

Scottish Trunk Road Network Management Contract

Schedule 1 - Conditions of Contract

North West Unit

This is Schedule 1 Conditions of Contract referred to in the foregoing Agreement between Scottish Ministers and BEAR Scotland Limited dated 28 April 2022 relative to the Scottish Trunk Road Management Contract for the North West Unit.

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1 General

1.1 Definitions

1.1.1 In this Contract the following words and expressions have the meanings hereby assigned to them except where the context otherwise requires.

"Abnormal Load Routeing Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Access System" means a permanent or temporary moveable access gantry, deck shuttle, lift, platform or suspended cradle together with associated runway beams, supports, powered winching or hauling equipment, running gear and associated fixings.

"Accident Investigation and Prevention Report" means a report, prepared by the Operating Company, containing proposals for remedial actions to address identified causes of accidents.

"Additional Party Agreement" means the agreement to be signed by Named Subcontractors, the Scottish Ministers and the Operating Company to enable Named Subcontractors to be joined as parties to the Project Bank Account Trust Agreement.

"Adjudicator" means the person referred to in Schedule 1 Conditions of Contract, Appendix 11 - Adjudication Procedure.

"Agreement" means the executed and legally binding document that witnesses the agreement in writing of the Parties for the Contract for the Unit.

"Airwave" means the proprietary encrypted digital radio communications system utilised for dedicated communication between licensed Emergency Services and other licensed organisations.

"Annual AMPS Training Plan" means the document prepared and maintained by the Operating Company that details and records the training to its staff in the use of AMPS and as described in more detail in Schedule 3 Contract Management, Section 4 Systems, Plans & Records, 4.1 Asset Management Performance System of the Scottish Ministers.

"Annual Business Plan" means the document that is prepared and maintained by the Partnering Leadership Board that details how the integrated team will deliver the objectives for the Unit and as described in more detail in Schedule 3 Contract Management, Section 1 Introduction, 1.3 Collaboration and Partnering.

"Annual Incidents Report" means the document prepared and maintained by the Operating Company to record the incidents that have occurred within the Unit and as described in

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more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

“Annual Journey Time Reliability Report” means a document prepared and maintained by the Operating Company and detailing the impacts of the Operating Company’s Operations on journey time reliability and described in more detail in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland, 5.3 Journey Time Reliability Coordinator.

“Annual Landscape Management Report” means the document prepared and maintained by the Operating Company to record the activities required to manage the landscape areas within the Unit and described in more detail in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscaping, 3.5 Landscape Development Process.

"Annual Period" means the period of one year from 00.00 hours on the 1 April each year to 24.00 hours on the 31 March of the following year, except for the first Annual Period which is the period from 00.00 hours on the Commencement of Service Date to 24.00 hours on the 31 March of the following year and the last Annual Period which is the period from 00.00 hours on the 1 April of the preceding year to 24.00 hours on the Service End Date.

“Annual Report” means a report prepared by the Operating Company describing the overall performance of the Operating Company during the previous Annual Period.

"Annual Road Safety Review Report" means an annual report, prepared by the Operating Company, containing a programme of proposed road safety initiatives planned to contribute to achieving the Scottish Government's casualty reductions targets.

“Annual Unit Specific Communications Plan” means the plan produced by the Operating Company working in conjunction with the Director that details the communications plan to be implemented in promoting to customers and stakeholders the Operating Company’s role in delivering the services under this Contract.

"Application for Payment" means the documentation provided by the Operating Company each month to support its request for payment.

"Area RAUC" means the Area Roads and Utilities Committee of any of the four Area RAUCs set up under the aegis of RAUC(S) that provides a forum for discussion on issues relevant on an area basis and reports to RAUC(S).

“Asbestos Management Plan” means the document prepared and maintained by the Operating Company which sets out the means (including resources, processes, programmes) by which the Operating Company will deliver the requirements of Schedule

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2 Scope, Section 8 Design, Construct and Certification of Operations, 8.5 Control of Asbestos Regulations.

“Asset Data Specialist” means Contract Personnel who ensure all asset data required by the Contract is recorded in the Asset Management Performance System in accordance with the requirements of Schedule 2 Scope, Section 1 Introduction, 1.5 Inventory Validation, Collection & Updating and other requirements set out in this Contract.

“Asset Management Performance System” / “AMPS” means the system of the Scottish Ministers for use by the Scottish Ministers and the Operating Company to record and measure performance of the Unit and described in more detail in Schedule 3 Contract Management, Section 4 Systems, Plans and Records.

“Asset Management Performance System Coordinator” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

“Asset Management Performance System User Manual” means the document issued by the Director, and updated from time to time, which the Operating Company uses to update the Asset Management Performance System.

“Asset Manager” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People to perform the requirements of Schedule 2 Scope, Section 1 Introduction, 1.5 Inventory Validation, Collection & Updating and other requirements set out in this Contract.

"Assignment of Rights Agreement" means an assignment of the Scottish Ministers' rights to pursue a claim in respect of Damage to Crown Property in the form contained in Schedule 3 Contract Management, Appendix 7 – Control of Core & Ordered Operations Attachment 7.14 – Form of Assignment of Rights Agreement & Notice of Assignment of Rights.

“Associated Company” means a company which is a subsidiary or holding company of the Operating Company or a subsidiary of the Holding Company of the Operating Company, where “subsidiary” and “Holding Company” have the meanings given in section 1159 of the Companies Act 2006.

"Auditable Section" means a defined section of the Unit for the purpose of audit, inspection and measurement and includes:

- (a) For dual carriageway (including motorway) routes: all travel lanes of the route operating in one direction over a length of 500 metres, together with all other assets

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of the Unit associated with such 500 metre length of the route between the centreline of the dual carriageway (including motorway) and the boundary of the Unit.

- (b) For single carriageway routes: all travel lanes of the route over a length of 500 metres, together with all other assets of the Unit associated with such 500 metre length of the route between the boundaries of the Unit.

“Authorisation (online)” means an authorisation made through the Project Bank Account Online Banking by the Operating Company or the Scottish Ministers authorising the Project Bank to make payments to the Operating Company and the Named Subcontractor(s) from the Project Bank Account.

“Authorisation (written)” means the document to be signed by the Scottish Ministers and the Operating Company authorising the Project Bank to make payments to the Operating Company and the Named Subcontractor(s) from the Project Bank Account.

“Award for Working as a CCTV Operator (Public Space Surveillance) with the Private Security Industry (Scotland) at SCQF Level 6” mean a Security Industry Authority endorsed qualification for Security Industry Authority licensing requirements.

"Base Index Figure" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.2.

"Base Lending Rate" means the UK base rate published by the Royal Bank of Scotland, as varied from time to time.

"Bid" means the submission made by the Operating Company in accordance with the annual cycle set out in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, as appropriate, to the Director in order to seek his consent for inclusion of a Scheme within the programmes or other such submission provided for in accordance with this Contract.

"Bond and Undertaking" means the bond and undertaking to be provided by the Operating Company to the Scottish Ministers described in this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee.

"Bridge Assessment" has the meaning given to it in the BD 21 of the Design Manual for Roads and Bridges (The Assessment of Highways Bridges and Structures).

“Bridges Manager” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

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"Bridge Schemes" means Schemes that include Structures listed in Schedule 2 Scope, Appendix 4 – Structures but not including those Structures listed in Schedule 2 Scope, Appendix 4 – Structures, Attachment 4.15 Structures with Particular Requirements.

"Budget Series" means a group of Works Codes.

"Business Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Carbon Emissions Report" means the document produced and maintained by the Operating Company that details the carbon factor score for material usage and transportation in Schemes and as described in more detail in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.18 Carbon Reporting.

"Carbon Management System" means Transport Scotland's computerised system for calculating and managing greenhouse gas emissions.

"Carbon Management System Annual Account" means the system used by Transport Scotland to record greenhouse gas emissions from data supplied by the Operating Company using the Carbon Management System Road Infrastructure Projects Tool and the Carbon Management System Operational Data Templates.

"Carbon Management System Road Infrastructure Projects Tool" means Transport Scotland's standalone MS Excel workbook tool used by the Operating Company to record material quantities from larger schemes, as well as transport distances and on-site fuel consumption to derive a 'project' specific footprint all as required by Schedule 3 Contract Management, Section 8 Procurement & Management of Schemes, 8.2 Schemes Executed as Operations. This tool is used to return the collated information to Transport Scotland who will then update the Carbon Management System Annual Account with the information provided.

"Carbon Management System Operational Data Templates" means the MS Excel worksheets which the Operating Company completes on a monthly/quarterly basis with utility and fuel use data for its various offices, depots and vehicle fleets.

"Category 1 Defect" has the meaning given for a Category 1 Defect in the Trunk Road Information Manual. "Category 1 Responders" has the meaning given to it in the Civil Contingencies Act 2004.

"Category 2 Defect" has the meaning given for a Category 2 Defect in the Trunk Road Information Manual.

"CDM Regulations" means the Construction (Design and Management) Regulations 2015.

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"CDM Scheme Register" means the document produced and maintained by the Operating Company that records information related to the CDM Regulations for each Scheme and described in more detail in Schedule 2 Scope, Section 8 Design, Construction and Certifications of Operations, 8.1 Construction (Design & Management) Regulations 2015.

"Central Office" means the Operating Company's central office to be established and located as referred to in Schedule 3 Contract Management, Section 3 Offices, Depot and Other Infrastructure.

"Certificate" means any document that formally attests the fulfilment of requirements of this Contract.

"Certificate of Completion" means such a certificate issued in connection with a Works Contract.

"Checker" means the organisation appointed by the Operating Company and previously consented to by the Director in writing to undertake the checks required under Schedule 2 Scope, Section 8 Design, Construct and Certification of Operations.

"Claim Notification" means the notice in writing to the Scottish Ministers by the Operating Company of an intention to claim additional payment in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payment and Claims, submitted simultaneously and as part of a 9901 Activation.

"Client" has the meaning given to it in the CDM Regulations.

"Client's Representative" is the named person appointed by the Operating Company to ensure that the Operating Company undertakes the client's duties under the CDM Regulations, including as part of the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Commencement of Service Date" means:

- (a) Commencement of Service Date is 16 August 2022 for all Trunk Roads listed in Schedule 2 Scope, Appendix 1 Introduction:
 - (i) Attachment 1.2 Trunk Roads Inside Boundaries of Unit at Commencement of Service Date, and
 - (ii) Attachment 1.4 Trunk Roads Outside Boundaries of Unit at Commencement of Service Date.

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"Comprehensive Inspections" has the meaning given for the different types of Comprehensive Inspections described in the Trunk Road Information Manual and are Core Operations.

"Computerised Road Weather Information System" means the system referred to in Schedule 2 Scope Section 6 Network Operations – Winter Service, 6.2 Management.

"Conditions of Contract" means this Schedule 1 Conditions of Contract unless the context demands otherwise.

"Confirmation of Oral Order" means a retrospective Order raised using the Asset Management Performance System in response to an oral Order raised by the Director.

"Consolidated Operations Instruction" means an Operations Instruction raised by the Operating Company in order to undertake a number of Operations related to different Scheme Identifiers at the same location.

"Construction Phase Plan" means the plan prepared by virtue of the CDM Regulations.

"Constructional Plant" means all appliances and things required for carrying out the Operations but does not include materials or other things intended to form or forming part of the Unit.

"Construction Industry Scheme" means the construction industry scheme under Chapter 3 of Part 3 of the Finance Act 2004.

"Contemporary Records" means those Records to be produced, created maintained or modified by the Operating Company in accordance with the requirements of this Contract.

"Contract" has the meaning given in the Agreement.

"Contract Administrator" means the Engineer and or Project Manager and or Supervisor or equivalent as stated in the form of Works Contract used.

"Contract Period" means the period between the Operations Commencement Date and later of (1) the expiry of the Non-Conformance Liability Period or (2) the expiry of the last Defects Correction Period.

"Contract Personnel" means employees, operatives, agents, subcontractors of every tier, including their employees and agents, of the Operating Company employed or engaged in the performance of the Operations from time to time.

"Contract Personnel Information" means any information about the employment and the employment terms and conditions of Contract Personnel requested by the Scottish Ministers.

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"Contract Price" means the sum of money set out in, or calculated in accordance with, this Contract properly payable to the Operating Company in accordance with the provisions of this Contract in respect of its performance of this Contract.

"Contract Price Fluctuation" means the index linked adjustment to the Schedule of Rates and Prices applied to payment to take account of inflation and as described in more detailed in Schedule 1 Conditions of Contract, Section 5 Payments, 5.8 Contract Price Fluctuations.

"Core Management Team" means the core management team appointed by the Operating Company and includes any additions to and or replacements of any members of such team as subsequently agreed under the terms of this Contract, and as detailed in Schedule 3 Contract Management, Section 2 Key People.

"Core Operations" means the activities, duties, obligations and responsibilities of the Operating Company set out in this Contract that are not Ordered Operations.

"Core Operations Closure Date" means the date logged into the Asset Management Performance System as the date on which all amounts for the relevant Core Operation for the preceding Financial Year have been included in an Application for Payment and after which no further amounts will be claimed by the Operating Company.

"Correspondence Officer" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Critical Incident" means any unplanned event that includes any one or more of the following:

- (a) All Incidents and Severe Weather events that result in a full closure of a Trunk Road,
- (b) All Incidents and Severe Weather events that result in a partial closure of a Trunk Road and causes significant disruption (which causes a code 4 serious delay) to the operation of the Trunk Road. This excludes minor instances of incidents such as breakdowns, isolated/minor weather impacts which do not require a form of temporary traffic management and do not meet the code 4 threshold for delays,
- (c) Road traffic collisions or Incidents on a Trunk Road which involve fatalities, serious injuries, or dangerous substances, which require crash investigation works to be undertaken or incur a code 4 serious delay,
- (d) Road traffic collisions or Incidents involving crossover of a vehicle from one carriageway of a Trunk Road to another,

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- (e) Equipment failures and serious or potentially serious damage to infrastructure or major structures resulting from an Incident on a Trunk Road that requires a closure or incurs a code 4 serious delay (excluding incidents which do not directly impact on the safety of the travelling public)
- (f) Any Incidents of public sensitivity, including public welfare Incidents; Incidents which have potential to impact on government or considered to have national significance; security alerts of criminal/terrorist activities; Incidents which generate media interest or any other significant event,
- (g) Environmental Incidents of significant importance which require specialist clean-up from secondary / backup resources and/or notification to SEPA,
- (h) Any Incident not on the Trunk Road that meets any of the above criteria and that may affect the Trunk Road.

"Crown Property" means everything that is part of the Unit.

"Current Index Figure" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations.

"Customer Care Forum" is a forum to review and report on progress and improvements in the customer care field.

"Customer Care Officer" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Cyber Essentials" means the cyber security certification required to be obtained and maintained by the Operating Company's contractors, sub-contractors and suppliers as set out in Schedule 3 Contract Management, Section 3 Office, Depots and other Infrastructure, 3.6 Information and Communication Technology.

"Cyber Essentials Plus" means the cyber security certification required to be obtained and maintained by the Operating Company as set out in Schedule 3 Contract Management, Section 3 Office, Depots and other Infrastructure, 3.6 Information and Communication Technology.

"Cyber Implementation Plan" means a plan prepared and executed by the Operating Company for the purposes of achieving and maintaining Cyber Essentials Plus during the Service Delivery Period.

"Cyber Security Incident" means any thing, event, act or omission which gives, or may give, rise to:

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- (a) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (b) reduced integrity of an information system, data or electronic communications network;
- (c) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (d) disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (e) unauthorised changes to firmware, software or hardware;
- (f) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (g) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (h) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (i) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the UK GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy.

“Cyclic Maintenance” means a Core Operation undertaken at regular intervals to maintain the safety, condition and functionality of an asset and reduce the need for other more expensive unplanned maintenance.

“Daily Action Plans” means the document produced every day by the Operating Company during the Winter Service Period that records planned and actual treatments for each Route described in more detail in Schedule 2 Scope, Section 6 Network Operations – Winter Service, 6.1 Planning, Execution, Monitoring & Reporting.

"Damage to Crown Property" means any damage caused by the actions, omissions or negligence of a third party such damage including without restriction damage that:

- (a) Reduces the lifespan of,

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- (b) Moves,
- (c) Impairs the usefulness of, or
- (d) Alters the appearance

Of Crown Property.

“Damage to Crown Property Consolidated Report” means the document produced and maintained by the Operating Company that details any damage to Crown Property and as described in more detail in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operation, 7.19 Damage to Crown Property & Third Party Claims and 7.21 Damage to Crown Property.

"Data Capture Device" means any portable electronic device that can be used by the Operating Company for entry and storage of data in digital form.

“Data Controller” has the meaning given in the Data Protection Laws.

“Data Processor” has the meaning given in the Data Protection Laws.

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

“Data Subject” has the meaning given in the Data Protection Laws.

“Data Subject Access Request” has the meaning given in the Data Protection Laws.

“Deer Management Plan” means the plan prepared and submitted by the Operating Company as described in more detail in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscape, 3.5 Landscape Development Process.

"Default" means:

- (a) Any breach of the obligations of either Party to this Contract (including but not limited to any breach of any undertaking or warranty given under or in terms of this Contract),
- (b) Any failure to perform or the negligent performance, negligent act or negligent omission of any obligation under this Contract,
- (c) Any breach of any Legislation, or
- (d) Any negligence or negligent or fraudulent misstatement or any other default,

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In all cases by either Party.

“Defects” means any defect or fault in the Unit (including shrinkages and omissions) including a:

- (a) Category 1 Defect, and
- (b) Category 2 Defect

Whether or not such defect is a Non-Conformance or is the result of a Non-Conformance

"Defects Correction Period" means, in respect of a Non-Conformance in a Scheme the period, commencing on the Scheme Completion Date of that Scheme and expiring on the later of:

- (a) A period of one hundred and four (104) weeks after such Scheme Completion Date, and
- (b) A period greater than one hundred and four (104) weeks after the Scheme Completion Date where the Scottish Ministers Requirements specify a longer period

During which the Operating Company is responsible, at its own expense, for Defects Correction Operations in relation to such Non-Conformances.

"Defects Correction Operations" means any work to correct Defects.

“Defects Inspection Report” means the document prepared by the Operating Company that details the inspection of any Defects.

“Delay Management Report” means the document prepared by the Operating Company that details the justification for implementing activities that will cause delay greater than the acceptable criteria and as described in more detail in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland.

“Demobilisation Manager” means the Contract Personnel consented to by the Director in accordance with Schedule 1 Conditions of Contract, Clause 3 Time, 3.3 Demobilisation Period.

"Demobilisation Period" means the period commencing no later than six (6) months before the Service End Date and ending at 00.00 hours on the Service End Date or any other date agreed with the Director.

“Demobilisation Plan” means the plan prepared by the Demobilisation Manager in accordance with Schedule 1 Conditions of Contract, Clause 3 Time, 3.3 Demobilisation period, 3.3.2.

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"Design" means the following:

- (a) All work, excluding Investigations, necessary for the preparation and completion of calculations, assessments and drawings,
- (b) Carrying out all procedures and checks,
- (c) Certification,
- (d) Preparation of processes and specifications, and or
- (e) All other information and documentation required,

To enable activities to be undertaken as stipulated by this Contract and from which the Operations or Works are programmed, procured, constructed and or executed.

"Design, Build, Finance and Operate (DBFO) Contract Provider" means an Operational Partner who has a contract with the Scottish Ministers to design, build, finance and operate a part of the Trunk Road network.

"Design Element" means a part of a Design.

"Design Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Design Manual for Roads and Bridges" means a suite of documents which contains requirements and advice relating to works on motorways and all-purpose trunk roads in the United Kingdom.

"Designer" means the party preparing a Design or a Design Element.

"Director" means the Director of Transport Scotland Road Directorate or any other person named by the Scottish Ministers from time to time to act on behalf of the Scottish Ministers.

"Director's Management System" means any system used by the Director in the management of a Trunk Road.

"Director's Performance Management Framework" means the support and provision by the Operating Company for the collection and collation of data items that are required for the subsequent calculation of the various measures and objectives in accordance with the requirements of Schedule 3 Contract Management, Section 9 Measuring Performance.

"Director Response/Direction" means the response raised within the Asset Management Performance System by the Director to an Operating Company Enquiry raised by the Operating Company in respect of Orders previously issued or an instruction from the Director in respect of a previously issued Order.

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"Dispute" means a difference or dispute under or arising out of or in connection with this Contract.

"Disruption Risk Management Plan" means the document prepared and maintained by the Operating Company to record the activities required to manage all identified risks of disruption to the Unit and described in more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

"Disruption Risk Site" means a site where there is a history of or potential for unplanned disruption in the form of a Lane Closure, carriageway closure or full road closure or some other temporary restriction to normal movement, excluding disruption due to congestion.

"Drawings" means the drawings:

- (a) Prepared by the Operating Company and or its Designer in pursuance of or in connection with a Design or otherwise together with any subsequent modification of such drawings received by the Scottish Ministers, and
- (b) Such other drawings as may from time to time be provided by the Scottish Ministers or the Operating Company.

"Duty of Care; Code of Practice" means a document published by the Scottish Government for managing controlled waste.

"Effective Value" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.2.

"Invoice Requirements" means the requirements for any electronic invoice as detailed in Appendix 8 of Schedule 1 Conditions of Contract, and any other requirements of any Legislation relating to electronic invoices, (including without limitation The Public Contracts (Scotland) Regulations 2015 as amended by the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 and The Utilities Contracts (Scotland) Regulations 2016 as amended by the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 and The Electronic Invoicing (Public Contracts etc.) Amendment (Scotland) Regulations 2019) or such other requirements as the Scottish Ministers may require and notify to the Operating Company from time to time.

"Electronic Copy" means a copy of any document provided or received by e-mail, internet, on a CD-ROM or DVD-ROM or on a USB memory stick or any portable device approved by the Director, in a standard software format, or a specified software format, in accordance with the provisions of this Contract.

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"Emergency Services" means the ambulance service, Police Scotland, fire and rescue service, maritime and coastguard agency.

"Employer" means The Scottish Ministers, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF and includes the Employer's personal representatives or successors.

"Employment Skills Plan" means the document prepared by the Operating Company and set out in Schedule 3 Contract Management, Appendix 1 Introduction Attachment 1.4 Employment Skills Plan.

"Engagement Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Engineer" means the person consented to by the Director as Contract Administrator in accordance with Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.16 Operating Company's Superintendence, 2.16.2.

'Environmental Licenses' means environmental licenses, permits, authorisations and exemptions required by any environmental Legislation in relation to the execution of the Operations.

"Environmental Licenses Register" means the document produced and maintained by the Operating Company that records information related to Environmental Licences (described in more detail in Schedule 2 Scope, Section 8 Design, Construction and Certifications of Operations, 8.6 Environmental Licensing.

"Environmental and Sustainability Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Estimated Bid Value" means the estimate of the value of a Scheme submitted with the Bid and will be the sum of the Estimated Construction Value and applicable Design fees.

"Estimated Construction Value" means the estimated value of all construction Operations and or Works for a Scheme estimated in accordance with Schedule 4 Measurement, Rates & Prices. The Estimated Construction Value shall not include the estimated value and or estimated cost of Investigations and Design.

"European Union Energy Star Programme" means the programme implemented by the European Union that involves the energy labelling of office equipment.

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“Expert Weather Forecasting Service” means a service provided by an independent supplier that accurately predicts and records trends in weather and advance warnings of Severe Weather at any particular time and location on or near the Unit.

"Final Index Figure" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations.

"Final Tender Submission" means the submission made by the Operating Company as a participant in response to the invitation to submit final tender and the documents in the procurement of this Contract.

"Financial Year" means Transport Scotland's financial year, which starts on 01 April and ends on the following 31 March.

“Flooding Management Plan” means the document prepared and maintained by the Operating Company to record the objectives required to manage all identified risks of disruption to the Unit associated with flooding and described in more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

“Front Line” means fully operational plant and equipment that is permanently available on the Unit and referred to in more detail in Schedule 2 Scope, Section 6 Network Operations – Winter Service.

“Front Line Public Space Surveillance (CCTV) License” means a license obtained from the Security Industry Authority that proves Contract Personnel have received formal training and hold a qualification by an awarding organisation for the purposes of Operations that involves public space surveillance using CCTV.

