer Summer Weekday" shall have the meaning ascribed to it in Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Traffic Sensitive GIS Layer Winter Saturday" shall have the meaning ascribed to it in Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Traffic Sensitive GIS Layer Winter Sunday" shall have the meaning ascribed to it in Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Traffic Sensitive GIS Layer Winter Weekday" shall have the meaning ascribed to it in Attachment 2 (*Availability Matrix*) to schedule 4 (*Payment Mechanism*);

"Traffic Sensitive Monitoring Lengths" shall mean those Monitoring Lengths highlighted as Traffic Sensitive in the Base Case Summer Deduction Matrix, Base Case Winter Deduction Matrix, Traffic Sensitive GIS Layer Summer (Weekday, Saturday, Sunday) and the Traffic Sensitive GIS Layer Winter (Weekday, Saturday, Sunday);

"Traffic Sign" has the meaning given to it in Section 64 of the Road Traffic Regulations Act 1984 and includes Street Name Plates and as listed in schedule 30 (*Project Network/Technical Information*);

"Traffic Signal" shall have the meaning ascribed to it in BS EN 12675:2001;

"Traffic Signal Controller" has the meaning given to it in BS EN 12675: 2001;

"Traffic Signal Head" has the meaning given to it in BS EN 12675:2001;

"Traffic Signal Inventory" means the inventory document cataloguing all Traffic Signal Sites on the Project Network and contained in schedule 30 (*Project Network/Technical Information*);

"Traffic Signal Loop" means an inductive loop embedded in the road surface to detect vehicles at Traffic Signals;

"Traffic Signal Monitoring System" means a computerised system located in the Control Room that monitors the operation and allows control over any Traffic Signal Point or site and is in compliance with Performance Standard 10 (Contract Management and Customer Interface) of schedule 2 (*Output Specification*);

"Traffic Signal Point" means any item of powered apparatus incorporating an external Traffic Signal Head(s), Traffic Signal Controller, detection equipment and call points;

"Traffic Signal Pole" means the pole on which a Traffic Signal Head sits;

"Traffic Signal Site" means a group of Traffic Signal Points that work in conjunction with one another to control the passage of vehicles through a junction or pedestrian facility and includes all ducts chambers and cabling;

"Traffic Signals Strategy" means a strategy prepared by the Service Provider in accordance with Performance Standard PS 2.14.15 of PS2 of schedule 2 (*Output Specification*) as required by clause 37.2.21 (*Surveys and Inspections*);

"Traffic Signs Manual" means the manual of that name published by the Stationery Office and any associated advice (including all local transport notes) issued from time to time by the Department for Transport and published by the Stationery Office;

"Traffic Signs Planned Maintenance Strategy" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of any traffic signal planned maintenance;

"Traffic Signs Regulations and General Directions" means the Traffic Signs Regulations and General Directions 2002;

"Traffic Stewards" means those persons engaged by the Service Provider to undertake duties specified within the Special Events Services Specification;

"Training and Development Policy" means the policy produced by the Service Provider under the provisions of clause 34.10 (*Training and Development Policy*) and which is contained in schedule 35 (*Workforce Policies*);

"Transfer Date" shall have the meaning given to it in clause 71.5.1 (*Alternative Pension Scheme*);

"Transfer" means a transfer of the electricity supply from Apparatus which has been removed to new Apparatus;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"Transfer Resource" means those types of equipment, vehicles, plant, machinery, materials, spare parts, tools, stocks, computers, consumables and other assets owned

by or leased to the Service Provider and/or the Sub-Contractor as set out in schedule 12 (*Demobilisation*);

"**Transfer Resource Lease**" means an asset lease in respect of the Transfer Resource;

"**Transfer Resource Warranty**" means a manufacturers' warranty in respect of the Transfer Resource;

"**Transferee Admission Body**" means the status of the Service Provider or any Service Provider Party as a transferee admission body under Regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008;

"**Transferring Employees**" means the persons listed in schedule 29 (*Employee Information*) employed by the Authority who immediately before the Service Commencement Date are engaged in a service substantially similar to the Services and who shall transfer to the Service Provider's (or the relevant Service Provider Party's) employment on the Service Commencement Date as a consequence of the application of TUPE;

"**Transferring Original Employee**" means an Original Employee:

- (a) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out a contract between the Authority and the Service Provider, a contract of employment with someone other than his existing employer; and
- (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of the Regulations in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his existing employer;

"**Transport Authority**" has the meaning given to it by section 91 of NRSWA;

"**Transport in the Urban Environment**" means the publication by the Institution of Highways and Transportation entitled "Transport in the Urban Environment" dated 1997;