“Further Detailed Direction” is the document that is prepared by the Director and issued to the Operating Company that contains the information shown in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.8 Further Detailed Enquiries & Directions.

“Further Detailed Enquiry” means the document prepared and issued by the Operating Company and described in more detail in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.1 Documentation and Procedures.

“Gantry Manager” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with

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regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

"General Inspection" has the meaning given to it in the Design Manual for Roads and Bridges as added to and amended by Schedule 2 Scope, Section 4 Inspection & Maintenance – Structures.

"Grassland Report" means the document that sets out the Operating Company's achievements and any concerns for the grassed areas for the areas identified within the Landscape Strategy and described in more detail in Schedule 2 Scope, Section 3 Inspections & Maintenance – Roads Including Landscaping, 3.5 Landscape Development Process.

"Hazard Notice" means a notice issued to the Operating Company by the Director and or Performance Audit Group identifying a situation which represents an immediate hazard requiring action by the Operating Company.

"HB" means type HB loading as defined in the Design Manual for Roads and Bridges: BD 37: Loads for Highway Bridges.

"Health and Safety Executive" means the UK government agency responsible for the encouragement, regulation and enforcement of workplace health, safety and welfare.

"Health and Safety File" has the meaning given to it in the CDM Regulations.

"Health, Safety and Risk Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Historical Records" means those records held by the previous operating company for the Unit and that such previous operating company is contractually required to hand over to the Operating Company.

"Historical Records Report" means the report produced by the Operating Company and issued to the Director that details the adequacy of the Historical Records and fulfils the requirements as detailed in Schedule 3 Contract Management, Appendix 4 Systems, Plans & Records Attachment 4.4 Historical Records Report.

"Hold Point" means a point incorporated in the Management System beyond which work shall not proceed until all work up to that point has been demonstrated under the Management System as complying with the requirements of this Contract.

"Holding Company" means a company that:

- (a) Holds the majority of voting rights in a company,

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- (b) Is a member of a company and has the right to appoint or remove a majority of its board of directors, and
- (c) Is a member of a company and controls alone, or under an agreement with other members, a majority of the voting rights in that company.

"Incident" means an unplanned event at an individual location on or near the Unit that has given rise to, or is likely to give rise to, disruption to traffic flow, harm to the environment or harm to the safety or welfare of road users, the public, or those working on or close to the Unit.

"Incident Liaison Officers" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Incident Management" means the management of Incidents by the Operating Company and included in plans and reports produced by the Operating Company as described in more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

"Incident Management Forum" means the forum held by Transport Scotland where attendance, participation and support by the Operating Company is required at the sole discretion of the Director to discuss Incident Management.

"Incident Response" means all operational activities undertaken by the Operating Company to co-ordinate, direct and execute an effective response after identification or notification of an Incident.

"Incident Response Operations" means all operational activities undertaken by the Operating Company to execute an effective response after identification or notification of an Incident.

"Incident Response Plan" means a written plan containing the Operating Company's arrangements for executing the Incident Response Operations and Incident Response, including details of Incident Response Resources, roles and responsibilities and communication arrangements. This is described in more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

"Incident Response Resources" means personnel, equipment, supplies, facilities and other resources utilised by the Operating Company to execute the Incident Response Operations.

"Incident Support Unit(s)" means all Operating Company's vehicle and personnel responding to Incidents occurring on the Trunk Road network outwith the Trunk Road

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Incident Support Service geographical coverage areas and on all Trunk Road Incident Support Service routes as required.

"Incident Support Unit Plan" means the written plan containing the Operating Company's arrangements for executing the Incident Response Operations and Incident Response, including details of Incident Response Resources, roles and responsibilities and communications arrangement of the Incident Support Unit described in more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

"Information Acts" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 1 General, 1.18 Freedom of Information.

"Information and Communication Technology System Plan" means the plan to be prepared by the Operating Company as referred to in Schedule 3 Contract Management, Section 3 Office, Depots & Other Infrastructure, 3.6 Information & Communication Technology.

"Initial Service End Date" means the period of eight (8) years from the Commencement of Service Date.

"Insolvency Event" means the occurrence of one (or more) of the following to a Relevant Entity:

- (a) Where a Relevant Entity is a company or a limited liability partnership:
 - (i) The appointment of an administrator pursuant to the Insolvency Act 1986 (which for the purpose of this definition is called the "Act"), or the lodging or filing with any court of a notice of intention to appoint an administrator in accordance with the Act, or an application is made to any court for the appointment to it of an administrator,
 - (ii) A judicial factor, a receiver, an administrative receiver or a receiver and manager is appointed in respect of it, or in respect of the whole or any part of its assets, business or undertaking,
 - (iii) A provisional liquidator, interim liquidator or liquidator is appointed to it,
 - (iv) A petition is presented to a court for its winding up,
 - (v) A resolution of its directors or members (or any class of its members) for its winding up, or for the taking of any steps with a view to the appointment to it of an administrator, liquidator, receiver, administrative receiver or judicial factor is proposed or passed, or

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- (vi) Any steps are taken by any party (including the Registrar of Companies) to have it struck off the Register of Companies.
- (b) Where a Relevant Entity is a partnership or limited partnership:
 - (i) A petition is presented to a court for its sequestration or the sequestration of any of its partners,
 - (ii) An interim trustee, or trustee in sequestration is appointed to it or any of its partners,
 - (iii) A bankruptcy order is made against it or against any of its partners,
 - (iv) A petition is presented at any court seeking that a bankruptcy order be made against it or any its partners, or
 - (v) It is dissolved or wound up, whether pursuant to any provision of the Partnership Act 1890 or the Limited Partnership Act 1907, or otherwise.
- (c) Without prejudice to the generality of the foregoing) in any case when:
 - (i) A Relevant Entity it is deemed unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986),
 - (ii) A Relevant Entity enters into or proposes any composition or arrangement (whether formal or informal) with or for the benefit of its creditors (including but not limited to a company voluntary arrangement, scheme of arrangement, trust deed or individual voluntary arrangement),
 - (iii) Any steps are taken by a creditor to enforce any security over the assets (or any part thereof) of a Relevant Entity,
 - (iv) A Relevant Entity ceases to or threatens to cease to carry on all or a material part of its business or operations,
 - (v) Diligence or other analogous process is levied on any part of the property of a Relevant Entity,
 - (vi) A judgment, order or award is granted against a Relevant Entity,
 - (vii) proceedings are instituted in respect of a Relevant Entity seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law, or other similar law affecting creditors' rights,
 - (viii) Any event corresponding to, or analogous with, those specified above, occurs in respect of a Relevant Entity under the law of any relevant jurisdiction, or

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- (ix) A Relevant Entity takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing.

"Intellectual Property Rights" means all intellectual property rights of any kind which may subsist or be enforceable, at present or in the future, in any part of the world, including but not limited to all forms of copyright, design right, goodwill, know-how, moral right, performing right, service mark, trade mark, patents, domain names, database rights, trade secrets, confidential information and other similar rights or obligations, whether or not registered or able to be registered in any country, or any applications for such registered rights.

"Invasive or Injurious Species Management Plan" means a plan produced by the Operating Company as described in more detail in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscaping, 3.5 Landscape Development Process.

"Inventory" means a list of Inventory Items fixed on and otherwise relevant to the Unit set out in Schedule 2 Scope, Section 1 Introduction, 1.2 The Unit.

"Inventory Item" means any of the items associated with the groups of assets described in the Trunk Roads Information Manual and the Transport Scotland Structures Manual.

"Inventory Validation Plan" means the document prepared and maintained by the Operating Company to validate, collect and update Inventory on the Unit in accordance with Schedule 2 Scope, Section 1 Introduction, 1.5 Inventory Validations, Collection & Updating.

"Investigations" means the investigation, studies, appraisals and the like performed by the Operating Company, and necessary to start related Design or assessment.

"Investment Objectives" means the objectives, realised by way of Core Operations and Ordered Operations, of the Scottish Ministers and as set out in more detail in Schedule 2 Scope, Section 1 Introduction, 1.6 Investment Objectives of the Contract.

"Journey Time Reliability Coordinator" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key people.

"Key Staff" means the key staff appointed by the Operating Company and includes any additions to, and or replacements of, any members of such as subsequently agreed under the terms of this Contract, and as detailed in Schedule 3 Contract Management, Section 2 Key People.

"Key Supplier / Key Sub-Contractor" means any supplier and/or sub-contractor engaged by the Operating Company to supply and/or carry out any of the following in connection with this Contract and/or any of the Operations:

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- (a) Road restraint systems (vehicle and pedestrian).
- (b) Road pavements – Bituminous bond materials,
- (c) Road lighting columns and brackets, CCTV masts and cantilevered masts,
- (d) Electrical work for road lighting and traffic signs,
- (e) Structural steelwork,
- (f) Protection of steelwork against corrosion, and
- (g) Any other types of work or services in respect of which the supplier and/or sub-contractor is designated by the Director from time to time as being a Key Supplier / Key Sub-Contractor

“Key Supplier / Key Sub-Contractor Guarantee” means the guarantee in the form set out in this Schedule 1 Conditions of Contract, Appendix 2 Form of Key Supplier / Key Sub-Contractor Guarantee, to be provided by a Key Supplier / Key Subcontractor to the Scottish Ministers

“Landscape Architect” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Landscape Areas" means vegetated areas of the Unit listed or to be listed in the landscape inventory in the Asset Management Performance System.

"Landscape Development Plan including Tree Management Plan" means the plan to be prepared by the Operating Company as referred to in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscaping, 3.5 Landscape Development Process.

“Landscape Strategy including Tree Management Plan” means the strategy to be prepared by the Operating Company as referred to in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscaping, 3.5 Landscape Development Process.

“Landslide Management Plan” means the plan to be prepared by the Operating Company as referred to in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

"Lane" means a delineated running lane or a hard shoulder of a road of the Unit.

"Lane Closure" means a circumstance where the minimum width of Lane required in accordance with Chapter 8 of the Traffic Signs Manual to permit passage by all classes of vehicle is not available.

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"Lane Occupation" means a Lane Closure by the Operating Company, in connection with the Operating Company's Operations.

"Lane Occupation Charge" means a charge levied for a Lane Closure under the circumstances stated in Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.17 Lane Occupation Charges.

"Leases" means the leases in respect of the Premises in terms of the draft forming Schedule 3 Contract management, Appendix 3 Office, Depots and Other Infrastructure, Attachment 3.1

"Legislation" means any primary or subordinate law or legislation, including without limitation;

- (a) Any act of parliament, act of Scottish parliament, byelaws, statutory instruments, rules, regulations, orders, notices, directions, consents, permissions, policies or guidance made or given pursuant to or in connection with any of the foregoing; and
- (b) Any legislative act of the European Union or the Commission of the European Community that without further enactment has legal effect in the United Kingdom, Great Britain and or in Scotland;
- (c) In each case as any of the foregoing are in force, enacted, amended, extended, or re-enacted, or replaced, from time to time, and whether the same apply in the United Kingdom or Great Britain and or in Scotland only.

"List of Subcontractors and Suppliers" means a list of subcontractors and suppliers who will perform Operations under the Contract prepared by the Operating Company in accordance with Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.5 Assignment, Subcontracting and Key Supplier / Key Sub-Contractor Guarantees.

"Litter and Refuse Collection Report" means the document produced every month by the Operating Company, between the Commencement of Service Date and Service End Date, that records the performance of the Operating Company in relation to keeping specific Trunk Roads of the Unit clear of litter and described in more detail in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscape, 3.4 Cyclic Maintenance.

"Local Authorities" means one (1) of the thirty two (32) unitary authorities designated as councils which consist of councillors elected by registered voters in each of the council areas of Scotland and receive the majority of their funding from the Scottish Government.

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"Local RAUC" means the local Roads and Utilities Committee organised by each road works authority to hold local liaison/co-ordination meetings, to co-ordinate works on roads to minimise inconvenience to road users.

"Low Value Application" means a sum being due to the Operating Company by the Scottish Ministers which is less than fifty thousand Great British Pounds and Zero Pence (£50,000).

"Lump Sum Quotation" means a fully inclusive, fixed price quotation provided by the Operating Company to the Scottish Ministers for the execution of all the Operations proposed in respect of the execution of an Order, including a detailed breakdown of resources, quantities, rates and prices.

"Major Bridge Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Major Bridge Schemes" means Schemes that include those Structures listed in Schedule 2 Scope, Appendix 4 – Structures, Attachment 4.15 Structures with Particular Requirements.

"Major Incident" means any unplanned event that requires the implementation of special arrangements by one or more of the Category 1 Responders in accordance with the requirements of the Civil Contingencies Act 2004 and the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 for:

- (a) The rescue and transport of a large number of casualties,
- (b) The involvement, either directly or indirectly, of large numbers of people,
- (c) The handling of a large number of enquiries likely to be generated both from the public and the news media, usually to Police Scotland, or
- (d) The large scale combined resources of the Category 1 responders to cater for the threat of death, serious injury or homelessness to a large number of people.

"Maintenance & Making Better Use" means the document that details the techniques to be used by the Operating Company in the Principal and General Inspections of the Trunk Road network.

"Management Survey" a survey required under the Control of Asbestos Regulations 2012 as amended by the Personal Protective Equipment (Enforcement) Regulations 2018 and by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019 .

"Management System" means the system for the management of health and safety, quality, and environment, to be provided by the Operating Company.

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“Manual Contract Document for Highway Works” means the primary documents required for the preparation of contracts for Trunk Roads in the United Kingdom.

“Manual for the Management of the Risk of the Unplanned Network Disruption” means the document that sets out the requirement for the preparation and maintenance by the Operating Company of the Disruption Risk Management Plan covering this Unit.

"Mass Action Programme" has the meaning given to it in Chapter 8 of Transport Scotland's Strategic Road Safety Plan.

“Media and Information Officer” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

“Mild Winter” means a Winter Service Period where the salt usage has not exceeded the quantity stated within Schedule 4 Measurement, Rates & Prices, Series 6100 Core Operations.

"Minor Incident" means any unplanned event on the Unit that is not considered by the Operating Company to be a Major Incident or a Critical Incident.

“Mobilisation Manager” means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Mobilisation Period" means the period commencing at 00.00 hours on the Operations Commencement Date and ending at 00.00 hours on the Commencement of Service Date.

"Monitoring Indicator" means a numerical measure of service provision as stated in Schedule 3 Contract Management, Section 9 Measuring Performance, 9.4 Publication of Performance & Monitoring Indicators.

“Monthly Journey Time Reliability Report” means a document prepared and maintained by the Operating Company detailing the liaisons that have taken place and are planned between the Operating Company and Operational Partners with regards to journey time reliability and described in more detail in Schedule 2 Scope, Section 5 Network Operations, 5.3 Journey Time Reliability Coordinator.

"Multi Agency Response Team" means the team comprising partner organisations working with Transport Scotland in the deployment of resources to manage Incidents or events that are deemed in the first instance by the Director to:

- (a) Have a high risk of severe disruption to road or rail journeys with potential safety risks for the travelling public,

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- (b) Have a significant potential impact for large parts of the strategic transport network, and
- (c) Require a multi-agency response.

"Mutual Aid" means the provision of assistance and resources to Operational Partners in exceptional circumstances as determined by the Director.

"Named Subcontractor" means a sub-contractor of any tier that it has been decided will use the Project Bank Account.

"National Traffic Data System" is a system used by Transport Scotland to collect, process, store and report on traffic count data across the Scottish Trunk Road network.

"National Winds Management Guidelines" is a strategy prepared by Transport Scotland that addresses the issue of managing the impact of high winds on the Scottish Trunk Road network.

"Network Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Network Operations" means an organisation or department of Transport Scotland which is responsible for the provision of a number of traffic travel information and road customer support services all of which are aimed at improving the operational efficiency and journey time reliability of the Trunk Roads of the Unit.

"Network Operations Equipment" means equipment that is situated on or near the network and referred to in more detail in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland.

"Network Operations Service Provider" means a list of providers as described in more detail in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland.

"New Entrant" means an individual new to the construction industry or who has not worked in the construction industry for six months or more.

"New Rate" means rates proposed by the Operating Company, when the Operating Company considers that the items detailed within the Schedule of Rates and Prices are not applicable to the Operations to be undertaken and as described in more detail in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.11 New Rates.

"Non-Adjustable Element" means a reduction to be applied to the amount of price adjustment calculated in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.3.

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"Non-Conformance" means any Default by the Operating Company, including without limitation:

- (a) Default in relation to the Operations, including but not limited to any defect in Design or resulting from defective Design, defect resulting from defective materials or defective workmanship, failure of any part of the Operations to meet or continue to meet the provisions of this Contract, and damage, destruction or other effect consequential on any Default of the Operating Company, or
- (b) Failure, as shown by the value of a Performance Indicator, to achieve the required standard of service, or
- (c) Failure by the Operating Company to professionally ensure the adequacy of the insurances offered by a Works Contractor in respect of a Works Contract.

"Non-Conformance Liability Period" means, in respect of any Non-Conformances that are not specific to a Scheme, the period that commences upon the Operations Commencement Date and expires on the date falling one hundred and four (104) weeks after the Service End Date.

"Non-Execution Adjustment" means the sum of money that the Scottish Ministers are entitled to receive from the Operating Company, in addition to the compensation, costs and expenses that the Scottish Ministers are otherwise entitled to recover in respect of Default by the Operating Company, as stated in Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.16 Scottish Ministers Step in Rights – Defaults.

"Non-Motorway Drainage System" means a drainage system associated with the Unit that is not a motorway drainage system.

"Normal Working Hours" means 07:00 to 19:00 hours on Working Days.

"Notice of Arbitration" means a notice in writing served by one Party on the other to refer the Dispute to the arbitration of a single arbitrator.

"Notice of Assignment of Rights" means a notice in the form contained in Schedule 3 Contract Management, Appendix 7 Control of Core & Ordered Operations, Attachment 7.14 Form of Assignment of Rights Agreement & Notice of Assignment of Rights given by the Operating Company to a person or organisation causing Damage to Crown Property, of the Scottish Ministers' assignment to the Operating Company of their rights against the person or organisation.

"Notice of Dispute" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes.

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"Notice of Extension" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 3 Time, 3.4 Execution of Operations.

"Notice of Non-Conformance" means a notice issued by the Director and or Performance Audit Group to the Operating Company recording a Non-Conformance.

"Notification of the Final Valuation of Repair of an Incidence of Damage to Crown Property" means the document prepared by the Operating Company in the format shown in Schedule 3 Contract Management, Appendix 7 Control of Core & Ordered Operations, Attachment 7.9 Notification of the Final Valuation of Repair of an Incidence of Damage to Crown Property.

"Observation Resulting from Inspection" means a notice issued to the Operating Company by the Director and or Performance Audit Group identifying circumstances requiring action by the Operating Company.

"Operating Company" means the person or persons, firm or firms or company or companies with whom the Scottish Ministers have completed and signed the Agreement; and such definition shall include [Insert Name of Operating Company] and the Operating Company's personal representatives, successors and permitted assignees. All references to the Operating Company are deemed to include reference to its Contract Personnel, advisers, agents, representatives, contractors, sub-contractors and or suppliers of any tier, unless the context otherwise requires.

"Operating Company Change Proposal" means any change to the Scottish Ministers' Requirements proposed by the Operating Company in accordance with Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.5 Operating Company's Change Proposals .

"Operating Company Enquiry" means an enquiry raised within the Asset Management Performance System by the Operating Company to the Director in respect of Orders previously issued.

"Operating Company's Audit Inspection" means an inspection carried out by the Operating Company to monitor compliance with the Scottish Ministers' Requirements.

"Operating Company's Hold Point" means a point incorporated in the Operating Company's Management System beyond which work shall not proceed until all work up to that point has been demonstrated under the Operating Company's Management System as complying with the requirements of this Contract.

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"Operating Company's Management System" means the system for the management of health and safety, quality, and environment, to be provided by the Operating Company.

"Operating Company's Management System Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Operating Company's Representative" means the person appointed by the Operating Company pursuant to Schedule 1 Conditions of Contract, Clause 1 General, 1.3 Administration of this Contract, 1.3.5.

"Operational Items" means:

- (a) Any Design forming part of the Operations,
- (b) Any materials, plant or equipment forming part of the Operations and or for incorporation on the Unit,
- (c) The Unit (insofar as the Unit is within the control of the Operating Company), or
- (d) Any person on the Unit, including but not limited to users of the Unit (insofar as the Unit is within the control of the Operating Company).

"Operational Partners" means:

- (a) Branches within the Roads Directorate and other Directorates in Transport Scotland,
- (b) Traffic Scotland Operations and Infrastructure Services Contractor,
- (c) The Office of the Scottish Road Works Commissioner,
- (d) The Performance Audit Group,
- (e) Police Scotland,
- (f) The Emergency Services,
- (g) Traffic Scotland Systems Contractor,
- (h) Transport Scotland's customers,
- (i) The Ministry of Defence,
- (j) Local Authorities,
- (k) Scottish Canals,
- (l) Bridge authorities,

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- (m) The Traffic Customer Care Line service,
- (n) Operating companies in adjacent units,
- (o) Design, Build, Finance and Operate (DBFO) Contract Provider in the adjacent units,
- (p) The Trunk Road Incident Support Service patrols in adjacent units,
- (q) The Scottish Environment Protection Agency,
- (r) Highways England and its service providers,
- (s) The Department for Transport,
- (t) Authorised contractors, notified to the Operating Company by the Scottish Minister,
- (u) Undertakers,
- (v) Statutory Authorities,
- (w) Network Rail,
- (x) The road users,
- (y) Marine Scotland,
- (z) Northern Lighthouse Board,
- (aa) Any other organisation notified to the Operating Company by the Scottish Ministers.

"Operations" means Core Operations and Ordered Operations.

"Operations Commencement Date" means the date notified by the Scottish Ministers in accordance with Schedule 1 Conditions of Contract, Clause 3 Time, 3.1 Operations, Commencement Date and the Commencement of Service Date, notwithstanding the date or dates of award or execution of this Contract.

"Operations Instruction" means the Operating Company's internal instruction to its personnel in respect of Operations.

"Operations Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Order" means an instruction issued by the Scottish Ministers to the Operating Company specifying Ordered Operations.

"Ordered Operations" means the activities, duties, obligations and responsibilities of the Operating Company set out in this Contract stated as being subject to an Order.

"Other Contracts" means as a minimum:

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- (a) Road and bridge construction and maintenance contracts out with Operating Company arrangements, and
- (b) Developers' schemes.

"Outgoing Operating Company" means the operating company engaged by the Scottish Ministers before the Commencement of Service Date, who performed operations which are equivalent or substantially similar to the Operations to be undertaken by the Operating Company, and who engaged employees who are eligible to transfer to the Operating Company by operation of the TUPE Regulations and become Contract Personnel of the Operating Company on the Commencement of Service Date.

"Overseeing Organisation" means the Director or, if waived in writing by the Director, the Operating Company.

"Parent Company Guarantee" means the parent company guarantee to be provided by the Operating Company to the Scottish Ministers, described in this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee.

"Parent Undertaking" means Parent Undertaking as set out in section 1162 of the Companies Act 2006.

"Parties" means the Scottish Ministers and the Operating Company. (A Party is either one of them as the context dictates.)

"Partnering Leadership Board" means a board established by the Operating Company that is described in more detail in Schedule 3 Contract Management, Section 1 Introduction, 1.3 Collaboration & Partnering.

"Payment Adjustment Factor" means a factor as stated in Schedule 3 Contract Management, Section 9 Measuring Performance, 9.3 Payment Adjustment Factors, to be applied in the measurement of items in the Schedule of Rates and Prices and used to adjust the value of the Operating Company's Operations in accordance with Schedule 1 Conditions of Contract, Clause 5 Payment.

"Payment Notified Record" means the record produced by the Asset Management Performance System to document those items paid within the payment of a monthly Application for Payment.

"Payment Received Record" means the record raised by the Operating Company to acknowledge receipt of its monthly payment under this Contract.

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"Performance Audit Group" means an organisation located at the -----REACTED-----
-----or its successors or assignees or any other person or persons, firm or company that the Director may from time to time appoint.