"**Treatment Commencement Time**" means the time on which treatment of the Project Network commences pursuant to Performance Requirement 7.4.3.1.1 in PS7 of schedule 2 (*Output Specification*);

"**Tree Management System**" means the database which holds all details of Highway Trees and is capable of producing a programme of services to ensure compliance with schedule 2 (*Output Specification*);

"**Tree Preservation Order (TPO)**" means an order made by the Authority as a local planning authority in respect of a tree or woodland;

"**Tree Risk Assessments**" means the process, procedure and documentation to review the condition and risks associated with any Highway Tree;

"**Tree Wounds**" means any damage to any Highway Tree detrimental to its condition;

"Trees Adjacent to the Highway" means a tree or part thereof within falling distance of the Highway;

"Trespasser" means any person present on the Project Network otherwise than in exercise of his or her powers or rights conferred upon him or her by the Highways Act;

"Trimming and Dimming Strategy" means the strategy produced by the Service Provider in compliance with the Isle of Wight Trimming and Dimming Policy referred to in Performance Standard 8 (*Authority Policies*) of schedule 2 (*Output Specification*);

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law;

"Unacceptable Monitoring Length" means the level of the WCI that following the Core Investment Period no Monitoring Length may be less than;

"Unascertained Land Rights" means any Land Right excluding any Ascertained Land Rights;

"Unauthorised Attachments" means those Attachments (other than Apparatus) which:

- (a) have not been Authorised by the Authority and notified to the Service Provider as having been Authorised; or
- (b) are Third Party Attachments which have previously been Authorised by the Authority but have remained attached for a period of time which exceeds the time frame during which the Attachment is allowed to be attached, as agreed between the Authority and the Service Provider;

"Unauthorised Attachments Register" means the register maintained by the Service Provider in accordance with PS10.8.1.1 of Appendix PS10 of schedule 2 (*Output Specification*) recording all Unauthorised Attachments;

"Unavailable" means in respect of each Monitoring Length (or part thereof), any partial or total closure or other restrictions of a lane of traffic (in one direction of travel) unless the cause of such partial or total closure or other restriction of a lane of traffic (in one direction of travel) is expressly stated in this Contract as being an Excusing Cause or an event that is Deemed Available and "Unavailability" shall be construed accordingly;

"Underground Apparatus" means the Authority's electrical distribution network;

"Underground Apparatus Inventory" means an electronic records system which records the following information in respect of all Underground Apparatus:

- (a) data in relation to the nature of all current and historical faults and details of the steps taken in relation to the repair of such faults and all relevant response times;
- (b) full details for each item of Underground Apparatus including its location on the Project Network;

- (c) details of all electrical testing of Underground Apparatus (whether or not such electrical testing is programmed or of an ad hoc nature);
- (d) all other information which may be of relevance to the Authority having regard to any of its statutory responsibilities and functions (whether as Highway Authority and/or Lighting Authority under the Highways Act 1980, Best Value Authority under the Local Government Act or otherwise); and
- (e) all other information required in accordance with Performance Standard 10 Contract Management and Customer Interface) of schedule 2 (*Output Specification*);

"Undertaking" means the business to be undertaken by the Service Provider (and any Service Provider Party) in performing the Services for the Authority;

"Uninsurable" means, in relation to a risk, either that:

- (a) insurance is not available to the Service Provider in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

"Uninsured Losses" means losses arising from any risks against which the Service Provider or any Service Provider Related Party does not maintain insurance (where not required to maintain insurance for such risks under this Contract or by law), provided that:

- (a) the amount of any losses that would otherwise be recoverable under any Required Insurance but for the applicable uninsured deductible in respect of such insurance;
- (b) any losses caused by or contributed to by any act or omission of the Service Provider or any Service Provider Related Party, including any loss arising from any breach of statutory duty, due to any breach of this Contract by the Service Provider or any Service Provider Related Party; and
- (c) any liabilities, losses, costs or expenses incurred by the Service Provider pursuant to clause 68.12 (*Reinstatement*) in respect of the cost of Reinstatement Works relating to a Relevant Incident up to the applicable Material Damage Limit in respect of that Relevant Incident,

shall not be treated as Uninsured Losses;

"Unitary Charge" means the payment calculated in accordance with schedule 4 (*Payment Mechanism*);

"Unpaved Verge" means those Verges that have not been paved;

"Unsuitable Person" means any person who:

- (a) has any Conviction; or
- (b) in the opinion of the Authority:
 - (i) is or is likely to cause damage to the reputation of the Authority; or
 - (ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Service Provider under this Contract; or
 - (iii) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any part of the Service; or
 - (iv) may present an actual or potential risk to the health, safety or welfare of any Authority Party or member of the public; or
 - (v) is not appropriately trained, qualified, skilled and/or competent to carry out any part of the Services;