"Performance Indicator" means a numerical measure of the Operating Company's compliance with a requirement of this Contract.

"Personal Data" has the meaning given in the Data Protection Laws.

"Pesticide Plan" means a document produced by the Operating Company that details the use of pesticides and as described in more detail in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscape, 3.5 Landscape Development Process.

"Planned Maintenance Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Pollution" means any pollution or contamination of any part of the Operations or the Unit or outwith the Unit, arising out or in connection with, a Default of the Operations or of water or land or the atmosphere and all losses, damage and bodily injury, howsoever caused, arising from or as a consequence of such pollution.

"Possession" means planned safety arrangements that control or prevent the normal movement of rail traffic between defined locations and for a predetermined period.

"Premises" means all of the buildings and areas of land leased to the Operating Company which do not form part of the Unit and which are subject to a separate lease agreement(s) between the Scottish Ministers and the Operating Company. "Press Transport Scotland" means the team in Transport Scotland that are responsible for the management, answering and issue of media and press enquiries on behalf of Transport Scotland.

'Primary Depot' means any depot that is permanently manned by staff of the Operating Company to perform Operations.

"Principal Contractor" has the meaning given to it in the CDM Regulations.

"Principal Designer" has the meaning given to it in the CDM Regulations.

"Principal Inspection" is as defined in the Design Manual for Roads and Bridges, as added to and amended by Schedule 2 Scope, Section 4 Inspection & Maintenance – Structures, 4.6 Principal Inspections.

"Processing" has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

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"Professional Services" means Operations undertaken by Contract Personnel specified in Appendix 62/1 Requirements for Professional Services of Schedule 5 Specification and Drawings and consented to in accordance with Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.7 Operating Company Contract Personnel, 2.7.1.

"Project Bank" means the bank which provides the Project Bank Account.

"Project Bank Account" means the bank account used to receive payments from the Scottish Ministers and make payments to the Operating Company and the Named Subcontractor(s).

"Project Bank Account Documents" means the following documents fully completed and executed by the Operating Company and which should be submitted when applicable under the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.1, (a) the Project Bank Account Trust Deed, (b) the RBS New Account Opening Form, (c) the RBS Partnership Mandate, (d) the RBS to RBS Bankline Third Party Mandate, (e) the RBS Entity Classification (Short Form), (f) the RBS Entity Classification (Short Form) Controlling Person(s) Addendum, (g) RBS Entity Classification Form, (h) RBS PBA Non-Financial Intermediary Form, (i) PBA Bidder Information Checklist

"Project Bank Account Online Banking" means the electronic online internet banking facilities provided by the Project Bank in respect on the Project Bank Account.

"Project Bank Account Trust Agreement" means the agreement to be entered into by the Scottish Ministers and the Operating Company in connection with the setting up and operation of the Project Bank Account.

"Project Manager" means the person consented to by the Director as Contract Administrator in accordance with Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.16 Operating Company Superintendence, 2.16.2.

"Purpose and Objectives of the Contract" means the requirements that are set in Schedule 2 Scope, Section 1 Introduction.

"Quality Plan" means the quality plan to be provided by the Operating Company pursuant to Schedule 3 Contract Management, Section 4 Systems, Plans and Records.

'Rain showers' are as defined by the United Kingdom Met Office and are classified as 'slight', 'moderate', 'heavy' or violent' for rates of accumulation of about 0-2 mm / hr (slight), 2-10 mm/ hr (moderate), 10-50 mm / hr (heavy) or greater than 50 mm / hr (violent) respectively.

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"RAUC(S)" means the Roads and Utilities Committee of Scotland that provides, at a national level, co-ordination and an overview of activities carried out on roads under the 'Street Works' element of the New Roads & Street Works Act 1991 as amended by the Transport (Scotland) Act 2005 and by the Transport (Scotland) Act 2019 with a view to improving the planning, co-ordination and quality of road works in Scotland.

"Record of Determination" means the document prepared on behalf of the Director by the Operating Company to record if an environmental impact assessment is required for a Design. The Director will provide the Operating Company with a copy of the form to be used for preparing the Record of Determination.

"Records" means Contemporary Records and Historical Records and usually consisting of a document in writing or some other permanent form for reference at a point later in time.

"Records Register" means a schedule of Records to be held by the Operating Company.

"Records Retention Period" means the periods referred to in Schedule 3 Contract Management, Section 4 Systems, Plans and Records, 4.5 Records.

"Reference Documents" is the list of documentation referenced in Schedule 1 Conditions of Contract, Appendix 1 Register of Reference Documents.

"Refurbishment / Demolition Survey" means a survey required under the Control of Asbestos Regulations 2012 as amended by the Personal Protective Equipment (Enforcement) Regulations 2018 and by the Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019.

"Relevant Entity" means

- (a) The Operating Company and, where the Operating Company comprises more than one legal person, each such person,
- (b) Where the Operating Company is a limited company or the Operating Company constitutes more than one limited company, any Holding Company of the Operating Company or its constituent members and any Holding Company of a Holding Company in the corporate chain to the ultimate parent company,
- (c) Where the Operating Company is a limited liability partnership, any member of that limited liability partnership,
- (d) Where the Operating Company is a partnership or a limited partnership, any partner in that partnership or limited partnership, and
- (e) Any Parent Undertaking of any entity referred to in (a), (b), (c) and or (d) above.

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"Relevant Organisation" means an organisation as referred to in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.28 Relevant Organisations, 2.28.1 and listed in Schedule 1 Conditions of Contract, Appendix 5 Relevant Organisations.

"Remedial Notice" means a notice of a Default given by the Scottish Ministers to the Operating Company, stating requirements for remedial action.

"Remedial Period" means the period stipulated in a Remedial Notice for remedying the relevant Default.

"Report of an Incidence of Damage to Crown Property" means a report prepared by the Operating Company in the format detailed in Schedule 3 Contract Management, Appendix 7 Control of Core & Ordered Operations, Attachment 7.15 Report of an Incidence of Damage to Crown Property.

"Road Asset Management Plan for Scottish Trunk Roads" means a document published by Transport Scotland that sets out the level of service Transport Scotland intends to provide on the Unit.

"Road Safety Framework" means a document published by Transport Scotland that sets out the framework for road safety in Scotland.

"Road Safety Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Roads for All: A Good Practice Guide for Roads" means a document published by Transport Scotland that sets out the requirements for inclusive design in construction, operation and maintenance of road infrastructure.

"Roadworks Module" means a web-based software application supplied by the Scottish Ministers to the Operating Company for the input, editing and dissemination of information on all planned roadworks, traffic management, Lane, carriageways or full road closures, Lane Occupations and events likely to cause traffic delays or disruption on the Unit.

"Route" means a section or sections of the Trunk Road network.

"Route Accident Reduction Plan" means the document containing proposals for reduction of road accidents, based upon consideration of accident patterns and rates along routes or parts of routes.

"Route Safety File" means a file containing information about a route that includes details of its overall safety performance.

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"Route Safety Group" means a group, consisting of representatives from organisations with an interest in road safety (such as Local Authorities, Emergency Services, safety camera partnerships and Operational Partners), formed to develop a sound knowledge base made up of five key components: route information and contacts, accident analysis, stakeholder and community issues, scheme programmes (safety, minor and major improvements, etc.), and technical projects and initiatives.

"Routine Monitoring Inspection" has the meaning given for the different types of Routine Monitoring Inspections described in the Trunk Road Information Manual and are Core Operations.

"Safety Management Review System" means the system developed in accordance with Highways Agency Interim Advice Note 139/11- Managed Motorways Safety Risk Working Instructions and Highways Agency Interim Advice Note 151/11- Safety Risk Management Guidance for Network Delivery and Development Directorate for the management of safety in the operation of the managed motorways in Scotland.

"Safety Management Steering Group" means the group comprising senior representatives of Transport Scotland's major projects, standards, road safety and network management functions which has responsibility for demonstrating that due care is exercised in the design and operation of the managed motorways in Scotland.

"Safe System Approach to Road Safety" is an approach to road safety management, based on the principle that life and health and of people should not be compromised by the need to travel by road.

"Salt Storage Facility" means a salt and sand storage barn complete with a roof of a type described in Schedule 2 Scope, Appendix 6 – Winter Service, Attachment 6.13 Salt Storage Facility.

"Schedule" has the meaning given in the Agreement.

"Schedule of Landscape Opportunities" means a plan prepared and updated by the Operating Company's Landscape Architect as described in more detail in Schedule 2 Scope, Section 3 Inspection & Maintenance – Roads Including Landscaping, 3.5 Landscape Development Process.

"Schedule of Rates and Prices" means Schedule 4 Measurement, Rates & Prices.

"Scheme" means work intended to be carried out or that is carried out as Operations and is subject to a Bid and or is subject to an Order, or is intended to be carried out or is carried out as a Works Contract.

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"Scheme Closure Date" means the date logged onto the Asset Management Performance System on which all amounts for a Scheme have been included in an Application for Payment and after which no further amounts will be claimed by the Operating Company.

"Scheme Completion Date" means the date logged onto the Asset Management Performance System on which all Operations within each individual Scheme have been completed.

"Scheme Identifier" means the unique scheme identifying number allocated by the Asset Management Performance System.

"Scottish Environmental Protection Agency" means the Scottish environment protection agency.

"Scottish Government Scotland's Road Safety Framework to 2030" means the framework for improving road safety in Scotland including Scottish targets for reductions in road deaths and serious injuries to 2030, published by the Scottish Government 2021.

"Scottish Ministers" means the members of the Scottish Executive who exercise Statutory Functions, including those transferred from UK Ministers of the Crown. All references to Scottish Ministers are deemed to include reference to Scottish Ministers' Personnel, advisers, agents and representatives, unless the context otherwise requires.

"Scottish Ministers' Hold Point" means a point notified by the Scottish Ministers at any time to the Operating Company for incorporation in the Operating Company's Management System, beyond which point the Operating Company is not permitted to proceed without demonstrating under the Operating Company's Management System to the Scottish Ministers' satisfaction that it has complied with the requirements of this Contract up to that point.

"Scottish Ministers' Personnel" means the employees of the Scottish Ministers.

"Scottish Ministers' Requirements" means:

- (a) Schedule 2 Scope,
- (b) Schedule 3 Contract Management, and
- (c) Schedule 5 Specification and Drawings.

"Scottish Road Works Register" means the register of roadworks that provides the means for the Scottish Ministers and local roads authorities to meet their obligations in relation to the New Roads and Street Works Act 1991, as amended by Transport (Scotland) Act

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2005, and by the Transport (Scotland) Act 2019 any successor register notified at any time to the Operating Company by the Scottish Ministers.

“Scottish Road Works Register Report” means the document produced every month by the Operating Company, between the Commencement of Service Date and Service End Date, that records the performance of the Operating Company in relation to keeping the Scottish Roadworks Register up to date and described in more detail in Schedule 2 Scope, Section 1 Introductions, 1.3 Statutory Functions Delegated to the Operating Company.

"Scottish Salt Group" has the meaning given to it in Schedule 2 Scope, Section 6 Network Operations – Winter Service.

"Scour Assessment" has the meaning given to it in the Design Manual for Roads and Bridges, as added to and amended by Schedule 2 Scope, Section 4 Inspections & Maintenance - Structures.

"Scour Inspection" has the meaning given to it in the Design Manual for Roads and Bridges, as added to and amended by Schedule 2 Scope, Section 4 Inspection & Maintenance - Structures.

“Scour Management and Flood Emergency Plan” means a plan for the scour management and flood emergency produced by Transport Scotland.

"SEAS" means the Scottish Government's accounting system that is the financial ledger used by Transport Scotland.

‘Secondary Depot’ means any depot that is usually unmanned and primarily used for the storage of the Operating Company’s equipment and materials used to perform Operations.

“The Security Industry Authority” means the statutory organisation responsible for regulating the private security industry in the UK.

“Senior Inspector” means an inspector with the experience, qualifications and knowledge described in Transport Scotland Structures Manual necessary to perform a particular inspection in relation to a Structure.

"Series" means any of the series of items listed and contained in Schedule 4 Measurement, Rates & Prices, Chapter IV Units and Methods of Measurement, or such other numerical series of items as may be added to Schedule 4 Measurement, Rates and Prices from time to time.

"Service Delivery Period" means the period from 00:00 hrs on the Commencement of Service Date to 24:00 hrs on the Service End Date.

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"Service End Date" means the later of the:

- (a) Initial Service End Date, and
- (b) Date specified in the last Notice of Extension.

"Severe Weather" means adverse weather conditions that disrupt, or are likely to disrupt, driving conditions and traffic movements on the Unit.

"Severe Weather Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Severe Winter" means a Winter Service Period where the salt usage has exceeded the quantity stated in Schedule 4 Measurement, Rates & Prices, Series 6100 Core Operations.

"Site" means the land or place where the work activity or part of the work activity of the Operations is executed.

"Site Operations" means the work activities or part of the work activity of the Operations at a Site.

"Site Operations Instruction" means a copy of an Operations Instruction issued to the Operating Company, for the carrying out of Operations on or relating to a Site.

"Site Waste Management Plan" means a plan for management, reuse, recycling and disposal of waste produced in connection with a Scheme.

"Skid Resistance Manager" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

'Snow' is as defined by the United Kingdom Met Office and can be classified as 'slight', 'moderate' or 'heavy' for a rate of accumulation of snow (in the absence of drifting or melting) less than 0.5 cm / hr (slight), 0.5-4 cm / hr (moderate) and greater than 4 cm (heavy) respectively.

"Society of Chief Officers of Transport in Scotland Roadside Memorials and Floral Tributes" means a document published by Police Scotland that sets out the roles and responsibilities in connection with the practice of placing memorials and floral tributes at the scene of a road death Incident by bereaved relatives and friends.

"Special Event" means any major sporting event, show or other public gathering that is expected to attract large volumes of traffic on the Unit or adjacent Trunk Road units or any sporting event, social event or entertainment which is held on a road.

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"Special Inspection" is as defined in the Design Manual for Roads and Bridges, as added to and amended by Schedule 2 Scope, Section 4 Inspection & Maintenance – Structures, 4.8 Special Inspections.

"Special Road" means a Trunk Road which is designated as a Special Road under section 7 of the Roads (Scotland) Act 1984.

"Special Requirements" means the published requirements of the Relevant Organisations which are current at the time of undertaking Operations.

"Specification" means Schedule 5 Specification and Drawings, and documents referred to therein.

"Specified Person" means the Director, who shall be the "specified person" as defined in section 110A (6) of the Housing Grants, Construction and Regeneration Act 1996, as amended by the Local Democracy, Economic Development and Construction Act 2009.

"Standard Incident Diversion Route" means existing roads designated by the Director as temporary routes for maintaining traffic around sections of the Trunk Road network temporarily closed due to a Special Event, roadworks, Incidents, Severe Weather events or any other disruption events.

"Standard Reports" means reports generated by the Asset Management Performance System in a fixed or variable format on a routine or ad hoc basis in accordance with the Director's requirements as to period covered and level of detail.

"Statement of Intent" means the document prepared by the Operating Company which describes the scope of, and justification for, a Scheme.

"Statutory Authority" means an organisation constituted under statute which has functions that may affect or be affected by the Trunk Roads or Operations or Works on the Trunk Roads.

"Statutory Function" means any statutory function given to a Statutory Authority.

"Statutory Order" means any order promoted by the Scottish Ministers or the Operating Company pursuant to exercising a Statutory Function.

"Strategic Road Safety Plan" means a document published by Transport Scotland that sets out how Transport Scotland intends to achieve road safety on the Trunk Road network.

"Strategic Road Safety Project Plan" means the document that prefaces the Accident Investigation and Prevention Report and detailed in Schedule 2 Scope, Section 11 Safety & Development – Road Safety Programme.

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“Strategic Salt” means a stockpile of salt maintained by the Director and held at facilities provided by the Operating Company that is used for the purposes as detailed in Schedule 2 Scope, Section 6 Network Operations – Winter Service, 6.4 De-icing Materials.

"Street Works" means road works as defined by Section 107 of the New Roads and Street Works Act 1991 as amended by the Transport (Scotland) Act 2005 and by the Transport (Scotland) Act 2019.

"Structure" means any:

- (a) Structure listed in Table 2.1 of BD 63 as amended by Table B1 of BD 63 contained in the Design Manual for Roads and Bridges,
- (b) Footbridge with span greater than or equal to 3.0 metres that carries pedestrians, cyclists, livestock or equestrians over or alongside Trunk Roads,
- (c) Underpass that allows pedestrians, cyclists, equestrians, livestock or farm vehicles to pass under a Trunk Road,
- (d) Sign or signal gantry over or adjacent to a Trunk Road, or sign or signal gantry that is the Scottish Ministers' responsibility at a specified location adjacent to a local road, supporting lighting, fixed signing, electronic signing, electrical equipment, or control equipment.

“Structure Name” means the name assigned to a Structure as detailed in Schedule 2 Scope, Appendix 4 Structures.

“Structure Reference Number” means the number assigned to a Structure as detailed in Schedule 2 Scope, Appendix 4 Structures.

"Structures Safety Inspection" means the inspection defined in Design Manual for Roads and Bridges Part 4 BD 63: Inspection of Highway Structures, as added to and amended by Schedule 2 Scope, Section 4 Inspection & Maintenance - Structures, 4.4 Structures Safety Inspection.

“Structures with Particular Requirements” are those that are listed in Schedule 2 Scope, Appendix 4 – Structures, Attachment 4.15 Structures with Particular Requirements.

"Supervisor" means the person consented to by the Director as Contract Administrator in accordance with Schedule 1 Conditions of Contract, Clause 2 Operating Company’s Main Responsibilities, 2.16 Operating Company Superintendence, 2.16.2.

“Supervisory Authority” has the meaning given in the Data Protection Laws.

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"Supplied Data" means any information, documents, designs and data supplied to the Operating Company, directly or indirectly, by or on behalf of the Scottish Ministers, whether by their consultants, agents, servants or other such personnel.

"Supply Chain Member" means a subcontractor of any tier for the Works or for the supply of goods and services in connection with this Contract other than an Operating Company's subcontractor.

"SV" means load model 3 (Special Vehicle) loading as defined in British Standard EN 1991-Part 2:2003 Actions on Structures, Traffic Loads on Bridges and the National Annex to British Standard EN 1991-Part 2:2003.

"Technical Approval" is as defined in the Design Manual for Roads and Bridges.

"Technical Approval Authority" is as defined in the Design Manual for Roads and Bridges.

"Technical Approval Schedule" is as defined in the Design Manual for Roads and Bridges.

"Temporary Traffic Regulation Order" means an order issued pursuant to Section 14 of the Road Traffic Regulation Act 1984.

"Termination Date" means the earlier of:

- (a) The Service End Date, or
- (b) The date on which this Contract is terminated pursuant to the terms of this Contract.

"Third Party Development Manager" means the Contract Personnel consented by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People and described in further detail in Schedule 2 Scope, Section 10 Safety & Developments – Developments.

"Third Party Works" includes for any subcontractor or other third party engaged to deliver Operations or any other services and where payment is valued in accordance with Schedule 4 Measurement, Rates & Prices, Series 6600 Third Party Works.

"Threshold Value" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids, 6.2.7.

"Time Works" means works undertaken as a unit of time.

"Total Order Value of Scheme" means the cumulative value of the individual Order values of Operations as contained in all Orders raised under individual Scheme Identifiers.

"Traffic Customer Care Line" means the dedicated 24 hour phone service for traffic customer care.

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"Traffic Customer Care Line Operator" means the party that operates the Traffic Customer Care Line on behalf of Transport Scotland.

"Traffic Scotland" means the Traffic Scotland Service.

"Traffic Scotland Backup Facility" provides the disaster recovery services for Transport Scotland's Traffic Scotland Service.

"Traffic Scotland Equipment" means the Scottish Ministers' intelligent transport system generally comprising all equipment, transmission buildings located on or off the Trunk Road, associated communications equipment, computers and operator workstations operated, maintained and developed by the Traffic Scotland Operations and Infrastructure Service Contractor in the provision of the Traffic Scotland Service.

"Traffic Scotland National Control Centre" means the location from which the operational element of the Traffic Scotland Service is provided and managed.

"Traffic Scotland Operations and Infrastructure Service Contractor" is the company appointed by the Scottish Ministers to deliver the Traffic Scotland Service and whose identity and role are more particularly detailed and described in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland, 5.1 Introduction.

"Traffic Scotland Service" means the service set up by the Scottish Ministers whose objectives are set out in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland, 5.1 Introduction and which service is delivered by Traffic Scotland Operations and Infrastructure Service Contractor on behalf of the Scottish Ministers.

"Traffic Scotland Systems Contractor" means the contractor appointed by the Scottish Ministers who provides, on behalf of the Scottish Ministers, support, maintenance, development and equipment supply services for the Traffic Scotland incident management system, web system, national traffic database system, and internet protocol communication system and whose identity and role are more particularly detailed and described in Schedule 2 Scope, Section 5 Network Operations – Traffic Scotland, 5.1 Introduction.

"Training and Employment Plan" means the document prepared and maintained by the Operating Company detailing how the Operating Company's approach to employment and training requirements are achieved and set out in more detail in Schedule 3 Contract Management, Section 1 Introduction, 1.4 Community Benefits.

"Transferring Employees" means those staff employed by the Outgoing Operating Company immediately prior to the Commencement of Service Date who by virtue of this Contract transfer to the Operating Company.

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"Transport Scotland" means the entity which is an executive agency of the Scottish Government and is the national transport agency for Scotland.

"Transport Scotland Corporate Plan 2020-21" means the plan that sets out how Transport Scotland will support the delivery of the transport priorities and the general economic vision for Scotland.

"Transport Scotland High Winds Strategy" means the document produced by Transport Scotland that details its high winds strategy.

"Transport Scotland Interim Amendment 125: Skid Resistance" means design guidance published by Transport Scotland in relation to skid resistance.

"Transport Scotland Trunk Road Network Management Directorate Emergency Standard Diversion Routes Development Procedures for Operating Companies" means the document that sets out the procedure to outline the necessary liaison requirements with fellow stakeholders in the development and production of emergency standard diversion routes.

"Transport Scotland Landslide Study Report" means the document produced by Transport Scotland and used by the Operating Company to develop their Landslide Management Plan.

"Transport Scotland Manual for the Management of Risk of Unplanned Network Disruption" means the document produced by Transport Scotland for the management of risk of unplanned network disruption.

"Transport Scotland Roads Directorate" means a division within Transport Scotland.

"Transport Scotland Strategic Road Safety Plan" means a strategy that details how Transport Scotland delivers road safety on the Trunk Road network.

"Transport Scotland Structures Manual" means a document published by Transport Scotland that sets out the requirements for the inspection, cyclic maintenance and damage to crown property in relation to Structures.

"Transport Scotland Structures Workbank" means the scope of work defined by the Director relating to the maintenance of Structures on the Trunk Road network.

"Transport Scotland Trunk Road Motorway Tourist Signposting" is the document published by the Scottish Government that contains guidance on the provision of tourist destination signs on the Trunk Road network.

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"Trunk Road" means a road as defined in the Roads (Scotland) Act 1984 for which the Scottish Ministers are the roads authority including without limitation:

- (a) Carriageways, hard shoulders, dedicated bus lanes, central reserves, interchanges, slip roads, connecting roads, access and service roads, roundabouts, junctions,
- (b) Car parks, lay-bys, traffic islands, Police Scotland observation areas,
- (c) Cycle tracks, cycleways, footways, footpaths, pavements,
- (d) Structures,
- (e) Any associated infrastructure and amenities, including fences, barriers and restraint systems, kerbs, gullies, drainage systems outfalls and balancing ponds, grassed areas, hedges, trees, planted areas, traffic signs, traffic signals, authorised signs erected by, or for, any party other than the Scottish Ministers, road furniture, road lighting, loop detector systems, communications installations, picnic areas, environmental mitigation measures, embankments and cuttings, rock faces, coastal defences, erosion protection work, and
- (f) Any other item set forth in this Contract or confirmed in writing from time to time by the Scottish Ministers.

"Trunk Road Incident Support Service" means all Operating Company's vehicle and personnel specifically designated to undertake standing patrols on defined sections of Trunk Road with the purpose of providing first line response to Incidents and Defects identified on the Trunk Road network.