"Updated Final New Works Response" means an updated Final New Works Responses which shall include all the information the Service Provider is required to provide pursuant to clause 49.24;

"Updated Highways Asset List" shall have the meaning given in clause 11.4.2.5 (*Part 1 Authority Predicted Works and other works*);

"Updated Latent Defect Report" shall bear the meaning given thereto in clause 13.4.8 (*Latent Defect Report*);

"Urgent" means those circumstances where early intervention is required by the Service Provider (as a result of circumstances arising beyond the Service Provider's control) in order to prevent further deterioration of a Project Network Part or Project Network Parts and/or address a danger to health or safety of persons, property or to the environment and **"Urgency"** shall be construed accordingly;

"Urban" means those Carriageways with a speed limit designation of 40 miles per hour or less and Medina Way;

"Urban Footpath" means those segregated facilities laid out for use by pedestrians which are remote from a Carriageway represented in the Project Network Model as separate Monitoring Lengths as set out in schedule 30 (*Project Network/Technical Information*);

"Urban Traffic Control Monitoring System" means a computerised system located in the Control Room that monitors the operation and allows control over any Traffic Signal Point or site which is designated as a UTC;

"UTC" or **"Urban Traffic Control"** means the electronic system which enables progression of traffic flows on the Project Network by co-ordinating the traffic signal timings;

"Value" shall have the meaning given to it in clause 7.2 (*Transfer of Stock, Isle of Wight Traffic Model, Stakeholder Management Tool and Land*);

"Value Engineering" shall mean a systematic method to improve the function and reduce the cost of goods, services and works thereby increasing value (where value has the meaning of the ratio of function to cost of the goods, services or works) and which shall be applied by the Parties and the Independent Certifier to all work which is undertaken as part of the Value Engineering Workshop;

"Value Engineering Report" shall mean the report produced by the Service Provider in accordance with the provisions of clause 13.7.2 (*Latent Defect Solution Not Agreed by the Parties*);

"Value Engineering Workshop" means either Value Engineering Workshop No: 1, Value Engineering Workshop No: 2 or Value Engineering Workshop No: 3 as the case may be;

"Value Engineering Workshop No: 1" shall have the meaning given to it in clause 13.7.1 (*Value Engineering Workshop*);

"Value Engineering Workshop No: 2" shall have the meaning given to it in clause 13.7.3 (*Latent Defect Solution Not Agreed by the Parties*);

"Value Engineering Workshop No: 3" shall have the meaning given to it in clause 13.8.2 (*Latent Defect Solution Agreed by the Parties*);

"VAT" means any value added tax;

"Vegetation" means:

- (a) all plant life, other than Highway Trees including grass, hedges, shrubs, weeds, bedding plants, roses and noxious plants;
- (b) Hard Landscaping;
- (c) Highway Trees;
- (d) Grassed Areas;
- (e) Grass Verges; and
- (f) Soft Estate;

"Vehicle Barrier" means a permanent or temporary structure placed in any location to prevent vehicles from gaining access to a specific location or direction;

"Verge" means all Paved Verges or Grass Verges between the Kerb and the Footway and/or between the Footway and the Carriageway and/or between Footways and/or to the edge of Embankments and Cuttings nearest to the Highway and/or on the central reservation in the Project Road;

"Verge Crossing" means a hardened area allowing the passage of vehicles from a Carriageway to a boundary;

"VMS" means a variable messaging system;

"Waste Collection Authority" shall have the meaning given in section 30(3) of the Environmental Protection Act;

"Waste Disposal Authority" shall have the meaning given to it in section 30(2) of the Environmental Protection Act;

"Waste Regulation Authority" shall have the meaning given in section 30(1) of the Environmental Protection Act;

"Water Adjustment" means the Water Adjustment calculated in accordance with paragraph 11 of schedule 4 (*Payment Mechanism*);

"Water Authority" means the utility company providing water and drainage services for the Isle of Wight;

"Water Calculation Tool" means the tool provided by the Authority to be utilised for the calculation of Water Footprint;

"Water Footprint" means the measurement and the impact of water used for Capital Embedded Water and Operational Water;

"Water Plan" means the Service Provider's plan for minimising the Water Footprint of the Services;

"Water Report" means the report produced by the Service Provider detailing the results in the Water Plan;

"WDM Structures Management System" shall have the same meaning as the "Structural Management System";

"Weather Forecast Provider" means a provider of a Weather Forecasting Service;