"Trunk Road Incident Support Service Plan" means a written plan containing the Operating Company's arrangements for executing Incident Response Operations and Incident Response including details of Incident Response Resources roles and responsibilities and communication arrangements as described in more detailed in Schedule 2 Scope, Section 7 Network Operations - Disruption Risk Management.

"Trunk Road Information Manual" means the manual published by the Scottish Government that sets out requirements in relation to the Trunk Roads of the Unit and includes:

- (a) The Asset Management Performance System, the asset register and the data to be collected and uploaded into Asset Management Performance Systems;
- (b) Planning, managing and performing the different types of Routine Monitoring Inspections and Comprehensive Inspections;
- (c) Defects categorisation and rectification;

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(d) Cyclic Maintenance including frequency and scope.

“Trunk Roads of the Unit” means any Trunk Road that is located within the boundaries and or limitations of the Unit.

“TUPE Commencement Information” means the information regarding the Transferring Employees that includes as a minimum identity, age, length of service, job title and terms and conditions of employment and which constitutes Employee Liability Information within the meaning of regulation 11 of the TUPE Regulations.

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.

"TUPE Information" means the information listed as such in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.4 and Schedule 1 Conditions of Contract, Appendix 4 – TUPE Information.

“Ultra-Low Emission Vehicle (ULEV)” means a vehicle that:

- (a) Uses low carbon technologies, and
- (b) Emits less than 75g of CO₂/km from the tailpipe

"Undertaker" means "undertaker" as defined in Section 107 of the New Roads and Street Works Act 1991 as amended by Transport (Scotland) Act 2005 and by the Transport (Scotland) Act 2019.

"Undisclosed Employees" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.8.

"Undisclosed Agreements" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.8.

"Unit" means the group of Trunk Roads to be managed and maintained according to the provisions of this Contract and as the Unit may be amended in the terms of this Contract.

“Unit-specific Communications Plan” means the document that is produced by the Operating Company working in conjunction with the Director and includes the plan to communicate with all key groups of customers and stakeholders. The plan is to include the

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criteria that is stated in Schedule 3 Contract Management, Section 5 Stakeholder and Customer Engagement, 5.3 Communications Planning.

"Updated TUPE Information" has the meaning given to it in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.5.

"Value Added Tax" means value added tax as provided for in the Value Added Tax Act 1994 and in supplemental Legislation (whether delegated or otherwise) or in any primary or secondary Legislation promulgated by the European Community, or any official body or agency of the European Community and any similar sales, consumption or turnover tax introduced in addition to the foregoing and includes the charge to tax under paragraph 6 of Schedule 9A of the Value Added Tax Act 1994.

"Value for Money Assessment" means an assessment provided to the Director as part of a Bid to demonstrate the achievement of maximum effectiveness through efficient use of resources and at minimum cost.

"Vehicle Recovery Service" means a service to be provided by the Operating Company which provides vehicle recovery.

"VisitScotland" means Scotland's national tourist board or its successor organisation.

"Vulnerable Locations" means known areas of the network where severe weather including winter, flooding, landslide and wind events are prone to occur as contained within the Operating Company's Management Plans,, disruption risk registers and in Schedule 2 Scope, Appendix 6 Winter Service, Attachment 6.7 Location of Known Vulnerable Locations.

"Weather Stations" means road sensors, weather station CCTV cameras, ice prediction equipment, road temperature sensors, and other weather station sensors forming part of the apparatus for weather monitoring.

"Weekly Non-conformance Report" means the document prepared by the Operating Company on a weekly basis that details any and all Non-Conformance and described in more detail in Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.12 Operating Company Weekly Non-conformance Report.

"Wind Management Plan" means the document prepared and maintained by the Operating Company to record the objectives required to manage all identified risks of disruption to the Unit associated with wind and described in more detail in Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management.

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"Winter Service" means the service provided by the Operating Company in accordance with Schedule 2 Scope, Section 6 Network Operations – Winter Service.

"Winter Service Duty Officers" means the Contract Personnel consented to by the Director in accordance with Schedule 3 Contract Management, Section 2 Key People.

"Winter Service Operations" means the Operating Company's Operations used to deliver the Winter Service and described in more detail in Schedule 2 Scope, Section 6 Network Operations – Winter Service.

"Winter Service Patrols" means the patrols that monitor road conditions to supplement weather information and carry out precautionary or de-icing treatments to deal with conditions that may arise during the Winter Service Period.

"Winter Service Period" means the period that commences on 1 October and finishes on 15 May in each Annual Period except that:

- (a) If the first Annual Period starts between 1 October and the following 15 May both dates inclusive, the commencement date of the Winter Service Period for the first Annual Period shall be the Commencement of Service Date, and
- (b) If the last Annual Period finishes before 15 May, then the Winter Service Period for the last annual Period shall finish on the Service End Date.

"Winter Service Plan" means the plan prepared by the Operating Company in accordance with Schedule 3 Contract Management, Section 5 Stakeholder and Customer Engagement, 5.3 Communications Planning and described in more detail in Schedule 2 Scope, Section 6 Network Operations – Winter Service.

"Winter Service Plant" means the plant and equipment (including without limitation Plant and Constructional Plant) which is used by and or on behalf of the Operating Company to deliver the Winter Service.

"Winter Severity Adjustment" means any adjustment to the amount paid to the Operating Company for salt usage and described in more detail in Schedule 4 Measurement, Rates & Prices, Series 6100 Core Operations.

"Work Category" means the Building Cost Information Service's highways term maintenance work category 4/HM/WC/01 to 4/HM/WC/09 assigned in Schedule 1 Conditions of Contract, Appendix 9 Contract Price Fluctuations, to any particular item in Schedule 4 Measurement, Rates & Prices, Appendix 1 – Rates and Prices, or subsequently derived that shall be used when calculating the increase or decrease in respect of Contract

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Price Fluctuations to amounts otherwise payable to the Operating Company in accordance with this Contract.

“Work Codes” means the code for a Scheme within a Bid.

"Working Day" means a day (other than a Saturday or Sunday or bank holiday or public holiday) on which banks are open for business in Scotland or would be open other than for the occurrence of an industrial dispute or force majeure event.

“Working Hours” means the hours between 0700 and 1900 hours 7 days per week but excluding Public Holidays.

“Working Year” means the number of working hours per calendar year exclusive of meal breaks, annual, public and sick leave and is based on a 40-hour week for 44 weeks of the year. For the purpose of the Contract the working annual hours shall be considered as 1760 hrs.

"Works" means the temporary work and the permanent work as specified in a Works Contract except that in the Specification reference to the "Works" shall, where the context so requires, be taken to be reference to the Operations.

"Works Contract" means a contract to be entered into or entered into between the Scottish Ministers and a Works Contractor for execution of a Scheme or part of a Scheme.

"Works Contract Instruction" means an instruction issued by the Director to the Operating Company to procure Works Contracts and to undertake related duties as provided by this Contract.

"Works Contractor" means the contractor for a Works Contract.

"9901 Activation" means a bid for additional payment activated in accordance with Schedule 3 Contract Management, Section 7 Control of Core and Ordered Operations, 7.13 9901 Activation and is supported by a Claim Notification at the same time.

1.2 Interpretation

1.2.1 In this Contract any words and or expressions that do not have meanings assigned to them in Schedule 1 Conditions of Contract, Clause 1 General, 1.1 Definitions shall have the appropriate contextual meaning given to them in the Oxford Dictionaries (<http://www.oxforddictionaries.com>). If there is any doubt or ambiguity as to which definition in the Oxford Dictionaries is appropriate in the context, the Director will decide, at his sole discretion, the appropriate definition.

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- 1.2.2 Words importing persons include companies, firms, partnerships, corporations and any other organisation having legal capacity.
- 1.2.3 Words importing the singular include the plural and vice versa, where the context so requires.
- 1.2.4 Words importing the male include the female and vice versa, where the context so requires.
- 1.2.5 Except in Schedule 4 Measurement, Rates & Prices and Schedule 5 Specification and Drawings, the headings in this Contract are provided for ease of reference only and are deemed not to be part of, and not to be taken into consideration in the interpretation or construction of, this Contract.
- 1.2.6 All references in this Contract to "Clause" in:
- (a) Schedules 1 to 4 unless otherwise provided, are references to Clauses numbered in Schedule 1 Conditions of Contract (or parts thereof), and
 - (b) Schedule 5 Specification and Drawings are, unless otherwise provided, references to Clauses numbered in Schedule 5 Specification and Drawings.
- 1.2.7 Any reference in this Contract to "Schedule" is, unless otherwise provided, a reference to a Schedule to this Contract.
- 1.2.8 Where in this Contract there is a requirement to carry out any of the Operations until the Service End Date, or the Termination Date, or until the expiry of a Defects Correction Period or the expiry of the Non-Conformance Liability Period, and notwithstanding any termination and/or abandonment, such provisions shall be without prejudice to and shall not limit, reduce extinguish or in any other way affect the Operating Company's liability in respect of or arising out of or in connection with any of the Operations and/or any Default by the Operating Company.
- 1.2.9 A reference to any person or organisation includes the successors (statutory or otherwise) and permitted assignees or successors in title of such person or organisation, irrespective of whether such succession or assignation has occurred before or after the Operations Commencement Date.
- 1.2.10 The word "cost", when used in this Contract, means all expenditure properly incurred or to be incurred, whether on or off the Unit, including overhead costs, except as expressly stated otherwise.
- 1.2.11 Every reference in documents referred to in this Contract to:

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- (a) "British Railways",
- (b) "British Railways Board",
- (c) "Railtrack",
- (d) "Network Rail", and
- (e) "Railway",

is, where the context permits deemed to be a reference to "Network Rail Infrastructure Limited" or their successors.

- 1.2.12 Every reference in this Contract and in documents referred to in this Contract to "public holiday" and "Public Holiday" is deemed to be a reference to 01 January, 02 January, 25 December and 26 December, in any year.
- 1.2.13 Every reference in this Contract to "day" is deemed to be a reference to a calendar day. A day is deemed to start at 00:00:00 hours and ends at 23:59:59 hours.
- 1.2.14 References within the Specification and the Design Manual for Roads and Bridges to:
- (a) "defect" means "Defect",
 - (b) "category (i) defect" means "Category 1 Defect ", and
 - (c) "category (ii) defect" means "Category 2 Defect",
- unless the context requires or implies otherwise.
- 1.2.15 Every reference in Schedule 4 Measurement, Rates & Prices to "plant" is deemed to be a reference to Constructional Plant.
- 1.2.16 Any requirement on the Operating Company under this Contract to "consult" any firm, organisation or person shall be construed as a requirement to allow a sufficient period for that consultee to comment on the matter in question.
- 1.2.17 Any consent or approval given or deemed to have been given by the Scottish Ministers or the Director to the Operating Company pursuant to the terms of this Contract shall not be held to relieve the Operating Company of any of its obligations under this Contract.
- 1.2.18 All obligations contained in this Contract are deemed to be obligations on the Operating Company unless any such obligation has been specifically stated otherwise.
- 1.2.19 Where, in this Contract, there is reference to any of the Core Management Team and or Key Staff as detailed in Schedule 3 Contract Management, Section 2 Key People then

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these shall be such parties whose roles and or responsibilities are referred to in this Contract.

- 1.2.20 Where in this Contract the Operating Company is to provide unrestricted access, it is accepted that the Operating Company will not be in breach of such provisions where access is restricted solely on the grounds that Legislation requires that certain restrictions are applied and or that, for safety, the Operating Company requires that any party taking access must comply with rules and regulations of the Operating Company provided that such are reasonable in the opinion of the Director in all the circumstances.
- 1.2.21 The documents forming this Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:
- (a) The Agreement,
 - (b) The Schedule 1 Conditions of Contract (Excluding the Reference Documents),
 - (c) The Scottish Ministers' Requirements (Schedule 2 Scope, Schedule 3 Contract Management and the Reference Documents),
 - (d) The Scottish Ministers' Requirements (Schedule 5 Specification and Drawings),
 - (e) Schedule of Rates and Prices (Schedule 4 Measurement, Rates & Prices),
 - (f) Clarifications and other documentation forming part of the Contract (Schedule 6 Clarifications and Other Documentation), and
 - (g) Any other documents forming part of this Contract.
- 1.2.22 In the case of any conflict between the provisions of this Contract and the provisions of:
- (a) Quality Management Systems – Requirements (BS EN ISO 9001:2015),
 - (b) Environmental Management Systems – Requirements (BS EN ISO 14001:2015),
 - (c) Information Technology, Security Techniques, Information Security Management Systems – Requirements (BS ISO/IEC 27001:2013) and
 - (d) Occupational Health and Safety Management (BS OHSAS 45001: 2018),
- the Operating Company shall advise the Director of such and shall comply with the decision of the Director as to which provision shall apply.
- 1.2.23 Where there is any conflict or ambiguity between this Contract and any Legislation, the Legislation shall take precedence over this Contract provided always that the Operating Company acknowledges that its obligations in respect of compliance with Legislation

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have been supplemented by provisions in this Contract. There shall be deemed to be no conflict or ambiguity between this Contract and any Legislation in circumstances where the only conflict or ambiguity would (but for this Schedule 1 Conditions of Contract, Clause 1 General, 1.2 Interpretations, 1.2.23) be that any obligation stated in this Contract is more onerous than the corresponding provision in any Legislation. In circumstances where this Contract is more onerous, this Contract shall take precedence over the Legislation and the Operating Company shall comply with this Contract provided that the obligation in this Contract is not unlawful under the Legislation.

1.2.24 The Operating Company shall notify the Scottish Ministers of conflicts within or between documents forming this Contract.

1.2.25 Where there is:

- (a) Any conflict,
- (b) Lack of clarity, and or
- (c) Difference in interpretation

within, in respect of or between:

- (d) Any of the documents forming the Scottish Ministers' Requirements,
- (e) The Design Manual for Roads and Bridges, and or
- (f) Any documents supplied by the Operating Company for the purposes of this Contract,

the Scottish Ministers will consult with the Operating Company as they deem necessary and will determine the meaning that, in their opinion, ensures the safest and most conservative result. The Scottish Ministers will notify the Operating Company of that meaning.

1.2.26 Any such meaning shall be binding upon the Operating Company. Any consequential alteration to the Operations shall be subject to the written consent of the Scottish Ministers.

1.2.27 The Operating Company is deemed to have made due allowance in the rates and prices contained in this Contract for complying with the requirements of this Schedule 1 Conditions of Contract, Clause 1 General, 1.2 Interpretations and no financial adjustment shall be made in respect of the application of or compliance with such requirements.

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1.3 Administration of the contract

1.3.1 The Director is empowered to act on behalf of the Scottish Ministers in respect of all their powers and duties under this Contract. The Director is responsible for administering this Contract on behalf of the Scottish Ministers.

1.3.2 Subject to this Schedule 1 Conditions of Contract, Clause 1 General, 1.3 Administration of the Contract, 1.3.3, the Director may from time to time in writing authorise any person to carry out any duty of the Director under this Contract on behalf of the Director.

Prior notice in writing of any such authorisation will be given by the Director to the Operating Company. Such authorisation shall continue in force until such time as the Director notifies both the Operating Company and the authorised individual in writing of its cessation.

1.3.3 The Director may not authorise any person to waive or alter the provisions of Schedule 1 Conditions of Contract.

1.3.4 If the Operating Company is dissatisfied with any Order given by a person authorised to carry out duties of the Director, the Operating Company may refer the matter in writing to the Director, who will thereupon confirm, reverse or vary such Order in writing.

1.3.5 The Operating Company shall appoint and provide an Operating Company's Representative, who shall have full authority to act as an agent of the Operating Company in relation to all matters arising out of, or in connection with, this Contract and who shall be appointed, available and in place at the Operations Commencement Date.

The Operating Company's Representative shall be appointed to act on a full-time basis as the Operating Company's Representative in respect of all matters pertaining to this Contract.

The Operating Company's Representative shall be the Operating Company's principal point of contact for the Scottish Ministers, their representatives and the Core Management Team throughout the Contract Period. All communications between the Scottish Ministers and the Operating Company or any of its members shall be made through the Operating Company's Representative.

The Operating Company's Representative shall ensure that the Operating Company executes all Operations in accordance with the requirements of this Contract, and that the Operating Company's Management System demonstrates the fulfilment of those requirements.

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The Operating Company's Representative shall have the power and authority to make any decisions on behalf of the Operating Company without recourse to senior management.

- 1.3.6 From the Operations Commencement Date, the Operating Company shall coordinate, plan, manage, maintain, carry out, execute and complete the Operations.
- 1.3.7 The Operating Company shall establish and maintain such additional subordinate offices, depots, and other facilities as required to enable the Operating Company to execute the Operations.
- 1.3.8 The Operating Company's Representative and the Core Management Team shall be responsible to the Operating Company and shall act independently of any other part of their organisation that may be carrying out work related in any way to this Contract.
- 1.3.9 This Contract provides for the Performance Audit Group to audit the performance of the Operating Company and to undertake various related duties and obligations.

The Director may from time to time substitute for the existing Performance Audit Group a new person, persons, firm, or company, provided that on each such occurrence the Director will in writing notify the Operating Company of the identity of the substitute person, persons, firm or company appointed.

The Performance Audit Group is responsible for administering parts of this Contract on behalf of the Scottish Ministers.

The Scottish Ministers may from time to time change the duties, responsibilities and authority of the Performance Audit Group. The Director will notify the Operating Company in writing of any such changes at least three days before they take effect.

The Performance Audit Group has no responsibility for the Operating Company's performance of the Operating Company's duties and obligations.

1.4 Giving notice and payment of fees

- 1.4.1 The Operating Company shall give all notices, take all actions, obtain all licences and pay all fees required to be given, taken or paid by any Legislation in relation to the execution of the Operations and by the rules and regulations of all Statutory Authorities, companies and Undertakers whose property or rights may be affected in any way by the Operations, including but not limited to such licences required by the Marine (Scotland) Act 2010, the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (Including amendments 2013 and 2017) and or by the Operational Partners. The Operating Company shall provide all assistance to the Scottish Ministers required in respect of all

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such licences, which shall include as a minimum giving all notices, making applications and taking all necessary action. The invoice cost of any fees in respect of licences required by the Marine Scotland Act 2010, Environmental Licenses and or the Operational Partners only shall be subject to an Order measured in accordance with Schedule 4 Series 6900 Payment of Accounts.. All other fees shall be borne by the Operating Company

1.5 Legislation

1.5.1 The Operating Company shall, in undertaking and performing the Operations and all other obligations incumbent upon it under this Contract, ascertain and comply in all respects with the provisions of all Legislation that apply to the Operations and with the rules and regulations of Statutory Authorities, Relevant Organisations and Undertakers. The Operating Company shall indemnify the Scottish Ministers against all penalties and liability of every kind for breach of any Legislation or such rules and regulations.

Provided always that:

- (a) Except in the case of a Design, the Operating Company is not required to indemnify the Scottish Ministers against the consequences of any such breach that is the unavoidable result of complying with any Order of the Scottish Ministers,
- (b) Where an Order is at any time found not to comply with any such Legislation, rules or regulations, the Scottish Ministers shall issue such further Order as necessary to secure compliance, and
- (c) The Operating Company is responsible for obtaining any planning permission, consents or other permissions of any nature which may be necessary in respect of the Operations or any completed Operations undertaken under any Order.

Such obligations shall include obtaining any such permissions and consents necessary in respect of any Design and any Works Contract that are subject to an Order.

1.5.2 The Operating Company shall comply with the statutory and other procedures, rules and regulations specified in this Contract, or contained in, or which form the subject of, any Order.

1.6 Scots law to apply

1.6.1 This Contract shall be governed by and interpreted in accordance with Scots Law. Except where this Contract provides otherwise, the Parties hereby submit to the exclusive jurisdiction of the Scottish Courts.

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1.6.2 Without prejudice to the rights expressly conferred on any party in this Contract, The Contract (Third Party Rights) (Scotland) Act 2017 shall not apply to the Contract, and no person or party who is not a Party to the Contract shall have any rights, express or implied, under the Contract.

1.7 Language

1.7.1 All documents to be produced for, or to be provided to, the Scottish Ministers in accordance with this Contract shall be in English. Except where this Contract provides otherwise all:

- (a) Operating and maintenance instructions and identification labels appearing on Constructional Plant and all other written and printed matter required for the Operations, and
- (b) Notices to third parties including the public given by the Operating Company in the course of executing the Operations,

shall be in English and in such other language or languages as required by the other provisions of this Contract or ordered in writing by the Scottish Ministers.

1.8 Notices

1.8.1 Except where otherwise expressly provided to the contrary in this Contract, any document, notice or other communication required or permitted to be given in terms of this Contract shall be in writing and served by hand delivery or by sending by first class recorded delivery post at or to:

- (a) In the case of the Scottish Ministers:

The Director, Roads Directorate

Transport Scotland

Buchanan House

58 Port Dundas Road

Glasgow

G4 0HF

- (b) In the case of the Operating Company, its registered office or Central Office,

- (c) And, in the case of the Performance Audit Group:

Performance Audit Group

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- (d) Or, in all three cases at or to such other address as is notified in writing by either Party to the other Party, and in the case of a change of address of the Performance Audit Group as is notified in writing by the Scottish Ministers and/or the Director to the Operating Company, in each case, in accordance with this Schedule 1 Conditions of Contract, Clause 1 General, 1.8 Notice, 1.8.1.

1.8.2 Any notice, document or other communication properly addressed and given in writing which is served by first class recorded delivery post in accordance with the provisions of this Schedule 1 Conditions of Contract, Clause 1 General, 1.8 Notices shall be deemed to be served and deemed to be received by the recipient on the second Working Day after posting.

1.8.3 Any notice, document or other communication properly addressed and given in writing and which is served by hand delivery in accordance with the provisions of this Schedule 1 Conditions of Contract, Clause 1 General, 1.8 Notices, shall be deemed to be served and deemed to be received on the day of hand delivery except if such day is not a Working Day or if hand delivery is after 17:00 hours on any Working Day, then such notice shall be deemed to have been served and deemed to be received on the first following Working Day.

1.8.4 Notwithstanding the other provisions of this Schedule 1 Conditions of Contract, Clause 1 General, 1.8 Notices, Orders shall generally be issued by transmission through the contract control and management function of the Asset Management Performance System and shall be deemed to have been received when the Order has so been transmitted by the Scottish Ministers to the Operating Company.

1.9 Conflicts of interests

1.9.1 The Operating Company shall take all necessary steps to ensure that no conflict of interest arises to it in the execution of the Operations.

In the event that the Operating Company identifies that it has, or may have, an actual or potential conflict of interest, it shall notify the Scottish Ministers immediately giving full details of the actual or potential conflict. No later than five (5) Working Days after such notification the Operating Company shall provide details of the steps it proposes to take

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to remove such conflict for the Scottish Ministers' consent (which consent may impose additional steps or amendments to such steps).

Where the Scottish Ministers do not consent to the steps proposed, the Scottish Ministers may, at their sole discretion, either appoint others to execute the relevant Operations or advise the Operating Company of the steps which the Scottish Ministers require the Operating Company to take to remove such conflict.

Where the Operating Company considers that the conflict cannot be removed or cannot be removed without incurring such cost which a contractor experienced in executing work similar to the Operations would consider to be commercially unreasonable (but excluding circumstances personal to the Operating Company), it shall advise the Scottish Ministers who may appoint a third party to perform the relevant obligation. All costs that are incurred shall be borne solely by the Operating Company, unless as stated otherwise within the provisions of this Contract.

Where the Scottish Ministers consent (conditionally or otherwise) or impose other steps, the Operating Company shall immediately carry out such steps and remove, or procure the removal of, any such conflict and shall advise the Scottish Ministers when such has been achieved.

1.10 Provision of documents

- 1.10.1 The Operating Company shall comply with the requirements of 071AR Creation, Maintenance and Submission of Documents and other Media of the Specification when creating, maintaining, submitting or otherwise providing a document, Record or submission.
- 1.10.2 In any contract entered into by the Operating Company for supply of materials, goods or services the Operating Company shall include the requirements and provisions of this Schedule 1 Conditions of Contract, Clause 1 General, 1.10 Provision of Documents.
- 1.10.3 Following the execution of this Contract, the Scottish Ministers shall provide to the Operating Company one certified true copy of this Contract.
- 1.10.4 The Operating Company shall submit to the Scottish Ministers and the Performance Audit Group, in the manner and at the times detailed in this Contract, all documentation and other information (including files, reports, Drawings, calculations, data, and Records), whether provided by the Scottish Ministers or obtained or made by or on behalf of the Operating Company, including documentation and information held as Electronic Copy.

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1.10.5 For the purposes of this Contract, all Electronic Copies to be provided by the Operating Company to the Director for archive purposes shall be provided in both the original software format and portable document format (pdf) on portable storage devices.

1.11 Drawings and information

1.11.1 The Operating Company shall provide to the Scottish Ministers such information and Drawings concerning the Operating Company's proposals in respect of any Order as are, in the Scottish Ministers' opinion, necessary for the proper execution of the Operations in accordance with this Contract. The Operating Company shall be bound by the information and Drawings so provided.

The Operating Company shall provide such information and Drawings within the timescales that are set out in Schedule 3 Contract Management, Section 4 Systems Plans and Records following any request or requirement to do so, and in any case at the time required in an Order or this Contract.

1.11.2 The Operating Company shall at all times keep in its Central Office at least one original or copy of all information and Drawings. Such information and Drawings shall be available at all times for inspection and use by any person authorised under this Contract.

1.12 Methods

1.12.1 Where required by the Scottish Ministers, the Operating Company shall submit, at such times as the Scottish Ministers may require, all information pertaining to the proposed methods for execution of the Operations.

Any such submission shall be sufficiently detailed to enable the Scottish Ministers to assess whether the proposed methods are adequate for execution of the Operations in accordance with this Contract.

1.13 Scottish Ministers consent

1.13.1 After receipt of any submission in accordance with Schedule 1 Conditions of Contract, Clause 1 General, 1.12 Methods, 1.12.1, the Scottish Ministers will notify the Operating Company in writing whether or not they consent to the Operating Company's proposed methods for the execution of the Operations.

1.13.2 In the event that the Scottish Ministers do not consent to any such proposed methods, they will:

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- (a) With their notice withholding consent, notify the Operating Company of the respects in which (in the opinion of the Scottish Ministers) the proposed methods fail to meet the requirements of this Contract, and
- (b) Subsequently issue an Order to the Operating Company to make such changes in the methods as may be necessary to meet the requirements of the Contract and to obtain their consent.

The costs for executing any such Order shall be borne by the Operating Company.

1.14 New Roads and Street Works Act 1991 (as amended)

- 1.14.1 For the purposes of this Contract all expressions common to the New Roads and Street Works Act 1991 and the Transport (Scotland) Act 2005 and the Transport (Scotland) Act 2019 and Schedule 1 Conditions of Contract, Clause 1 General, 1.14 New Roads and Street Works Act 1991 (as amended), 1.14.1 to 1.14.3 shall have the same meaning as that assigned to them by the New Roads and Street Works Act 1991 as amended by the Transport (Scotland) Act 2005 and by the Transport (Scotland) Act 2019 unless the context otherwise shall require a different meaning.
- 1.14.2 In respect of the New Roads and Street Works Act 1991 as amended by the Transport (Scotland) Act 2005 and by the Transport (Scotland) Act 2019 the Scottish Ministers have delegated and do hereby delegate to the Operating Company those Statutory Functions in respect of the New Roads and Street Works Act 1991 as amended by the Transport (Scotland) Act 2005 and by the Transport (Scotland) Act 2019 as stated in Schedule 2 Scope, Section 1 Introduction, 1.3 Statutory Functions Delegated to the Operating Company.
- 1.14.3 Thereafter the Scottish Ministers shall notify the Operating Company from time to time in writing of any changes required in respect of such delegated Statutory Functions.
- 1.14.4 The changes to the Statutory Functions referred to in Schedule 1 Conditions of Contract, Clause 1 General, 1.14 New Roads and Street Works Act 1991 (as amended), 1.14.3 are deemed to be incorporated into Schedule 2 Scope, Section 1 Introduction, 1.3 Statutory Functions Delegated to the Operating Company of this Contract of this Contract when notice is given to the Operating Company under Schedule 1 Conditions of Contract, Clause 1.14 New Roads and Street Works Act 1991 (as amended), 1.14.3.

1.15 Non corrupt practices

- 1.15.1 The Operating Company warrants that it has not and shall not:

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- (a) Offer, give or agree to the giving of any gift or consideration of any kind to any person or entity as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract by the Operating Company or any other contract with the Scottish Ministers or for showing or forbearing to show favour or disfavour of any person or entity in relation to this Contract or any other contract between the Scottish Ministers and the Operating Company, or
- (b) Enter into this Contract or any other contract with the Scottish Ministers in connection with which commission has been paid or agreed to be paid by the Operating Company or on its behalf or to its knowledge to any person or entity unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Scottish Ministers, or
- (c) Commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or Section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or commit any breach of the Data Protection Act 2018 by unlawfully processing personal data in connection with any blacklisting activities.

1.15.2 Any breach of the prohibitions referred to in this Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices or the commission of any offence under the Bribery Act 2010 or any similar or related Legislation in respect of fraudulent acts by the Operating Company in relation to this Contract or any other contract with the Scottish Ministers shall entitle the Scottish Ministers to terminate this Contract in accordance with Schedule 1 Conditions of Contract, Clause 9 Termination.

Thereupon the provisions of Schedule 1 Conditions of Contract, Clause 9 Termination shall have effect as if such breach or offence was expressed as a reason for termination by the other provisions of this Contract. The termination shall be as if made under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.1 and the subsequent procedures and entitlements shall be the same as that for termination under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.1.

In addition to the costs and expenses recoverable by the Scottish Ministers as provided for in the other provisions of this Contract, the Scottish Ministers shall be entitled to recover from the Operating Company any other costs or losses incurred by the Scottish

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Ministers consequent upon such termination under this Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices.

In the event that the Operating Company breaches the prohibitions referred to in this Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices or commits an offence under the Bribery Act 2010 in relation to this Contract or any other contract with the Scottish Ministers, the Operating Company shall not be entitled to payments on this Contract or contracts beyond this Contract (if any) which may be provided for by the other provisions of this Contract.

- 1.15.3 In every sub-contract for any part of the Operations the Operating Company shall incorporate provisions that:
- (a) Impose on the contractor, sub-contractor and or supplier of any tier liabilities substantially similar to those imposed on the Operating Company by Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices, 1.15.1 and 1.15.2, and
 - (b) Entitle the Operating Company to determine the sub-contract on terms equivalent to those contained in the other provisions of this Contract.
- 1.15.4 The Operating Company will be held liable for the actions or lack of action of any contractor, sub-contractor and or supplier of any tier should a sub-contractor breach the requirements of this Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices.
- 1.15.5 In the event of any breach by any sub-contractor of any tier of any of the liabilities referred to in Schedule 1 Conditions of Contract, Cause 1 General, 1.15 Non Corrupt Practices, 1.15.3, the Operating Company shall without prejudice to any of its obligations under this Contract take action in accordance with the terms of the sub-contract to exercise its rights against the contractor, sub-contractor and or supplier of any tier.
- Failure by the Operating Company to take action shall be a reason for termination of this Contract by the Scottish Ministers in accordance with Schedule 1 Conditions of Contract, Clause 9 Termination.
- When the Operating Company exercises its rights against a contractor, sub-contractor and or supplier of any tier in accordance with this Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices, it shall make no claim nor agree to any claim being made on its behalf against the Scottish Ministers for any consequential delays and extra costs arising from the terms of this Contract.

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1.15.6 Any Dispute as to the amount recoverable by the Scottish Ministers from the Operating Company under this Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices, shall be settled in the manner provided by Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes.

1.16 Privacy of information

1.16.1 The Operating Company shall only give information concerning this Contract for publication in accordance with the provisions of this Contract as stated in Schedule 3 Contract Management, Section 6 Disclosure of Information. This includes the disclosure of any information that is required in accordance with Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection.

1.16.2 The Operating Company shall obtain the consent of the Director in relation to any application for award and or accreditation and shall not implement any proposed application for award of accreditation without the consent of the Director.

1.17 Secrecy

1.17.1 Notwithstanding any other provisions of this Contract, the provisions of the Official Secrets Acts 1911 to 1989 shall apply to this Contract and to the Operating Company. The Operating Company shall procure and ensure that all persons employed by it in connection with this Contract are aware that these statutory provisions apply to them during the continuance and after the completion or earlier termination of this Contract.

1.17.2 Information concerning this Contract and any information obtained either by:

- (a) The Operating Company in the course of the execution of this Contract, or
- (b) Any person employed by the Operating Company in connection with this Contract in the course of such employment,

shall be confidential and shall be used by the Operating Company and by any such person solely for the purpose of this Contract.

Subject to the provisions of this Schedule 1 Conditions of Contract, Clause 1 General, 1.17 Secrecy, such information shall not at any time be disclosed to any third parties by the Operating Company or by any such person without the prior written consent of the Scottish Ministers.

1.18 Freedom of information

1.18.1 The Scottish Ministers may need to disclose or publish all information in respect of the Operations.

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Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2004 as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, the INSPIRE (Scotland) Regulations 2009 and judicial orders and any similar or related legislation that may exist in other jurisdictions ("Information Acts"). The decisions of the Scottish Ministers regarding the disclosure, or otherwise, of information shall be final and conclusive under the terms of the Information Acts.

The Scottish Ministers may disclose all information submitted to them in accordance with this Contract to the Scottish and United Kingdom parliaments and to any other department, office or agency of Her Majesty's governments in Scotland and the United Kingdom and their servants and agents. The Operating Company acknowledges that, when making such disclosures, the Scottish Ministers are unable to impose any restriction upon the information that they provide and that such disclosure shall be deemed not to be a breach of this Contract.

- 1.18.2 Any information regarding the Intellectual Property Rights of each of the Parties shall be deemed commercially sensitive information for the purposes of the Information Acts (to the extent that such information is not available to the general public).
- 1.18.3 The Operating Company shall (and shall ensure and procure that all of its agents, representatives, contractors, sub-contractors and or suppliers of any tier) assist the Scottish Ministers in managing requests for information in relation to this Contract that are made to the Scottish Ministers or to the Operating Company in accordance with the procedures set out in Schedule 3 Contract Management, Section 6 Disclosure of Information, 6.1 Legislation & Disclosure of Information, only where the request is made in connection with the Information Acts. The Scottish Ministers may in addition to the requirements set out in Schedule 3 Contract Management, Section 6 Disclosure of Information, 6.1 Legislation & Disclosure of Information, from time to time, serve on the Operating Company an information notice requiring the Operating Company within such time and in such form as is specified in the information notice, to furnish to the Scottish Ministers such information as the Scottish Ministers may reasonably require relating to such requests for information. The Operating Company acknowledges that in responding to such requests for information, the Scottish Ministers shall be entitled to provide information relating to this Contract in accordance with this Schedule 1 Conditions of Contract, Clause 1 General, 1.18 Freedom of Information.

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1.19 Reference Documents

- 1.19.1 The Operating Company shall comply with the documents identified in this Schedule 1 Conditions of Contract, Appendix 1 Reference Documents.
- 1.19.2 Notwithstanding any date stated in Schedule 1 Conditions of Contract, Appendix 1 Reference Documents, for any Ordered Operations the relevant reference documents are deemed to be the editions current on the date of the Order instructing those Operations.
- 1.19.3 Notwithstanding any date stated in Schedule 1 Conditions of Contract, Appendix 1 Reference Documents, for any Core Operations the relevant reference documents are deemed to be the editions current on the date 30 days prior to the date of execution of those Core Operations.

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2 Operating company's main responsibilities

2.1 Scope of contract

2.1.1 The Operating Company acknowledges that it has not entered into this Contract in reliance on the accuracy or sufficiency of any Supplied Data.

2.1.2 This Contract sets out the entire rights and liabilities of the Operating Company and the Scottish Ministers relating to the subject matter of this Contract and except where it may be expressly referred to or referenced herein supersedes all prior representations, understandings, agreements, factual matrix and or documents between or by the Operating Company and or the Scottish Ministers in regard to the Operations and to any other matters covered by this Contract except in respect of any fraudulent misrepresentations made by either party.

2.1.3 The Operating Company is deemed:

- (a) To have inspected and examined the Unit and its surroundings and information available in connection therewith,
- (b) To have inspected and examined and satisfied itself with the condition and suitability of any goods, materials, plant and or equipment handed over or to be handed over to it by the Scottish Ministers or any other party, and information available in connection with the Unit,
- (c) To have satisfied itself, before submitting its Final Tender Submission, as to the form and nature of the Unit, the conditions materials and circumstances likely to be encountered on the Unit, the extent and nature of the work, and the materials and all other resources necessary, for the completion of the Operations in accordance with the provisions of this Contract,
- (d) To have satisfied itself, before submitting its Final Tender Submission, as to the means of communication with and access to the Unit,
- (e) To have satisfied itself, before submitting its Final Tender Submission, as to the accommodation that it may require, including the adequacy and suitability of the Premises (if applicable) provided by the Scottish Ministers as accommodation for its Central Office and main depot and other purposes and of all provisions relating to availability and use of the Premises detailed in Schedule 3 Contract Management, Section 3 Offices, Depots and Other Infrastructure and in the separate lease agreement(s) (if any) between the Scottish Ministers and the Operating Company,

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- (f) To have obtained for itself, before submitting its Final Tender Submission, all necessary information as to risks, contingencies and all other circumstances that might have influenced or affected its obligations and any payment received, and
- (g) To have satisfied itself of the correctness and sufficiency of its rates and prices before submitting its Final Tender Submission.

2.1.4 Unless otherwise stated in this Contract, the rates and prices in this Contract cover all of the Operating Company's risks and obligations under this Contract.

2.1.5 The Scottish Ministers neither warrant nor take responsibility for:

- (a) The accuracy of any information in connection with the matters referred to in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.1 Scope of Contract, 2.1.2 and 2.1.3, and or
- (b) The condition and or suitability of any goods, materials, plant or equipment, that may have been provided by, or on behalf of, the Scottish Ministers or any other source.

The Operating Company is deemed not to have relied on any information referred to in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.1 Scope of Contract, 2.1.1 to 2.1.3 except to the extent that it has satisfied itself under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.1 Scope of Contract, 2.1.2 as to the accuracy of such information for the purposes of the Operations.

The Scottish Ministers do not warrant that any condition or circumstance prevails at the Unit and its surroundings, whether a condition applying generally or to the particular parts or positions.

2.1.6 The Operating Company shall, in return for having undertaken and performed the Operations in accordance with this Contract, be paid the Contract Price.

2.1.7 The Operating Company shall execute all Operations with due expedition and all due diligence and without delay.

2.1.8 Subject to the other provisions of this Contract, the Operating Company shall not make any alteration in, addition to or omission from any Order issued under this Contract.

2.1.9 The Operating Company does not have the exclusive right to undertake work on the Unit.

2.1.10 Extracts from Other Contracts may be provided to the Operating Company by the Director. The Operating Company shall provide such information, co-operation and

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assistance as may be required to enable any work to be carried out under Other Contracts to be co-ordinated with the Operations and to enable the Scottish Ministers to comply with Other Contracts. The Operating Company shall not do or omit to do anything or permit to be done or omitted by those for whom the Operating Company is responsible, anything which would place the Scottish Ministers in breach of their obligations under Other Contracts to the extent that such obligations relate to or are connected with the Operations and or render the Scottish Ministers liable under Other Contracts to pay losses, costs and or damages of whatsoever nature. The Operating Company shall as a minimum:

- (a) Liaise and co-operate with all contractors for Other Contracts,
- (b) Ensure that so far as practicable no disruption is caused to any work being carried out by contractors for Other Contracts on the Unit, and
- (c) Co-ordinate the Operations with any work carried out or to be carried out by contractors for Other Contracts.

The Operating Company shall do nothing which will put the Scottish Ministers in breach of their obligations under Other Contracts.

2.2 Key obligations

2.2.1 The Operating Company shall be responsible for the acts, Defaults, omissions and negligence of its Contract Personnel, advisers, agents, representatives, contractors, sub-contractors and or suppliers of any tier and other persons engaged by it in any capacity whatsoever, as if they were the acts, Defaults, omissions or negligence of the Operating Company.

2.3 Knowledge

2.3.1 Without limitation to its actual knowledge, the Operating Company shall for the purposes of this Contract be deemed to have such knowledge in respect of the Operations as is held by the following Contract Personnel:

- (a) The Designer,
- (b) The Checker,
- (c) The Road Safety Manager, and
- (d) Any other persons and employees engaged by it in any capacity.

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2.4 Delegation of statutory functions to the operating company

- 2.4.1 The Director may from time to time delegate to the Operating Company any additional Statutory Functions that are allowed to be contracted out in accordance with the Legislation listed in Schedule 2 Scope, 1.3 Statutory Functions Delegated to the Operating Company, Attachment 1.7 Statutory Functions Delegated to the Operating Company subject to the Director giving the Operating Company not less than four weeks' prior written notice.
- 2.4.2 The Director may from time to time delete or vary the existing delegation of any Statutory Function to the Operating Company.
- 2.4.3 To the extent that such delegation, deletion or variation is in respect of any of the Statutory Functions specified in this Contract, no compensation is due or shall be paid to or by either the Scottish Ministers or the Operating Company for such delegation, deletion or variation.

2.5 Assignment, subcontracting and key supplier / key sub-contractor guarantees

- 2.5.1 This Contract shall be personal to the Operating Company.
- The Operating Company shall not assign, novate, or otherwise transfer, by any means whatsoever, any right, interest or obligation which it may have in or under this Contract without the prior written consent of the Scottish Ministers and any Default in respect of this requirement shall, without limiting any other rights, powers or claims of Scottish Ministers, entitle Scottish Ministers to terminate this Contract for Default in accordance with the provisions of Schedule 1 Conditions of Contract, Clause Termination, Clause 9.1.2.
- 2.5.2 Following the Operations Commencement Date, the Operating Company shall advertise through the Public Contracts Scotland advertising portal all new sub-contracting opportunities related to the execution of this Contract that the Operating Company had not already planned to award to a particular sub-contractor or supplier when preparing its Final Tender Submission for the award of this Contract.
- 2.5.3 Except where otherwise provided by this Contract, the Operating Company shall not sub-contract any part of the Operations without the prior written consent of the Scottish Ministers.
- 2.5.4 The provision of labour on a labour-only basis does not require the written consent of the Scottish Ministers under the provisions of Schedule 1 Conditions of Contract, Clause 2

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Operating Company's Main Responsibilities, 2.5 Assignment, Subcontracting and Key Supplier / Key Sub-Contractor Guarantees, 2.5.3.

- 2.5.5 No sub-contracting or other transfer of any duty, function, liability, obligation or other responsibility (or any part thereof) incumbent upon the Operating Company in terms of this Contract by any means whatsoever to any third party by the Operating Company shall have the effect of relieving the Operating Company of any such duty, function, liability, obligation, or responsibility (or any part thereof) owed to the Scottish Ministers in terms of this Contract, notwithstanding that the Scottish Ministers have consented to such, sub-contracting or other transfer and the Operating Company shall at all times be bound fully to implement this Contract.
- 2.5.6 The Operating Company shall prepare and keep up to date at all times a List of Subcontractors and Suppliers who will perform Operations of any kind under the Contract. The Operating Company shall update the List of Subcontractors and Suppliers no later than two (2) Working Days after the Operating Company has entered into a duly executed subcontract and or agreement for Operations of any kind under the Contract.
- 2.5.7 The Operating Company shall provide to the Scottish Ministers, when they so request, a copy of the agreement or other document that records any permitted assignment, sub-contracting, or other transfer arrangements with a third party of any of the Operations under or in terms of this Contract including the List of Subcontractors and Suppliers no later than two (2) Working Days after receiving a written request from Scottish Ministers, the Director, the Performance Audit Group or any other person duly authorised by the Director to act on his behalf in this regard.
- 2.5.8 The Operating Company shall procure that each Key Supplier / Key Sub-Contractor shall execute a guarantee in favour of the Scottish Ministers in the form contained in and forming Schedule 1 Conditions of Contract, Appendix 2 Form of Key Supplier / Key Sub-Contractor Guarantee or in such other form as may be proposed by the relevant Key Supplier / Key Sub-Contractor and to which the Scottish Ministers, acting reasonably, may consent.
- 2.5.9 The Operating Company shall deliver each Key Supplier / Key Sub-Contractor Guarantee, duly executed on behalf of the relevant Key Supplier / Key Sub-Contractor, to the Scottish Ministers, together with a true and complete copy of the relevant supply contract or subcontract (including the pricing information) all within twenty (20) Working Days of the date when the Operating Company entered into a contract including acceptance of a tender with the relevant Key Supplier / Key Sub-Contractor.

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- 2.5.10 Provided, that if the supply contract or sub-contract between the Operating Company and the Key Supplier / Key Sub-Contractor provides that the required Key Supplier / Key Sub-Contractor Guarantee will only be issued following the supply or completion by the Key Supplier / Key Sub-Contractor of the relevant items or work, the Key Supplier / Key Sub-Contractor Guarantee, duly executed, may be delivered to the Scottish Ministers no later than twenty (20) Working Days after the date on which the Key Supplier / Key Sub-Contractor supplied or completed the relevant items or work.
- 2.5.11 If a Key Supplier / Key Sub-Contractor Guarantee has not been executed and delivered to the Scottish Ministers in the manner and within the applicable period specified in this clause, then any payment from the Scottish Ministers to the Operating Company pursuant to this Contract which is due at the date by which the Key Supplier / Key Sub-Contractor Guarantee should have been delivered pursuant to this clause, shall, notwithstanding any other provision of this Contract but subject to clause 2.5.12 immediately below, cease to be due and payable to the Operating Company until such Key Supplier / Key Sub-Contractor Guarantee has been duly executed and delivered by the Operating Company to the Scottish Ministers.
- 2.5.12 Where, pursuant to the exercise of their rights under clause 2.5.11, the Scottish Ministers intend to withhold any payment and/or make any deduction from any payments and/or make any deduction from any payments to the Operating Company, the Scottish Ministers shall issue an appropriate payment notice and/or pay less notice in terms of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract. The maximum amount that the Scottish Ministers may withhold and/or deduct under 2.5.11 in respect of any single Key Supplier / Key Sub-Contractor Guarantee shall be twenty thousand Great British Pound and zero pence (GBP 20,000). The Operating Company's obligation under this Clause 2.5 Assignment, Subcontracting and Key Supplier / Key Sub-Contractor Guarantees to procure Key Supplier / Key Sub-Contractor Guarantees shall cease to apply in respect of any Key Supplier / Key Sub-Contractor who has become insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 (As amended).

2.6 General obligations

- 2.6.1 The Operating Company shall undertake and complete all Operations in respect of the Unit in accordance with the terms of this Contract including the Reference Documents. All activities, duties, obligations and responsibilities of the Operating Company set out in this Contract are Core Operations, unless stated as being subject to an Order. All

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activities, duties, obligations and responsibilities of the Operating Company set out in this Contract and stated as being subject to an Order are Ordered Operations.

The Operating Company shall provide everything necessary, whether of a temporary or permanent nature, including all resources required in and for Operations, so far as the necessity for such provision is specified in or can be inferred from any Order and this Contract.

Such resources shall include without limitation:

- (a) The provision of all personnel of appropriate level of skill, competence and where necessary holding the appropriate formal qualifications,
- (b) The provision of all Constructional Plant,
- (c) The provision of all materials,
- (d) The provision of all offices, depots, stores and other such facilities, and
- (e) The provision and maintenance of all temporary traffic management arrangements.

2.6.2 The Operating Company shall immediately take such action as necessary for the:

- (a) Saving of life,
- (b) Protection of property,
- (c) Safety of the Operations,
- (d) Safety of users of the Unit, and
- (e) Safety and protection of the Unit.

2.6.3 During each Winter Service Period, all vehicles actively involved in maintenance and management Operations shall be fitted with winter tyres on all wheels.