"Weather Forecasting Service" means a specialised electronic weather forecasting service and electronic road condition forecasting service;

"Weather Forecasting Service Provider" means a provider of a Weather Forecasting Service;

"Weather Regulation Authority" shall have the meaning given to it in section 30(4)(3) of the Environmental Protection Act;

"Weeds" means any plant life which is located in an inappropriate or non designated location on the Project Network including grass, Hedges, shrubs, bedding plants, roses, Noxious Plants Injurious Weeds and Notifiable Weeds with the exception of Highway Trees;

"Weed Control" means a botanical component of pest control, preventing weeds from reaching a mature stage of growth;

"Weekly Briefing Report" means the report to be submitted by the Service Provider to the Authority in accordance Performance Standard 10 Appendix PS 10 of schedule 2 (*Output Specification*);

"Well Maintained Highways Code of Practice" means the Code of Practice entitled "Well-maintained Highways Code of Practice for Highways Maintenance Management";

"Wheel Path" means the longitudinal zones on a Carriageway over which the wheels of vehicles travel;

"Wheel Track Rutting" has the same meaning given to it in UKPMS Visual Inspection Guide v 1.0 as updated or amended from time to time;

"Whole Life Costs" means, in relation to any Medium Value Change or High Value Change, the estimated and, where such information is available, the actual cost of operating and maintaining such Change over its intended design life (consistent with the Service Provider Response);

"Width Restriction" means any width restriction which has been put in place as a result of a Traffic Regulation Order;

"Wight Car Park Condition Index" means the calculated value obtained from survey data which provides a graduated measure of the Off-Street Car Park condition for demonstrating compliance with the requirements of the Contract for each Off-Street Car Park;

"Wight Carriageway Condition Index" or "WCCI" means the calculated value from survey data that provides a graduated measure of the Carriageway condition for demonstrating compliance with the requirements of the Contract per monitoring length or on a PFI District basis;

"Wight Condition Indices" or "WCI" means the value given to an asset as described in the Contract required to demonstrate compliance with the requirements of the Contract;

"Wight Condition Indices Report" means the document issued to provide the current indices levels, details of the calculation or assessment of all indices and the data processed or unprocessed required for the calculation or assessment;

"Wight Footway Condition Index" or "WFCI" means the calculated value from survey data that provides a graduated measure of the Footway, Cycleway, Kerb, Drainage, Channel and Steps condition for demonstrating compliance with the requirements of the Contract per monitoring length or on a PFI District basis;

"Winter Bulletin" means a document issued each day through the Winter Service period as required by Performance Standard 7 Appendix PS 07 of schedule 2 (*Output Specification*);

"Winter Service" means the Services provided in accordance with Section 41(1A) of the Highways Act and any subsequent operations as required by Performance Standard 7 (Winter Service) of schedule 2 (*Output Specification*);

"Winter Service Desk" means the location for the control of Winter Services;

"Winter Service Operations" means those operations necessary to comply with Winter Service;

"Winter Service Period" means 1 November to 31 March inclusive in each Contract Year;

"Winter Service Plan" means a document produced by the Service Provider to identify the processes, procedures, programme resources, materials and work that

they intend to use and carry out each Contract Year with regard to all matters related to the provision of Winter Services;

"Work Site" means any property used by the Service Provider or any Service Provider Party for the preparation, management or delivery of the Service or any land on which the Service is being provided, any property used by the Service Provider or any Service Party as training or workshop facilities and any places where work is being prepared or materials obtained for the Project;

"Workforce Information" means, without limitation to Regulation 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, in respect of an individual his / her:

- (a) name (surname, forename, title and initials);
- (b) date of birth;
- (c) home address;
- (d) job title;
- (e) job description;
- (f) place of work;
- (g) date of commencement of service;
- (h) period of continuous service and notice entitlement;
- (i) normal hours of work;
- (j) annual leave entitlement;
- (k) annual leave not taken prior to the Service Commencement Date (accrued holiday entitlement);
- (l) sick pay entitlement;
- (m) maternity and other leave entitlements;
- (n) National Insurance number and contribution rate;
- (o) annual salary and rates of pay band/grade (including intervals at which remuneration is paid);
- (p) other benefits to which the individual is entitled under the contract of employment or which the individual might legitimately expect to receive pursuant to the contract of employment and his/her employment;
- (q) bonus payments in the twelve (12) Months prior to the Service Commencement Date and details of how such bonuses were calculated;
- (r) allowances and bonuses for the preceding twelve (12) Month period;
- (s) tax code, five (5) Months' copy pay slip data, cumulative pay for tax and pension purposes and cumulative tax paid;