2.6.4 If at any time the Scottish Ministers consider that any arrangements of the Operating Company are insufficient for the proper discharge of its obligations under this Contract, they will in writing notify the Operating Company, explaining why such a view is held. The Operating Company shall thereupon, at its own expense, take such remedial actions as necessary.

2.6.5 The Operating Company shall provide to the Director and the Performance Audit Group unrestricted access, and all necessary facilities and resources to permit the undertaking of such audits and inspections of the Operating Company's financial accounts, and other financial and cost records relating to this Contract, as the Director may consider necessary from time to time.

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2.7 Operating company contract personnel

2.7.1 Prior to the Commencement of Service Date, the Operating Company shall prepare an electronic register listing all members of Contract Personnel in accordance with the requirements of Schedule 3 Contract Management, Section 2 Key People.

The Operating Company shall prepare and submit the register to the Director.

The Operating Company shall obtain the Director's written consent for any Contract Personnel to be engaged in Professional Services prior to commencing such Professional Services.

2.7.2 The Operating Company shall maintain and update the register referred to in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.7 Operating Company Contract Personnel, 2.7.1 and Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.3 for the duration of the Contract Period.

Where applicable, the register shall show the start and end dates of the period during which each member of staff was allocated each job title.

2.7.3 The Operating Company and Contract Personnel who are carrying out Operations on or adjacent to the Unit (but excluding Contract Personnel who work solely within an office) shall have accreditation under the Construction Skills Certification Scheme. The Operating Company shall ensure that this requirement to have accreditation under the Construction Skills Certification Scheme applies to (and is adhered to by) all Works Contractors at the location of all Works.

2.8 Operating company

2.8.1 The Operating Company shall exercise professional skill, care and diligence in carrying out and or procuring any Design and or in the performance of Professional Services forming part of the Operations and shall otherwise ensure that the Operations meet the requirements of this Contract.

2.8.2 The Operating Company is responsible for the adequacy and safety of all Design, Operations, Defects Correction Operations, and other activities forming part of the Operations and is responsible for the management, coordination and or integration of all Design.

2.8.3 No claim by the Operating Company is admissible on the ground that the Operating Company relied upon any audit, inspection or supervision conducted, or any consent or approval issued or deemed issued, by or on behalf of the Scottish Ministers when signing

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any Certificate required to be provided under this Contract or when discharging any of its other obligations in accordance with this Contract.

2.8.4 The Operating Company is not entitled to rely on any such audit, inspection, supervision, consent or approval of the Scottish Ministers:

- (a) When signing any Certificate required to be provided under this Contract,
- (b) When discharging any of its other obligations in accordance with this Contract, or
- (c) As a justification for failure to sign any such Certificate or discharge any of its other obligations in accordance with this Contract.

2.9 Addition and removal of things to and from unit

2.9.1 The Operating Company shall carry out Core Operations on any additions to the Unit made during the Contract Period. There shall be no adjustment to payments under this Contract either in respect of such additions or in respect of removal of things during the Contract Period, apart from those provided for under Schedule 4 Measurement, Rates & Prices, Chapter IV Units and Methods of Measurement, Series 6700 Changes in Scope of Operations.

2.10 Investigations, design, design checks and certification

2.10.1 The Operating Company shall carry out Investigations and Design required for Core Operations and for Ordered Operations. All Investigations and Design shall be carried out in accordance with the requirements of this Contract:

- (a) Investigations and Design included within Core Operations is as follows:
 - (i) Investigations and Design related to Damage to Crown Property with a value of repair excluding Design and Investigations of not more than fifty thousand Great British Pounds and Zero Pence (£50,000), estimated in accordance with Schedule 4, Measurement Rates & Prices, Chapter III Preparation of the Schedule of Rates and Prices and Schedule 4, Appendix 1 Rates and Prices.
 - (ii) Investigations and Design for Schemes where the Estimated Construction Value of the Scheme is not more than fifty thousand Great British Pounds and Zero Pence (£50,000).
 - (iii) Investigations and Design required for all other Core Operations.
- (b) Investigations and Design for Ordered Operations shall be as set out in an Order.

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2.10.2 The Operating Company shall bear responsibility for a Design when it has carried out the whole or any part of the Design itself or it has procured the carrying out on its behalf of the whole or any part of the Design.

If the Designer and Checker fail to agree on any matter relating to the Design or this Contract, the Operating Company shall, subject to the prior written consent of the Scottish Ministers, appoint and employ no later than five (5) Working Days after such consent is received a person of appropriate professional skill to resolve the matter within a time to be determined by the Director and notified within such consent.

The Director will consent to, or object to, such proposed appointment within fourteen (14) days of being requested to do so in writing by the Operating Company.

In the event that the Director so objects to such a proposed appointment, the Operating Company shall nominate another person, the appointment being subject to the foregoing provisions of this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibility, 2.10 Investigations, Design, Design Checks and Certification.

2.10.3 The Operating Company shall complete, register and retain within the Central Office all Certificates (including associated data) and information (including Drawings, calculations and all other associated documents) required by this Contract in respect of the Operations for which the Operating Company has produced or procured a Design.

The Operating Company shall ensure that no part of any Operations on a Site in respect of a Design shall commence unless such completion and registration of Certificates has been effected.

The Director may require the Operating Company from time to time to provide to the Director and the Performance Audit Group copies of registers and other evidence of:

- (a) Registration,
- (b) Certificates (including associated data), and
- (c) Information (including Drawings, calculations and all other associated documents).

2.10.4 Where, during the carrying out of any Operations for which the Operating Company has undertaken or procured a Design, the Operating Company encounters anything which invalidates any of the Design (or part of the Design) assumptions, or requires amendments to its method of Operations on a Site in respect of such Design (or part of the Design), it shall immediately notify the Director in writing of the matter.

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No later than ten (10) Working Days after such notification, the Operating Company shall submit in writing to the Director for his written consent details of any such amendments proposed to be made to such Design or Operations on a Site, and shall obtain an amending Order from the Director prior to making the proposed amendment. Such Order shall have no value and the Operating Company has no entitlement to any additional payment and claims in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payment and Claims.

The Operating Company shall provide any further information required or requested by the Director prior to, or as a condition of, any such grant of written consent before such written consent is granted.

All risks, including to all costs, time and Operations, in connection with and resulting from any such amendment to a Design or Operations pursuant to this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.10 Investigations, Design, Design Checks and Certification shall be borne by the Operating Company.

- 2.10.5 To the extent that any Certificate requires the Operating Company and the Designer to certify that Operations for which the Operating Company has undertaken and or procured the Design (or any part of the Design) have been constructed, completed and maintained in accordance with this Contract, the Operating Company shall in undertaking the Operations ensure and procure that:
- (a) Both the Operating Company and the Designer supervise such Operations, including sampling and testing required by this Contract, in such a manner and to such extent as may be required by the Director,
 - (b) The Designer notifies the Operating Company in writing (providing copies simultaneously to the Director and the Performance Audit Group) of any change in the Operating Company's arrangements which are necessary in the opinion of the Designer for the proper discharge of the Operating Company's Design obligations in respect of this Contract, and
 - (c) The Designer notifies the Operating Company in writing (providing copies simultaneously to the Director and the Performance Audit Group) of any sample and test which the Designer considers necessary in connection with this Contract and that the Operating Company thereafter, and without delay after such notification, executes any such sample, test and record and preserves in the Central Office all results thereof.

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2.10.6 Where additional work of Design arises as the unavoidable result of any Order, the Operating Company is bound to undertake and is responsible for such additional work of Design. The provisions of this Contract concerning Design apply to any such additional work of Design.

All costs in connection with and resulting from such additional Design shall be borne by the Operating Company where resulting from a Default by the Operating Company.

2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee

2.11.1 The Operating Company shall, not later than thirty (30) days prior to the Commencement of Service Date, provide a Bond and Undertaking validly executed in a self-proving manner by an insurance company or bank in the sum of two million Great British Pounds and Zero Pence (£2,000,000).

The Bond and Undertaking shall be provided by an insurance company or bank acceptable to the Scottish Ministers and shall be in the form of the Bond and Undertaking contained in and forming Schedule 1 Conditions of Contract, Appendix 3 Form of Model Bond & Undertaking and Parent Company Guarantee, or otherwise acceptable to the Scottish Ministers.

The Bond and Undertaking shall be in place until the earlier of:

- (a) The end of the Contract Period, and
- (b) A period of five (5) years from the Commencement of Service Date (the "Initial Bond Term").

The Operating Company shall, not later than ninety (90) days prior to the end of the Initial Bond Term, extend or replace the Bond and Undertaking (the "Further Bond and Undertaking"). The Further Bond and Undertaking shall be provided by an insurance company or bank acceptable to the Scottish Ministers and shall be in the form of the Bond and Undertaking contained in Schedule 1 Conditions of Contract, Appendix 3 Form of Model Bond & Undertaking and Parent Company Guarantee, or otherwise acceptable to the Scottish Ministers and shall be valid and enforceable until the end of the Contract Period.

The provisions of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18 and 5.4.19 shall apply to the Further Bond and Undertaking in the same manner as they apply to the bond and Undertaking.

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Prior to preparing the execution of the Bond and Undertaking, the Operating Company shall submit the proposed Bond and Undertaking, including the name of the guarantor, for the prior written acceptance of the Scottish Ministers.

The obtaining of the Bond and Undertaking and all costs incurred thereby are the responsibility of the Operating Company.

- 2.11.2 It shall be a condition of his Contract, the Operating Company shall deliver a validly executed Parent Company Guarantee in the form set out in Schedule 1 Conditions of Contract, Appendix 3 Form of Model Bond & Undertaking and Parent Company Guarantee. The rights and obligations of the Parties shall have no force or affect unless the Parent Company Guarantee has been properly executed and delivered to the Scottish Ministers.

The Parties acknowledge that if this condition has not been fulfilled any performance by the Operating Company shall be at the risk of the Operating Company and the Scottish Ministers shall not be liable for and the Operating Company irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to any performance of this Contract. Where the Operating Company has failed to fulfil this condition within fourteen (14) days of the Operations Commencement Date the Scottish Ministers shall have the right to terminate the Contract by notice in writing to the Operating Company in accordance with Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract.

2.12 Inspection of the unit

- 2.12.1 The Operating Company shall make and keep itself familiar with the Unit.

2.13 Operations to the satisfaction of Scottish Ministers

- 2.13.1 Everything to be provided by the Operating Company in respect of this Contract, including the mode, manner and speed of executing the Operations, shall be of a kind and conducted in such a manner as is to the satisfaction of the Scottish Ministers.

2.14 Setting out

- 2.14.1 The Operating Company shall be responsible for:
- (a) The proper setting-out of work executed in carrying out the Operations,
 - (b) The correctness of the position, levels, dimensions and alignment of all parts of such work, and
 - (c) The provision of all necessary resources in connection therewith.

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If, at any time during the Contract Period, any error appears or arises in the setting out, position, levels, dimensions or alignment of any part of such work, the Operating Company shall at its own cost rectify such error and any consequences whatsoever of such error.

Any monitoring by the Scottish Ministers of any setting-out or of any position, levels, dimensions or alignment shall not in any way relieve the Operating Company of its responsibility for the correctness of such setting-out or of any such position, levels, dimensions or alignment in accordance with this Contract.

2.15 Safety and security

- 2.15.1 The Operating Company shall, throughout the progress of the Operations, ensure the safety of all persons upon the Unit (so far as such safety is under its control). Accordingly, the Operating Company shall keep the Unit (so far as the Unit is under its control) in a state appropriate to the avoidance of danger to all users.
- 2.15.2 The Operating Company shall, in connection with the Operations, provide and maintain, at its own cost, all lights, guards, fencing, warning signs and watching and security systems controlling access, when and where deemed necessary by the Scottish Ministers, Undertakers, any Statutory Authorities or any other authority for the protection of the Operations or for the safety and convenience of all third parties including the public and all other persons, companies, firms and other organisations entitled to be on the Unit.
- 2.15.3 Where the Scottish Ministers execute work themselves or employ other contractors and similar organisations to execute work on the Unit, they will, in respect of such work:
- (a) Ensure and procure that any such contractors and similar organisations ensure, the safety of all persons entitled to be upon the Unit,
 - (b) Liaise, and ensure and procure that any such contractors and similar organisations liaise, with the Operating Company in respect of their activities on the Unit, and
 - (c) Keep, and ensure and procure that any such contractors and similar organisations keep, the Unit in a state appropriate to the avoidance of danger to such persons.

2.16 Operating company superintendence

- 2.16.1 The Operating Company shall provide all necessary superintendence during the execution of Operations and as long thereafter as required by this Contract.

Such superintendence shall be undertaken by a sufficient number of persons, all of whom shall have sufficient knowledge of the Operations to be executed (including the methods

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and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the execution of the Operations to the satisfaction of the Director.

2.16.2 The Operating Company shall nominate to the Director in writing, for written consent, competent person(s) of appropriate professional skill to act as the Contract Administrator, in accordance with the form of Works Contract used, in all Works Contracts.

2.17 Clearing during and on completion

2.17.1 The Operating Company shall, in the course of undertaking Operations, keep the Unit free from:

- (a) All Constructional Plant and other vehicles not required for the Operations,
- (b) Surplus goods or materials,
- (c) Rubbish, and
- (d) Any obstruction to the free flow of pedestrian and vehicular traffic.

2.17.2 On the completion of Operations and at the Service End Date, subject to Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant, 7.1.10, the Operating Company shall return:

- (a) The Unit, and
- (b) All Premises depots, buildings and areas made available to the Operating Company,

to the condition required by this Contract. The Operating Company shall clear away and remove from the Unit all:

- (c) Constructional Plant and other vehicles,
- (d) Goods or materials,
- (e) Rubbish,
- (f) Temporary work of every kind, and
- (g) Traffic management equipment,

and leave the whole of the Unit in a condition that is to the satisfaction of the Scottish Ministers.

2.18 Discrimination

2.18.1 The Operating Company shall not discriminate unlawfully in any matter relating to employment.

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2.19 Motorways, Letters of Authority and keys

2.19.1 Where the Operating Company are required to undertake Operations which are listed under Clause 14(1) (e) of The Motorways Traffic (Scotland) Regulations 1995 they are permitted do so provided that the Operating Company complies with the requirements of clause 2.19 and any other health and safety requirements in the Contract including Schedule 1 Clause 8.1, Schedule 3 Sections 4.2 and 4.3 and also complies with any other reasonable requirements of the Scottish Ministers.

2.19.2 Where Operations lie under Clause 14(1) (f) of the aforementioned regulations, namely

- Inspection
- Survey
- Investigation
- Census

these activities require authority granted by the Scottish Ministers. The Operating Company Letter of Authority provided within Appendix 13 provides the Operating Company general authority to undertake these Operations. A copy of the Operating Company Letter of Authority should be taken to site to evidence the Operating Company's legitimate presence on the motorway for the activities which are authorised in the Operating Company Letter of Authority issued pursuant to Clause 14(1)(f) of The Motorways Traffic (Scotland) Regulations 1995

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The Operating Company shall take responsibility for:

- (a) The competence training and induction of any Contract Personnel who are to work on motorways of the Unit,
- (b) The planning and management of any activity on such motorways,
- (c) The actions of such Contract Personnel when working on such motorways.
- (d) For satisfying itself to the reason why the activity is being proposed with or without traffic management and have put in place appropriate RAMS,
- (e) How the Contract Personnel shall operate when on the motorway, and
- (f) The specific training on the health and safety risks that has been given to Contract Personnel in order that the activity shall be undertaken safely.

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and the Operating Company shall be fully responsible for the activity and the section of motorway to which it relates until the end date of the activity. All Operations undertaken using the Operating Company Letter of Authority shall be planned and logged in the Operating Company's Management System. The local Police Scotland control room shall be informed prior to any such Operations being undertaken.

2.19.3 If a third party, who is not the Operating Company nor Contract Personnel, makes an application to the Operating Company to access the motorway for an activity, the Operating Company shall direct all such applications to Transport Scotland, who shall act on such matters on behalf of Scottish Ministers. To allow the application to be considered by Transport Scotland, the Operating Company shall ensure that the third party is made aware and ensures that any such application provides full details of the specific activity, which will include (as a minimum):

- type of activity (inspection, survey, investigation or census) to be undertaken
- the location(s) or section of motorway of the specific activity
- start and end dates of the period for which the request is being made

The Operating Company shall ensure that the third party is informed that Transport Scotland, acting on behalf of the Scottish Minister's, will consider the application and permit or reject the application as appropriate

2.19.4 Where the Operating Company requires access to unattended locked premises on the Unit, it shall apply to the Director in writing for such access. The Director will provide keys to the Operating Company, which shall thereafter be responsible for their safe keeping.

Such keys shall be surrendered immediately upon written request from the Director and in any event at the Termination Date. Loss of a key shall be reported immediately to the Director, to enable security precautions to be implemented.

2.20 Access and provision of facilities

2.20.1 The Operating Company shall allow the Scottish Ministers, the Performance Audit Group and any other person authorised by the Scottish Ministers (including other contractors and other third parties) to have unrestricted access at all times, without any requirement for prior notice, to:

- (a) The Central Office,
- (b) The Premises for the North West Unit,

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- (c) All depots, buildings, areas or other places made available to the Operating Company, offices, subordinate offices, depots and workshops belonging to or under the control of the Operating Company,
- (d) All other places where work is being prepared or executed (including places where the Design is being prepared and or executed),
- (e) Documents and Records,
- (f) Materials being manufactured or articles and machinery obtained or being obtained for, or in connection with, the Operations,
- (g) Operations,
- (h) The Unit, and
- (i) All files, documents, information and all other data produced by the Operating Company as part of, or in connection with, the execution of the Operations.

The Operating Company shall afford every facility for, and every assistance in obtaining, such access and or shall procure that such access is granted.

2.21 Rate of progress

2.21.1 Where, for any reason that does not entitle the Operating Company to an extension of time, the rate of progress of all or any of the Operations is at any time in the opinion of the Scottish Ministers too slow to ensure completion of the relevant Operations by the time prescribed in this Contract or any Order or by the extended time for completion referred to in this Contract, the Scottish Ministers shall so notify the Operating Company in writing.

The Operating Company shall thereupon:

- (a) Obtain consent from the Scottish Ministers to take measures; and
- (b) Take such measures,

to expedite progress to allow completion of those Operations by the prescribed time or extended time.

The Operating Company is not entitled to any additional payment for taking measures required under this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities.

2.22 Removal of operating company's employees

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2.22.1 The Operating Company shall employ only persons who are skilled and experienced in their several trades and callings.

The Scottish Ministers are entitled to object to, and may at any time require the Operating Company to remove from the execution of the Operations by written notice to such effect to the Operating Company, any person employed thereon who, in the opinion of the Scottish Ministers, has:

- (a) Misconducted himself,
- (b) Been incompetent,
- (c) Been negligent in the performance of his duties whether by act or omission,
- (d) Failed to conform with any particular provisions with regard to safety set out in this Contract, or
- (e) Persisted in any conduct that is prejudicial to safety or health.

2.22.2 The Operating Company:

- (a) Shall immediately comply with any such requirement and
- (b) Shall ensure that such person is not again engaged by the Operating Company in any capacity upon the Unit or in respect of the Operations, without the prior written permission of the Scottish Ministers.

2.22.3 In the event of any such removal, the Operating Company shall not delay, suspend, terminate or withhold the performance of any of its obligations under this Contract and shall remain bound to implement its obligations in full.

2.22.4 The Scottish Ministers shall have no liability to the Operating Company in respect of any costs or expenses incurred by the Operating Company as a result of any requirements of the Scottish Ministers pursuant to Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.22 Removal of Operating Company's Employees.

2.23 Interference with adjoining land and properties

2.23.1 Except where this Contract provides otherwise, the Operations shall be executed so as not to interfere with:

- (a) The convenience of all third parties including the public,
- (b) Access to public or private roads, footpaths or properties, and
- (c) Occupation of adjoining land or properties, whether in possession of the Scottish Ministers or any other person.

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- 2.23.2 The Operating Company shall take all necessary measures to prevent damage, loss, injury or nuisance caused by, or in connection with, the Operations.
- 2.23.3 All parts of the Operations shall be carried out without unreasonable noise and disturbance and the Operating Company shall be responsible for any liability on account of noise or other disturbance or nuisance created whilst executing Operations under this Contract.
- 2.23.4 The Operating Company shall fulfil the commitments set out in the environmental statements, if any, contained in Schedule 2 Scope, Section 1 Introduction in connection with any watercourses, drains, waterways and bodies of water to prevent any:
- (a) Interference with the supply to or abstraction from such sources,
 - (b) Silting,
 - (c) Erosion of their beds or banks, and
 - (d) Pollution of the water,
- which would affect adversely the quality or appearance thereof or cause injury or death to animal, aquatic or plant life.
- 2.23.5 The Operating Company shall indemnify and keep indemnified the Scottish Ministers against any claims, demands, proceedings, damages, costs, charges and expenses whatsoever in relation to any of the matters, liabilities and responsibilities referred to in, and or in respect of breach of:
- (a) Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.23 Interference with Adjoining Land and Properties, 2.23.1, 2.23.2, 2.23.3 and 2.23.4, and
 - (b) Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.24 Avoidance of Damage to Roads, 2.24.1 and 2.24.2.

2.24 Avoidance of damage to roads

- 2.24.1 The Operating Company shall use all reasonable means to prevent any of the roads and bridges on the routes leading to the Unit from being subjected to extraordinary traffic within the meaning of Section 96 of the Roads (Scotland) Act 1984 by any traffic of the Operating Company.
- 2.24.2 The Operating Company shall be liable for all claims for damage to any road or bridge on routes leading to, or within, the Unit caused by extraordinary traffic, as described in

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Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.24 Avoidance of Damage to Roads, 2.24.1.

Such liability shall include any claims made by any Operational Partner directly against the Scottish Ministers pursuant to any Legislation and the Operating Company shall negotiate and pay all claims arising out of such damage.

- 2.24.3 In undertaking Operations, the Operating Company shall select routes and use vehicles and restrict and distribute loads so that:
- (a) Any extraordinary traffic, as described in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.24 Avoidance of Damage to Roads, 2.24.1, as shall inevitably arise from the moving of manufactured articles, fabricated articles, equipment, and material to or from and to the Unit shall be limited as far as reasonably possible, and
 - (b) Any damage or injury is not caused to such roads and bridges.
- 2.24.4 The Operating Company is responsible for, and shall pay the cost of, the strengthening of bridges and altering or improving of any road to facilitate the movement of Constructional Plant and associated Operations.
- 2.24.5 Should any damage occur to any bridge or road in the execution of the Operations, the Operating Company shall notify the Scottish Ministers in writing of the event as soon as it becomes aware of such damage or of a claim from an authority entitled to make such claim.
- 2.24.6 Where under any Legislation a haulier is required to indemnify the relevant authority against damage, the Scottish Ministers shall not be liable for any claim in respect thereof or in relation thereto.
- Should any claim, in the opinion of the Scottish Ministers, be due to any Default on the part of the Operating Company to observe and perform its obligations under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.24 Avoidance of Damage to Roads, 2.24.1, then the amount notified in writing to the Operating Company by the Scottish Ministers to be due to such Default shall be paid by the Operating Company to the Scottish Ministers or deducted from any sum due, or that may become due, to the Operating Company.
- 2.24.7 Without prejudice to the provisions of Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.24 Avoidance of Damage to Roads, 2.24.1, 2.24.2, 2.24.3 and 2.24.4, the Operating Company shall comply with, and ensure

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that its contractors, agents, representatives, suppliers and sub-contractors of any tier, shall comply with the requirements of the relevant road order for routing of vehicles.

In specifying routing requirements, the Scottish Ministers do not warrant in any way that such route(s) will be available in full or in part for the whole or any part of the Contract Period.

The Operating Company shall provide, erect and maintain in good condition traffic signs of a type consented to by the Scottish Ministers giving effect to these routing requirements.

2.25 Operations with government or local authority establishments

2.25.1 Where Operations are undertaken within the boundaries of a government or Local Authority establishment, the Operating Company shall comply with any procedures, rules and regulations of such establishment.

2.26 The construction (design and management) regulations

- 2.26.1 For the purpose of this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.26 The Construction (Design and Management) Regulations the terms "client", "construction phase plan", health and safety file, "designer", "principal contractor" and "contractor" shall have the meanings assigned to them in the CDM Regulations.
- 2.26.2 The Operating Company shall be responsible for acting as Principal Designer and shall appoint other organisations to be designer(s) as shall be required during the Contract Period for Operations.
- 2.26.3 The Operating Company shall be responsible for acting as Principal Contractor and shall appoint other organisations to be contractor(s) as shall be required during the Contract Period for Operations.
- 2.26.4 The Operating Company shall notify the Scottish Ministers in writing of the appointment of designer(s) and/or contractor(s) and any changes made during the Contract Period for Operations.
- 2.26.5 Where the CDM Regulations apply to Works undertaken by a Works Contractor, the Operating Company is appointed to act in the role of Principal Designer for Works Contracts. The Works Contractor will be appointed to act in the role of Principal Contractor for Works Contracts.

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- 2.26.6 When taking any actions in any role for which it is responsible under the CDM Regulations, the Operating Company shall record in writing that such actions are being taken in accordance with the provisions of the CDM Regulations and the role under which the actions are taken.
- 2.26.7 Any action required by the Principal Designer and/or Principal Contractor pursuant to Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.26 The Construction (Design and Management) Regulations 2.26.2 to 2.26.6, with particular reference to any alteration or amendment to the Construction Phase Plan, shall not entitle the Operating Company to any additional payment or extension of time for such provision and action.
- 2.26.8 The Operating Company shall comply with the requirements of Schedule 2 Scope, Section 8 Design, Construction and Certification of Operations, 8.1 Construction (Design and Management) Regulations 2015 in respect of the client's duties under the CDM Regulations.

2.27 Transfer of undertakings

- 2.27.1 The Parties acknowledge that at the Commencement of Service Date, the TUPE Regulations shall apply to this Contract so that the contract personnel or any contractor, sub-contractor and or supplier of any tier of the operating company engaged by the Scottish Ministers before the Commencement of Service Date, who performed operations which are equivalent or substantially similar to the Operations to be undertaken by the Operating Company, are eligible to transfer to the Operating Company by operation of the TUPE Regulations and become Contract Personnel of the Operating Company on the Commencement of Service Date.

Before and with effect from the Commencement of Service Date, the Operating Company warrants that it shall comply with its obligations under the TUPE Regulations.

The Parties acknowledge that where the TUPE Regulations apply at the Contract Termination Date, the Operating Company has further obligations under the TUPE Regulations and the Operating Company warrants that it shall comply with those obligations.

- 2.27.2 The Scottish Ministers shall not be liable for any failure of the Operating Company to fulfil its obligations under the TUPE Regulations.

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The Operating Company shall pay, provide and settle in full all remuneration and benefits of any kind which are due to the Contract Personnel. These will be paid or provided no later than the date such remuneration and or benefits are due.

2.27.3 At any time during the existence of this Contract or after its expiry or termination, the Operating Company shall provide to the Scottish Ministers in writing such Contract Personnel Information as the Scottish Ministers may require.

Such information shall be provided within four weeks of receipt of any request, or such other reasonable period as agreed by the Scottish Ministers, and in such formats as may be specified by the Scottish Ministers.

2.27.4 The Operating Company shall supply the TUPE Information described in Schedule 1 Conditions of Contract, Appendix 4 TUPE Information, whether requested or not, to the Scottish Ministers in writing (or in such format as may be specified by the Scottish Ministers), at least twenty-four (24) months before the Service End Date. The TUPE Information is only to include details relating to the Contract Personnel and or any contractor, sub-contractor and or supplier of any tier and shall be organised by reference to the particular employer.

2.27.5 After the TUPE Information has been provided, the Operating Company shall notify the Scottish Ministers in writing of any change to any part of the TUPE Information (such information being the "Updated TUPE Information") and shall co-operate with any reasonable requests made by the Scottish Ministers or any prospective tenderer or incoming operating company concerning the TUPE Information and or the Updated TUPE Information all within fourteen (14) days of a change or receipt of a request, whichever is the earlier.

2.27.6 The Operating Company warrants that the TUPE Information, the Updated TUPE Information and Contract Personnel Information, shall be complete and accurate as at the date it is supplied to the Scottish Ministers.

2.27.7 The Operating Company irrevocably waives, and ensures and procures that its contractors, sub-contractors and suppliers of any tier, irrevocably waive the right of confidentiality and any other right that it or they may have in respect of the TUPE Information, the Updated TUPE Information, or the Contract Personnel Information.

2.27.8 The Scottish Ministers may disclose any of the TUPE Information, Updated TUPE Information and Contract Personnel Information to any prospective tenderer and incoming operating company and will ensure that, prior to such disclosure, the prospective tenderer

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or the incoming operating company undertakes not to disclose (unless required by law to do so) such information to any other person other than a person who:

- (a) Is a servant, agent or legal adviser of the prospective tenderer or incoming operating company, and
- (b) Has undertaken not to disclose that information unless required by law to do so.

If after the Service End Date:

- (c) Any contract of employment relating to an individual:
 - (i) Who is not included in the TUPE Information provided under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.14 or otherwise, or
 - (ii) Who is included in the TUPE Information provided under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.14 but who has been identified by the Operating Company as not being eligible to transfer as provided for by Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.14, or
 - (iii) Who has been included in the TUPE Information provided under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.14 or otherwise but has incorrectly been identified as being eligible to transfer by the Operating Company under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.14 (together the "Undisclosed Employees"), shall have effect as if originally made between the Scottish Ministers (or an incoming operating company) and the individual or any individual Undisclosed Employee claims that their contract has this effect, or
- (d) Any collective agreement shall have effect as if originally made between the Scottish Ministers (and or an incoming operating company) and any party to the collective agreement or any party claims that a collective agreement has this effect (together the "Undisclosed Agreements"),

the Scottish Ministers (or an incoming operating company) may forthwith terminate the Undisclosed Agreements and or employment of the Undisclosed Employees.

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2.27.9 The Operating Company shall indemnify and keep indemnified the Scottish Ministers in respect of any claims, costs (including Scottish Ministers' costs), expenses, payments, damages, compensation awards and liabilities arising from:

- (a) Any claim by any person that the transfer of his employment to an incoming operating company or Scottish Ministers involves or would involve a substantial change in working conditions to his material detriment or a claim that it gives or would give him grounds to claim constructive dismissal or any objection to the transfer by a transferring employee,
- (b) The employment of the Contract Personnel and the Undisclosed Employees by the Operating Company,
- (c) The employment of the Undisclosed Employees, the termination of the employment of the Undisclosed Employees or the termination of the Undisclosed Agreements, in each case by the Scottish Ministers or an incoming operating company,
- (d) Any act or omission by the Operating Company in relation to the Contract Personnel,
- (e) Any claim (including any entitlement of any Contract Personnel or Undisclosed Employee consequent on such a claim) by any trade union or staff association or employee representative arising from or connected with any failure by the Operating Company to comply with any legal obligation to such trade union or staff association or employee representative (whether under the TUPE Regulations or otherwise),
- (f) Any failure by the Operating Company to comply with its obligations under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, and
- (g) Any failure by the Operating Company, to comply with its obligations under regulations 11 and 13 of the TUPE Regulations at any time.

The Operating Company shall also indemnify and keep indemnified (if the Scottish Ministers so direct) any incoming operating company in respect of any claims, costs, (including Scottish Ministers cost) expenses, payments, damages, compensation awards and liabilities arising from the above Schedule 1 Conditions of Contract, Clause 2 Operating Company Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.9 (b), (c), (d), (e), (f) and (g).

2.27.10 The Operating Company shall indemnify the Scottish Ministers and be liable for any additional employment costs incurred by the Scottish Ministers and any successor organisation to the Operating Company resulting from inaccurate or incomplete information

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submitted by the Operating Company under this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings. Employment costs referred to in this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings, 2.27.10 shall include costs of terminating employment of individuals and costs resulting from the Scottish Ministers' and the successor organisation's representation at employment tribunals.

2.27.11 The Operating Company shall or shall procure that its contractors, sub-contractors and suppliers of any tier to whom any Contract Personnel transfer under TUPE shall:

- (a) Ensure that all Contract Personnel are engaged on terms and conditions of employment which are no less favourable overall than those applying to them immediately before the Commencement of Service Date;
- (b) Subject to Clause 2.27.11(a) ensure that the terms and conditions offered to any new employees who are being employed or engaged in the Operations are offered after full consultation with the representatives of any recognised trade union of the Contract Personnel or, in the event that there is no recognised trade union for the Contract Personnel, with other elected representatives of such Contract Personnel;
- (c) Subject to Clause 2.27.11(a) and 2.27.13, ensure that any changes to the terms and conditions of the Contract Personnel are achieved after full consultation with the representatives of any recognised trade union of such Contract Personnel or, in the event that there is no recognised trade union for such Contract Personnel, with other elected representatives of such Contract Personnel;
- (d) Use all reasonable endeavours to promote and conduct fair employment practices and best practice in relation to health and safety and equal opportunities and maintain a constructive approach to employee relations, including to the question of trade union recognition.
- (e) Support any government sponsored review of any guidelines, recommendations or requirements in relation to public private partnerships in Scotland and the Operating Company shall provide (and shall procure that any of its contractors, sub-contractors and suppliers of any tier shall provide) the Scottish Ministers with all such advice, information or other support as it shall require to enable it to assist any such reviews;
- (f) Provide in writing to the Scottish Ministers immediately upon a request from the Scottish Ministers subject to its obligations relating to data protection and confidentiality, all such information or documentation as the Scottish Ministers may require acting reasonably to enable it to review and monitor the extent to which the

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Operating Company (or any of its contractors, sub-contractors and suppliers of any tier) complies with the conditions set out in the document “Public Private Partnerships in Scotland – Protocol and Guidance Concerning Employment Issues” and the Statutory Guidance on the Selection of Tenderers and Award of Contracts - Addressing Fair Work Practices, including the Living Wage, in Procurement in each case as amended or replaced from time to time (or any such similar protocol, requirements or guidance issued and with which the Scottish Ministers, the Operating Company or any of its contractors, sub-contractors and suppliers of any tier may be required to comply) and in this Clause 2.27 throughout the period of this Agreement. Such information may include (but shall not be limited to) information relating to:-

- (i) The management arrangements for the Contract Personnel;
 - (ii) The pay, terms and conditions of the Contract Personnel, including approach to supporting the Living Wage (as defined in the Statutory Guidance on the Selection of Tenderers and Award of Contracts - Addressing Fair Work Practices, including the Living Wage, in Procurement) and details of the pension arrangements for Contract Personnel;
 - (iii) The variety of workforce training and development opportunities available to the Contract Personnel;
 - (iv) The framework for and conduct of employee relations relating to the Contract Personnel, including the employer’s approach to trade union recognition and facilities;
 - (v) The health and safety, equal opportunities or other employment related procedures relating to the Contract Personnel;
 - (vi) Approach to stability of employment and hours of work, and avoiding exploitative employment practices, including for example, avoiding inappropriate use of zero-hours contracts; and
 - (vii) Approach to promoting equality of opportunity and flexible working (including for example, practices such as flexi-time and career breaks) and support for family friendly working and wider work life balance;
- (g) Provide to the Scottish Ministers as soon as reasonably practicable any further information or documentation in its possession or under its control (or which it can reasonably obtain) which updates any information or documentation provided in accordance with Clause 2.27.11(f) above; and
- (h) Warrant that the information provided to the Scottish Ministers in accordance with Clauses 2.27.11(f) and 2.27.11(g) above will be full, complete and accurate.

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2.27.12 The Operating Company shall be liable for any costs incurred by the Scottish Ministers and any successor organisation to the Operating Company due to the non-disclosure by the Operating Company of any collective agreements that are subject to TUPE Regulations.

2.27.13 Within the period of six (6) months prior to the Service End Date, the Operating Company shall not:

- (a) Alter the terms and conditions of the Contract Personnel,
- (b) Increase the number of total Contract Personnel assigned to the Operations, or
- (c) Change the identity of the Contract Personnel unless such person is replaced with an individual of equivalent or greater level or skill and experience; without the consent of the Scottish Ministers.

The requirements of this clause shall apply following:

- (d) The occurrence of any circumstance given in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract which enables the Scottish Ministers to terminate the contract, or
- (e) The issue of a notice of termination under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract.

The requirements of this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings do not apply to changes arising in order to comply with nationally agreed settlements or Legislation.

2.27.14 Within twenty-one (21) days of service of any notice of termination under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract the Operating Company shall provide the Scottish Ministers with the Contract Personnel Information and the TUPE Information. The Operating Company shall identify those employees whose details are included in the TUPE Information but who are not eligible to transfer by operation of the TUPE Regulations to the Scottish Ministers or an incoming operating company.

2.27.15 The provisions of this Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.27 Transfer of Undertakings shall survive the expiry or termination of this Contract howsoever arising.

2.28 Relevant organisations

2.28.1. "Relevant Organisation" means any of the authorities, Undertakers and other organisations listed in Schedule 1 Conditions of Contract, Appendix 5 Relevant Organisations and

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includes their successor organisations and any subsidiary or Parent Undertakings (within the meaning of Section 1162 of the Companies Act 2006 save that for the purposes of subsection (2) of that Section an undertaking shall be treated as a member of another undertaking if any shares in that other undertaking are held by a person or that person's nominee by way of security or in connection with the taking of security granted by the undertaking) of such organisations.

2.29 Compliance with relevant organisations

2.29.1 The Operating Company shall make its own arrangements for undertaking Operations which involve or impinge upon the interests of any Relevant Organisation.

When making arrangements for, and when undertaking, such Operations the Operating Company shall comply with the Special Requirements of all applicable Relevant Organisations.

2.29.2 The Operating Company shall make all necessary applications for Possessions, canal stoppages and closures of public rights of way.

2.29.3 The Operating Company shall comply with any requirements of the Relevant Organisation that are specific to any particular Order.

Compliance with the requirements referred to in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.29 Compliance with Relevant Organisations, 2.29.3 shall not relieve the Operating Company of any of its other obligations and liabilities under this Contract.

2.29.4 Fulfilment of such other obligations and liabilities shall not relieve the Operating Company of its responsibility to comply with the Special Requirements of the Relevant Organisation.

2.29.5 Where there is a conflict between the Special Requirements of Relevant Organisations and the provisions or requirements of this Contract and or among the Special Requirements, the Operating Company shall notify the Director. The Director shall resolve such conflict. The Director shall confirm to the Operating Company in writing his decision as to any interpretation of the Special Requirements or any resolution within or between such Special Requirements. Any such decision shall be binding on the Operating Company. Any consequential alteration to the Operations shall be subject to the written consent of the Scottish Ministers.

2.30 Environmental Licences

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- 2.30.1 The Operating Company is the responsible person for the application of Environmental Licences, permits, authorisations and exemptions (collectively known as ‘Environmental Licences’) as applicable to the Operations.
- 2.30.2 The Operating Company shall perform all of the duties as the “responsible person” including:
- (a) Preparing and submitting an application to the Scottish Environment Protection Agency (SEPA), NatureScot, Marine Scotland and any other statutory bodies / environmental regulators, as required, in connection with all Operations including Works Contracts unless otherwise instructed by the Director in writing,
 - (b) Obtaining “an authorisation” from SEPA, NatureScot, Marine Scotland and any other statutory bodies / environmental regulators in connection with all Operations including Works Contracts unless otherwise instructed by the Director in writing,
 - (c) Performing all Operations necessary to secure compliance with the terms of the Environmental Licences unless the Work is performed under a Works Contract
- Required under the relevant environmental legislation as applicable to the Operations.
- 2.30.3 When taking any actions in any role for which the Operating Company is responsible pursuant to Schedule 1 Conditions of Contract, Clause 2 Operating Company’s Main Responsibilities, 2.30 Environmental Licences, the Operating Company shall record in writing the actions performed in accordance with the provisions of Environmental Licences.
- 2.30.4 If Operations necessary to secure compliance with the terms of an Environmental Licence result in a reduction and or increase in the quantity of Inventory contained in the AMPS the Operating Company shall not be entitled to any additional payment and or claims in accordance with Schedule 1 Conditions of Contract, Clause 5 Payment or an extension of time for such provision and action.
- 2.30.5 The Operating Company shall comply with the requirements of Schedule 2 Scope, Section 8 Design, Construction and Certification of Operations, 8.6 Environmental Licences as applicable to all Operations.

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3 Time

3.1 Operations commencement date

3.1.1 The Scottish Ministers will notify the Operating Company in writing of the Operations Commencement Date.

3.2 Mobilisation period

3.2.1 The Scottish Ministers are entitled to issue Orders during the Mobilisation Period.

3.2.2 Any Orders issued prior to the availability of the Asset Management Performance System will be:

(d) Issued in writing independently of the Asset Management Performance System,
and

(e) Subsequently transmitted to the Operating Company by the Director via the Asset Management Performance System after it becomes operational.

3.2.3 During the Mobilisation Period the Operating Company shall acquire the capacity to execute the Operations in accordance with the provisions of this Contract and of any issued Orders.

3.2.4 The Operating Company shall not later than sixty (60) days prior to the Commencement of Service Date establish within the geographical area served by the Unit, at the locations required by this Contract:

(a) All sub-offices necessary to allow the Operating Company to fulfil its obligations under this Contract, and

(b) All depots and other facilities necessary to allow the Operating Company to fulfil its Operations under this Contract,

all in terms of this Contract.

3.2.5 The Operating Company shall comply with the requirements of Schedule 3 Contract Management, Section 3 Office, Depots & Other Infrastructure, 3.1 Operating Company Central Office & Control Room and any agreement(s) (if any) for lease entered into by the Scottish Ministers with the Operating Company regarding establishment of the Central Office.

3.2.6 In accordance with the requirements of Schedule 3 Contract Management, Section 2 Key People, 2.2 Mobilisation Manager, the Operating Company shall appoint a Mobilisation

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Manager to undertake the duties listed in Schedule 1 Conditions of Contract, Clause 3 Time, 3.2 Mobilisation Period commencing on the first day of the Mobilisation Period.

3.2.7 During the Mobilisation Period, the Mobilisation Manager shall:

- (a) Agree arrangements for providing the Operating Company's personnel with access to the Premises (if applicable) to allow the Operating Company to comply with the requirements stated in Schedule 3 Contract Management, Section 3 Office, Depots & Other Infrastructure, Section 3.1 Operating Company Central Office & Control Room in relation to the Central Office and the control room,
- (b) Liaise with the Director regarding the structure, content and functionality of the Operating Company's Unit-specific website, and make proposals to the Director for his consent for the structure, content and functionality no later than thirty (30) days prior to the Commencement of Service Date. Such structure, content and functionality shall as a minimum accord with the requirements in Schedule 3 Contract Management, Section 5 Stakeholder and Customer Engagement, 5.6 Unit Specific Website. The Director will consider the Operating Company's proposals and will either give his consent or request amended proposals from the Operating Company,
- (c) On receipt of the Director's consent to the proposals for the Unit-specific website, ensure that it is created and launched no later than thirty (30) days after the Commencement of Service Date, and
- (d) Review all historic operations procedures, inspection procedures, emergency procedures, maintenance procedures, safety procedures and patrol procedures including as a minimum those listed in Schedule 3 Contract Management, Section 4 Systems, Plans and Records and make recommendations to the Director for his written consent on any changes required to meet the requirements of this Contract. Recommendations shall be submitted to the Director no later than ninety (90) days prior to the Commencement of Service Date.

3.2.8 The Operating Company will contact all Operational Partners, and any other organisation notified to the Operating Company by the Scottish Ministers, at least thirty (30) days prior to the Commencement of Service Date to inform them of the Operating Company's responsibility for the Contract. The Operating Company will also provide all Operational Partners with the Operating Company's contact details at least thirty (30) days prior to the Commencement of Service Date and ensure they also request, record and maintain the contact details of Operational Partners throughout the Contract Period.

3.3 Demobilisation period

- 3.3.1 The Operating Company shall provide a proposal for a person to fulfil the role of Demobilisation Manager to the Director for his written consent no later than eight (8) months before the Service End Date.
- 3.3.2 The Demobilisation Manager shall prepare a Demobilisation Plan which sets out the means (including resources, processes and programmes of Core Operations) by which the Operating Company will perform all Operations required to be complete before the Service End Date and necessary to ensure a handover to an incoming Operating Company and submit to the Director for consent no later than eight (8) months before the Service End Date. The Director will provide comments on the Demobilisation Plan no later than seven (7) months before the Service End Date and the Operating Company shall, if required, amend the Demobilisation Plan in accordance with the Director's comments before executing the Demobilisation Plan during the Demobilisation Period.

3.4 Execution of operations

- 3.4.1 The Operating Company shall execute the Operations from the Operations Commencement Date until the Service End Date or within the Non-Conformance Liability Period as required by the other provisions of this Contract.
- 3.4.2 The Operating Company shall from 00:00 hours on the Commencement of Service Date until 24:00 hours on the Service End Date take full responsibility for:
- (a) The care of the Unit,
 - (b) The care of the Operations, and
 - (c) The safety of all persons entitled to be upon the Unit (so far as such safety is, or should be, within the control of the Operating Company).
- 3.4.3 The Scottish Ministers may at their discretion extend the Service Delivery Period beyond the Initial Service End Date, to a later Service End Date, by a period or a number of periods up to a total extension not exceeding four (4) years, by giving written notice to the Operating Company.
- Such a notice shall be termed a "Notice of Extension".
- Where the Scottish Ministers wish to exercise their discretion to extend the Service Delivery Period they shall issue a Notice of Extension in writing to the Operating Company:

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- (a) No later than twelve (12) months before the Initial Service End Date, or
- (b) If the Service Delivery Period has already been extended by the giving of a Notice of Extension in accordance with this Schedule 1 Conditions of Contract, Clause 6 Change Control, no later than twelve (12) weeks before the Service End Date, specifying within such Notice of Extension the period by which the Service Delivery Period is extended.

3.4.4 The Operating Company may at its option waive the requirements stated in Schedule 1 Conditions of Contract, Clause 3 Time, 3.4 Execution of Operations, 3.4.3 for notice periods.

3.5 Preparation of programmes

3.5.1 The Operating Company shall prepare programmes for the Operations and submit them to the Scottish Ministers in accordance with the requirements of this Contract.

3.6 Revisions of programmes

3.6.1 If at any time the Scottish Ministers consider that the actual progress of any part of the Operations does not comply with any programmes, times, or dates forming part of any Order or of any requirement of this Contract, the Scottish Ministers shall issue an Order to the Operating Company requiring it to produce a revised programme or times showing the modification to the original programme or times necessary to ensure the completion of the Operations in accordance with such revised programmes or times.

Any costs associated with such revisions to programme or times shall be borne by the Operating Company.

3.7 Commencement and completion of schemes and times of working

3.7.1 Within any Order the Scottish Ministers may specify for any Scheme:

- (a) The date for commencement of all or any part of the Operations,
- (b) The time or date for completion of all or any part of the Operations, or
- (c) The time or date for commencement or completion of all or any part of the Works, required to be undertaken by the Operating Company or the Works Contractor as relevant under any such Order.

3.7.2 The Operating Company on receipt of any Order shall proceed with the Operations with due expedition and without delay in accordance with the Order and this Contract.

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3.7.3 Each part of the Operations for any Scheme shall be completed within the time or date for completion stated in each Order (or such extended time or date as may be allowed under Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.4 Extensions of Time for Completion of Operations in respect of such part of the Operations).

3.7.4 Operations for any Scheme shall be undertaken on whatever days and at whatever time or times of day as shall be permitted under this Contract, taking account of any restrictions specified in the Scottish Ministers' Requirements or exceptionally on such other days or other time or times of day as may be specified in any Order for any such Scheme.

3.8 Completion certificates and notification of completion of schemes

3.8.1 For each Scheme, the Operating Company shall, within five (5) Working Days of:

- (a) completion of the whole of the Operations required for a Scheme, and
- (b) these Operations having passed any final test required by this Contract,

issue to the Scottish Ministers a Certificate, in the form shown in Schedule 3 Contract Management, Appendix 7 Control of Core & Ordered Operations, Attachment 7.6 Equality Act Requirements, stating the date on which the Operating Company has, in its opinion, completed its obligations for that Scheme to execute Operations covered by the relevant Order in accordance with this Contract.