- (t) any letters of appointment;
- (u) written particulars of employment;
- (v) ethnic category where known;
- (w) contractual hours of work;
- (x) contractual overtime;
- (y) overtime history for the preceding twelve Month period and whether any member of staff has waived their right not to work in excess of forty eight hours per week under the Working Time Regulations 1998;
- (z) one off task and finish payments;
- (aa) shift, unsociable hours or other premium rates of pay;
- (bb) local protection built into the individual contracts of employment;
- (cc) outstanding employee loans including car loans;
- (dd) contractual gratuity obligations;
- (ee) any recommendation for medical retirement;
- (ff) absence through maternity leave, or authorised paid or unpaid absence together with details of any action taken to date;
- (gg) sickness and absence records for the preceding twelve (12) Months including any records of parental leave taken;
- (hh) being in a redeployment pool or any allocation to light duties;
- (ii) working on duty, secondment or temporary upgrades listing date of commencement, period of this appointment and details of their substantive post;
- (jj) any industrial injuries notified to the Authority for a period of up to three years prior to the Service Commencement Date, details of where liability has been accepted by the Authority and level of compensation paid for the same period;
- (kk) details of employer's liability insurance and if not is the Authority self-insured;
- (ll) claims, or potential claims outstanding for industrial injury and any payment made or to be made;
- (mm) (in relation to prospective Transferring Employees only) claims, or potential claims, under the Authority's personal accident scheme and any payment made or to be made;
- (nn) Employment Tribunal claims, or other tortious liability claims;

- (oo) Employment Tribunal applications lodged in respect of sex or race discrimination that have been either successful or settled since two (2) years prior to the Service Commencement Date;
- (pp) (in relation to prospective Transferring Employees only) dismissals likely to be made by the Authority in connection with this transfer;
- (qq) suspension, possible suspension or disciplinary action;
- (rr) live warnings and outstanding grievances;
- (ss) training records, performance or assessment details, existing training or sponsorship commitments;
- (tt) trade union recognition and trade union facilities agreements in place;
- (uu) all trade union/safety representatives;
- (vv) any disability within the meaning of the Disability Discrimination Act 1995 of which the Authority is aware;
- (ww) (in relation to prospective Transferring Employees only) consultation and information correspondence sent by the Authority to the trade unions in connection with this transfer;
- (xx) statement of material benefits protection;
- (yy) temporary contract or a fixed term contract;
- (zz) any contractual right to return to work following a career of any other break in service;
- (aaa) any agreement to carry over holiday from the 2005/2006 to 2006/2007 holiday year or from 2006/2007 to the 2007/2008 holiday year;
- (bbb) for pension purposes, the notional reckonable service date;
- (ccc) pensionable pay history for three (3) years to date of transfer;
- (ddd) the amount of any deduction in respect of a contribution under Additional Voluntary Contribution arrangements;
- (eee) any other voluntary deductions from pay including deductions for trade union subscriptions;
- (fff) bank/building society account details for payroll purposes;
- (ggg) any letters or documents or collective agreements affecting terms and conditions of employment;
- (hhh) outstanding loans/advances on salary or debts;
- (iii) emergency Contact Details;
- (jjj) particulars of any service licence or service tenancy;

"**Workforce Policies**" shall mean the Service Provider's or Service Provider Parties' policies contained in schedule 35 (*Workforce Policies*);

"**Works for Road Purposes**" has the meaning given in Section 86(2) of NRSWA;

"**Yar Bridge**" means the swing Bridge crossing the River Yar at Yarmouth;

"**Yar Bridge Control System**" means the Powered Apparatus necessary to operate and control the Yar Bridge;

"**Yar Bridge Emergency Plan**" means the document produced by the Service Provider to demonstrate the Service Provider's ability and plan to comply with the Service Provider's obligations under Performance Standard 6 (Emergencies and Reactive Response) Appendix PS 6 of schedule 2 (*Output Specification*) together with such other specific requirements as may be notified by the Authority from time to time;

"**Yar Bridge Emergency Strategy**" means the Service Provider's procedures, processes, timings, resources and controls relating to the execution of Services when an emergency occurs;

"**Year 19**" shall have the meaning given to it in clause 82.2.2.2 (*Structures*);

"**Year 22**" shall have the meaning given to it in clause 82.2.2.5 (*Structures*);

"**Year 23**" shall have the meaning given to it in clause 82.2.2.2 (*Structures*);

"**Year 24**" shall have the meaning given to it in clause 82.2.2.6 (*Structures*); and

"**Y Value**" has the meaning given to it in part 2 of schedule 18 (*Accruals and De-Accruals*) or otherwise determined pursuant to schedule 18 (*Accruals and De-Accruals*).