3.8.2 For each Scheme, the Operating Company shall, within five (5) Working Days of:

- (a) completion of the whole of the Operations required for a Scheme, and
- (b) these Operations having passed any final test required by this Contract,

record such completion and passage of final tests within the Asset Management Performance System.

4 Quality management

4.1 Examination of work before covering up

4.1.1 Where required in writing by the Director, the Operating Company shall ensure that no part of the Operations is covered up or put out of view without the prior written consent of the Director.

The Operating Company shall afford every opportunity to the Director to:

- (a) Examine or measure any work which is about to be covered up or put out of view, and
- (b) Examine foundations and other constructed elements before permanent work is placed on them.

The Operating Company shall provide written notice to the Director whenever any such work or foundation is ready or about to be ready for such examination. On receipt of such notice, the Director will, if the Director wishes to make such examination, without unreasonable delay and in writing notify the Operating Company accordingly, and make such examination.

4.1.2 The Operating Company shall, when required by the Scottish Ministers under any Order:

- (a) Uncover any part or parts of the Operations,
- (b) Make openings in or through any part or parts,
- (c) Carry out searches, inspections, investigations, tests and trials, and
- (d) Reinstate and make good any part or parts to the satisfaction of the Scottish Ministers.

If any such part or parts have been covered up or put out of view and are found to have been executed in accordance with this Contract, the cost of such uncovering, making of openings, carrying out searches, inspections, investigations, tests or trials, reinstating and making good shall, subject to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.1 Examination of Work Before Covering Up, 4.1.3, be borne by the Scottish Ministers but in all other cases all such costs shall be borne by the Operating Company.

4.1.3 Where the Scottish Ministers issue an Order in accordance with Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.1 Examination of Work before Covering up, 4.1.2 in circumstances where the results of previous un-coverings, making of openings, searches, inspections, tests or trails of other parts of the Operations have shown that

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Operations or any part thereof have not been carried out in accordance with this Contract, the associated costs (including as a minimum the costs of reinstatement and making good) shall be borne by the Operating Company whatever the results.

4.2 Operating company to determine cause of defects

4.2.1 The Operating Company shall, where subject to an Order during the Mobilisation Period, the Service Delivery Period, Annual Periods, and Non-Conformance Liability Period, execute searches, inspections, investigations, tests and trials to determine the cause of any Defect and carry out such Defects Correction Operations as are required by the Scottish Ministers.

Where and to the extent that such Defect is a Non-Conformance or is the result of a Non-Conformance, the cost of all such searches, inspections, investigations, tests, trials and Defects Correction Operations in relation to such Defect shall be borne by the Operating Company.

Where and to the extent that such Defect is not a Non-Conformance or a result of a Non-Conformance, but is:

- (a) A Category 1 Defect or Category 2 Defect, or
- (b) Damage to Crown Property with a value of repair of no more than fifty thousand Great British Pounds and Zero Pence (£50,000),

then the value of all such searches, inspections, investigations, tests, trials and Defects Correction Operations executed by the Operating Company in relation to such a Defect shall subject to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.2 Operating Company to Determine Cause of Defects, 4.2.2 be ascertained in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations for payment to the Operating Company in accordance with this Contract.

4.2.2 Where such searches, inspections, investigations, tests and trials have shown there to be a Defect that is a Non-Conformance or a Defect that is the result of a Non-Conformance, the Scottish Ministers may, subject to an Order, require further such searches, inspections, investigations, tests and trials on any part of the Unit. The costs of such, (including as a minimum the costs of reinstatement and making good) shall be borne by the Operating Company whatever the results.

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4.3 Urgent repairs

4.3.1 Where at any time, in the opinion of the Scottish Ministers, any Defects Correction Operations or other action, work or repair need to be urgently executed in connection with or arising out of the Operations (including where the Scottish Ministers deem there to be any immediate threat to public safety), the Scottish Ministers are entitled, subject to the provisions of Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.4, to execute themselves, or to employ other persons to execute, such Defects Correction Operations or other action, work or repair.

4.3.2 The Scottish Ministers will, following their decision to exercise their entitlement under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.1, notify the Operating Company in writing of such decision and provide details within any such notice of the Defects Correction Operations or other action, work or repair to be executed or which has already been executed by them, or on their behalf.

Any such notice shall not be deemed to be a Remedial Notice, whether or not the requirement for such Defects Correction Operations or other action, work or repair occurs because of the Default of the Operating Company.

4.3.3 Where the Scottish Ministers execute, or arrange for the execution of, Defects Correction Operations or other action, work or repair under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.1 or 4.3.5, then to the extent that in their opinion the Operating Company was liable to execute such Defects Correction Operations or other action, work or repairs at its own expense because the relevant Defect was a Non-Conformance or was the result of a Non-Conformance, all costs and expenses properly incurred by the Scottish Ministers in the execution shall be, at the option of the Scottish Ministers, either:

- (a) Recoverable on demand from the Operating Company as a debt due to the Scottish Ministers, or
- (b) Deducted by the Scottish Ministers from the next payment or any subsequent payment due, to the Operating Company under this Contract.

The Scottish Ministers will notify the Operating Company in writing of such costs and expenses prior to any such demand or deduction by them.

4.3.4 In the period to the Termination Date, the Scottish Ministers are only entitled to execute, or employ other persons to execute, any Defects Correction Operations or other action, work or repair required under Schedule 1 Conditions of Contract, Clause 4 Quality

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Management, 4.3 Urgent Repairs, 4.3.1 if in their opinion (acting reasonably in all the circumstances) the Operating Company is unable or unwilling to execute the same within the timescales which the Scottish Ministers deem to be necessary in the particular circumstances.

- 4.3.5 If, in the event of circumstances arising to which the provisions of Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.1 apply, the Scottish Ministers either do not opt to, or pursuant to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.4 are not entitled to, exercise their option in terms of Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.1 to execute or employ other persons to execute any Defects Correction Operations or other action, work or repair required, they will issue an Order to the Operating Company requiring the Operating Company to execute and complete the Defects Correction Operations or other action, work or repair required.

In respect of any such Order, the Operating Company is not entitled to any extension of time under Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.4 Extensions of Time for Completion of Operations unless the delay is caused by the actions of the Scottish Ministers. If the Operating Company does not execute and complete the Defects Correction Operations or other action, work or repair required in terms of such Order, the Scottish Ministers are entitled, without further notice to the Operating Company, themselves to execute, or employ other persons to execute, such Defects Correction Operations, other action, work, or repair, and to demand of, or deduct from amounts due to the Operating Company, the whole costs and expenses incurred by the Scottish Ministers in terms of and in the manner described in Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.3.

4.4 Removal of improper work and materials

- 4.4.1 The Scottish Ministers may, during the progress of the Operations, issue an Order requiring:
- (a) The removal from the Unit within such time or times as may be specified in such Order of any materials that, in the opinion of the Scottish Ministers, are not in accordance with this Contract and the substitution of compliant materials for such non-compliant materials, or
 - (b) The removal and re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work that, in the opinion of the Scottish Ministers, in respect of materials or workmanship, is not in accordance with this Contract.

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All costs in relation to such Orders shall be borne by the Operating Company.

- 4.4.2 The failure of the Scottish Ministers, or any person acting for them pursuant to the other provisions of this Contract, to reject or disapprove any work or materials shall not prejudice the power of the Scottish Ministers, or any person acting for them, subsequently to reject or disapprove such work or materials.

4.5 Correction of defects

- 4.5.1 The Operating Company shall without delay, following the carrying out by it of any Operations:

- (a) Search for, undertake inspections and investigations concerning, and record, in accordance with the Scottish Ministers' Requirements, all Defects that exist at the commencement of, and/or appear or occur during the relevant Defects Correction Period,
- (b) Execute and record all Defects Correction Operations in accordance with the other provisions of this Contract,
- (c) Execute and record, in accordance with the Scottish Ministers' Requirements, any Defects Correction Operations that, within fourteen (14) days after expiration of the relevant Defects Correction Period, are required of, and notified to, the Operating Company in writing by the Scottish Ministers,
- (d) Maintain, in accordance with the Scottish Ministers' Requirements, Records and registers of all the activities referred to in this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.5 Correction of Defects, and
- (e) Provide from time to time, to the Director and the Performance Audit Group, copies of such Records and registers, within twenty-one (21) days of any request.

- 4.5.2 Defects Correction Operations shall be carried out by the Operating Company at its own expense where and to the extent that, in the opinion of the Scottish Ministers, the relevant Defect is a Non-Conformance or is the result of a Non-Conformance.

- 4.5.3 Where the Operating Company fails to execute, or fails to execute within the time specified in terms of this Contract, any necessary Defects Correction Operations required by this Contract or the Scottish Ministers, the Scottish Ministers are entitled to:

- (a) Execute such Defects Correction Operations themselves, or
- (b) Arrange for the execution of the Defects Correction Operations by other contractors.

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Where and to the extent that such Defects Correction Operations relate to a Defect that is a Non-Conformance or is the result of a Non-Conformance, the Scottish Ministers are entitled, at their option, either to:

- (c) Recover from the Operating Company the costs incurred by the Scottish Ministers in connection with execution of the Defects Correction Operations, either on demand from the Operating Company as a debt due to the Scottish Ministers, or
- (d) Deduct the amount of these costs from the next payment or any subsequent payment, due, to the Operating Company under this Contract.

Where and to the extent that such Defects Correction Operations relate to a Defect that is not a Non-Conformance or is not the result of a Non-Conformance, the Scottish Ministers are entitled, at their option, either to:

- (e) Recover from the Operating Company the additional costs incurred by the Scottish Ministers in connection with the execution of the Defects Correction Operations, either on demand from the Operating Company as debt due to the Scottish Ministers, or
- (f) Deduct the amount of these additional costs from the next payment or any subsequent payment, due to the Operating Company under this Contract.

Where in each case such additional shall be calculated as the costs in excess of the amount that the Scottish Ministers would have been obliged to pay to the Operating Company pursuant to Schedule 1 Conditions of Contract, Clause 5 Payment had the Operating Company executed the Defects Correction Operations in the manner required by this Contract.

4.6 Defects correction certificate

- 4.6.1 Upon the expiry of each Defects Correction Period, and when all relevant Defects Correction Operations referred to in Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.2 Operating Company to Determine Cause of Defects, 4.2.1 and 4.5 Correction of Defects, 4.5.1 to 4.5.3 have been completed, the Operating Company shall issue to the Scottish Ministers, in a form to be consented to by the Director, a Certificate stating the date on which the Operating Company has, in its opinion, completed its obligations to execute Defects Correction Operations in connection with the Operations covered by the relevant Order in accordance with this Contract.

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4.6.2 The issue of this Certificate does not relieve either the Operating Company or the Scottish Ministers from any liability arising out of, or in any way connected with, the performance of their respective obligations under this Contract.

4.7 Non-conformance liability

4.7.1 During the Non-Conformance Liability Period, the Scottish Ministers may make their own investigations and employ their own workmen and other contractors to execute searches, inspections and investigations for all Non-Conformances, and may execute any necessary Defects Correction Operations themselves or arrange for execution by other contractors. The execution of such searches, inspections and investigations shall be audited by the Performance Audit Group or such other person or body as authorised from time to time by the Scottish Ministers.

4.7.2 The Scottish Ministers will give at least fourteen (14) days' notice in writing to the Operating Company, stating the intended dates, times and locations of any such searches, inspections or investigations. The Operating Company has the right to witness these searches, inspections or investigations.

4.7.3 Within such period as is considered reasonable by the Scottish Ministers, after the date of completion of each such search, inspection or investigation, the Scottish Ministers will deliver to the Operating Company a list of any resulting necessary Defects Correction Operations.

4.7.4 The value of the work undertaken in searching, inspecting, or investigating for Non-Conformances and undertaking any Defects Correction Operations under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.7 Non Conformance Liability, 4.7.1 to 4.7.3 shall be ascertained by the Scottish Ministers as if such work had been the requirements of an Order issued under this Contract.

4.7.5 The Scottish Ministers shall provide the valuation of such work to the Operating Company within seven (7) days of completion of any such Defects Correction Operations. The amounts of all such valuations are recoverable by the Scottish Ministers from the Operating Company under this Contract, where and to the extent that the work relates to any Non-Conformance that may have been identified as a result of or during the course of any such searches, inspections and investigations.

4.8 Operating company's management system

4.8.1 For the Contract Period, the Operating Company shall establish, document, implement, maintain and continually improve the effectiveness of the Operating Company's

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Management System in accordance with the requirements of Schedule 3 Contract Management, Section 4 Systems, Plans & Records, 4.2 Operating Company Management System and Quality Plan.

The purpose of the Operating Company's Management System is to ensure and demonstrate that all aspects of the Operations and all other matters for which the Operating Company is responsible under the terms of this Contract are executed in accordance with the terms of this Contract. Documented procedures in the Operating Company's Management System shall be such that, when followed, they ensure the effective management of the Operations.

4.8.2 The Operating Company shall provide to the Scottish Ministers for their written consent when produced or updated or when requested by the Scottish Ministers, a Quality Plan that meets but is not limited by the requirements of Schedule 3 Contract Management, Section 4 Systems, Plans and Records, 4.2 Operating Company Management System and Quality Plan.

4.8.3 No later than sixty (60) days prior to the Commencement of Service Date the Operating Company shall submit its developed and detailed:

- (a) Operating Company's Management System,
- (b) Quality Plan,
- (c) Winter Service Plan, and
- (d) Incident Response Plan,

to the Scottish Ministers for their written consent. All other plans and reports to be produced by the Operating Company in accordance with the Contract shall be submitted within the time periods indicated in Schedule 2 Scope and Schedule 3 Contract Management.

At the time of submission, any software and computer programmes to be used by the Operating Company that are necessary for the operation of the systems shall be ready for use in the manner and detail required as stated in other provisions of this Contract.

4.8.4 As necessary for continued compliance with the provisions of this Contract, the Operating Company shall regularly review and when necessary amend the Operating Company's Management System and Quality Plan and submit such amendments to the Scottish Ministers for their written consent. The Operating Company shall carry out such review and any amendment at intervals no greater than six (6) months.

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4.8.5 During the execution of Operations, the Operating Company's performance under the Operating Company's Management System and the Quality Plan shall be examined and thereafter audited by the Performance Audit Group.

The Performance Audit Group will undertake regular and periodic:

- (a) Inspection,
- (b) Monitoring,
- (c) Spot checking,
- (d) Auditing, and
- (e) Other examination and audit processes as it deems necessary,

of the Operating Company's Management System, the Quality Plan and all procedures and systems contained therein.

4.8.6 The Operating Company shall not commence, or permit the commencement of, any aspect of the Operations or any other matters for which the Operating Company is responsible under this Contract before those parts of the Operating Company's Management System which concern any such aspect of the Operations or such other matters have been completed.

For the purposes of this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.8 Operating Company's Management System, a part of the Operating Company's Management System shall be considered complete when it has been consented to in writing by the Scottish Ministers. Such consent shall not be unreasonably delayed and a response to submissions under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.8 Operating Company's Management System shall be given by the Scottish Ministers within twenty-one (21) days of receipt.

4.9 Failure by operating company to perform its obligations

4.9.1 Notwithstanding any other provisions of this Contract, where, in the opinion of the Scottish Ministers, the Operating Company fails to execute all or any of its obligations described in Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.8 Operating Company's Management System to the satisfaction of the Scottish Ministers, the Scottish Ministers will notify the Operating Company of the Default in writing.

4.9.2 Where the Operating Company does not rectify a Non-Conformance in a manner and or within a timescale that is acceptable to the Scottish Ministers, the Scottish Ministers may notify the Operating Company in writing.

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Where the Scottish Ministers have so notified the Operating Company pursuant to this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.9 Failure By Operating Company to Perform its Obligations, they may thereupon make such arrangements and incur such costs and expenses as they consider reasonable for rectifying such Non-Conformance of the Operating Company and for securing compliance with the requirements of this Contract.

Notwithstanding any other provisions of this Contract, where audits by the Scottish Ministers or the Performance Audit Group identify a Non-Conformance by the Operating Company, the Scottish Ministers will be entitled to carry out additional audits of the Operations.

- 4.9.3 Actions by the Scottish Ministers pursuant to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.9 Failure by Operating Company to Perform its Obligations, 4.9.2 shall not entitle the Operating Company to any extra payment, or any extension of time, for completion of the Operations.

The Operating Company shall be liable for such actions of the Scottish Ministers under this Schedule 1 Conditions of Contract, Clause 4.9 Failure by Operating Company to Perform its Obligations, as though, for such purpose, the Operating Company had taken such actions itself.

- 4.9.4 The Scottish Ministers will particularise and notify in writing to the Operating Company on a monthly basis the amounts of any costs and expenses whatsoever incurred by the Scottish Ministers or by persons authorised to act on their behalf pursuant to this Schedule 1 Conditions of Contract, Clause 4.9 Failure by Operating Company to Perform its Obligations.

All such amounts shall be recoverable as sums of money due from the Operating Company to the Scottish Ministers. Such sums shall be deducted from the next payment or any subsequent payment due to the Operating Company pursuant to the provisions of this Contract or, at the sole discretion of the Scottish Ministers, shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers.

- 4.9.5 Where the Operating Company fails to submit changes to the Operating Company's Management System required pursuant to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.8 Operating Company's Management System the Scottish Ministers may in writing notify the Operating Company of changes that are necessary for compliance with the requirements of this Contract.

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In any such event, the Operating Company shall introduce such changes into the Operating Company's Management System within fourteen (14) days or another timescale as confirmed by the Director.

In any such event, the Scottish Ministers shall be entitled to recover from the Operating Company:

- (a) All costs and expenses whatsoever (including professional fees, Contract Personnel costs, overheads and administrative costs),
- (b) All abortive costs, and
- (c) Other sums,

that have been incurred where the Scottish Ministers have been acting as though they were the Operating Company.

All consequences on the Operating Company arising from the actions of the Scottish Ministers pursuant to this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.9 Failure by Operating Company to Perform its Obligations, shall be the responsibility of the Operating Company.

Where the Performance Audit Group has given written notice to the Operating Company, pursuant to the provisions of Schedule 3 Contract Management, Section 9 Measuring Performance, 9.1 Audits by the Performance Audit Group, of an intention to execute an audit of any aspect of the Operations and where the Operating Company fails to provide the necessary Contract Personnel, access, Records and facilities, the Scottish Ministers shall be entitled to recover from the Operating Company all abortive costs and expenses and any other sums properly incurred by the Performance Audit Group and the Scottish Ministers.

Without prejudice to the other rights and remedies that the Scottish Ministers may have, the Scottish Ministers shall be entitled to recover such costs and expenses and other sums referred to herein from the next payment or any subsequent payment due to the Operating Company pursuant to the provisions of this Contract or, at the option of the Scottish Ministers, shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers.

- 4.9.6 In taking any actions under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.9 Failure by Operating Company to Perform its Obligations, the Scottish Ministers shall in respect of the Operating Company's Default as described therein be entitled to act as though they were the Operating Company.

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4.10 Application to sub-contract

- 4.10.1 The Operating Company shall ensure and procure that a condition is inserted in each sub-contract and order for goods and services forming part of the Operations whereby contractors, sub-contractors and or suppliers of any tier shall institute, maintain and operate, for the term of this Contract, a management system complying with the requirements of Schedule 3 Contract Management, Section 4 Systems, Plans and Records, 4.2 Operating Company Management System and Quality Plan and the other provisions of this Contract, for the purpose of ensuring and demonstrating that such goods and services comply with this Contract.
- 4.10.2 The Operating Company shall ensure and procure that a condition is inserted in each sub-contract to provide for the Scottish Ministers access and facilities meeting the requirements of Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.20 Access and Provision of Facilities, 2.20.1 and of a standard sufficient to enable them to take such actions as they may consider necessary under this Schedule 1 Conditions of Contract, Clause 4 Quality Management.

4.11 Laboratories and testing schedules

- 4.11.1 All materials and workmanship shall be of the respective kinds described in any Order and in accordance with the Scottish Ministers' Requirements.
- Such materials and workmanship shall be subjected to the samples and tests required or reasonably implied by the terms of this Contract and set out in the method statements forming part of the Operating Company's Management System or any Order.
- 4.11.2 Except as may be provided otherwise by this Contract, every sample and test required by this Contract shall be undertaken by a laboratory holding accreditation granted in respect of such sampling and testing:
- (a) By the United Kingdom Accreditation Service (UKAS), or
 - (b) By the European co-operation for Accreditation of Laboratories (EAL).
- 4.11.3 No later than sixty (60) days prior to the Commencement of Service Date, the Operating Company shall provide to the Scottish Ministers a schedule of the tests and inspections that the Operating Company then considers to be necessary for the anticipated execution of Operations.
- Within twenty-one (21) days of receipt of the schedule of tests and inspections (or revision thereto), the Scottish Ministers will either consent to the schedule or inform the Operating Company of reasons why the coverage of the schedule is not adequate to

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ensure achievement of the Scottish Ministers' Requirements. In the latter event, the Operating Company shall submit a revised schedule for acceptance within fourteen (14) days of receipt of the Scottish Ministers' response.

If no response is received from the Scottish Ministers within twenty-one (21) days of receipt of any submission of a schedule of tests and inspections, the Operating Company may remind the Scottish Ministers accordingly. If, seven (7) days after the reminder is issued, no response has been received from the Scottish Ministers, the schedule is deemed to be consented to by the Scottish Ministers.

Thereafter, the said schedule shall be maintained by the Operating Company and supplemented as necessary from time to time to include such additional tests and inspections as may be required for compliance with any Order.

4.11.4 Inspection and test schedules and documentation (including any necessary processes) for recording compliance shall be provided under the Quality Plan and relevant copies of such schedules and documentation shall be provided to the Scottish Ministers prior to commencement of the activity concerned.

4.11.5 Where work items are required to be sampled, tested and or inspected in accordance with this Contract then such sampling, testing and or inspection is acknowledged by the Operating Company to be and is deemed for all purposes to be a material and essential part of the work item and the Operating Company shall become entitled to include within any Application for Payment under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract the relevant work item only when the relevant sampling, testing and or inspection has been carried out and the test results demonstrate that the work item has been completed and is in accordance with this Contract. The Operating Company acknowledges that it is important for the Scottish Ministers to have Records which demonstrate that work items have been carried out in accordance with this Contract.

The Scottish Ministers shall be under no obligation to pay for and the Operating Company shall not seek payment for a work item that is required to be sampled, tested and or inspected in accordance with this Contract and such work item is either untested or has not yet passed the relevant test.

The Operating Company shall not carry out a work item that covers up an untested work item or which would make an untested work item inaccessible. In order for the untested work item to be tested the Scottish Ministers shall be entitled to instruct the Operating Company (at the Operating Company's cost) to remove or open up any such untested

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work that the Operating Company carries out. The Scottish Ministers shall be under no obligation to pay for and the Operating Company shall not seek payment for any such untested work item until the untested work item has passed its test (provided always that the cost of opening up or removing the untested work item and repairing or reinstating the untested work item shall be met by the Operating Company).

- 4.11.6 Where the Scottish Ministers consider it necessary to undertake any tests under their own direction, independently of the Operating Company, the Operating Company shall provide such assistance, instruments, machines, labour, materials, temporary traffic management and safety measures and other resources as required for examining, measuring and testing any work and the quality, weight and quantity of any materials used, and shall supply samples of materials before incorporation in the Operations for testing as may be selected and required by the Scottish Ministers.
- 4.11.7 The provision of samples and testing shall be the responsibility of the Operating Company where such test is required by the other provisions of this Contract.
- Such tests shall include, but shall not be limited to, tests under load and tests to ascertain whether the Design of any finished or partially finished work is fit for the purposes that it was intended to fulfil.
- 4.11.8 Where any test is instructed by the Scottish Ministers that is in addition to the requirements of this Contract, or is subject to an Order, the Scottish Ministers will, subject to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.11 Laboratories and Testing Schedules, 4.11.9, only be responsible for the costs of the testing if the test shows the workmanship or materials to be in accordance with both the provisions of this Contract and the relevant Order.
- 4.11.9 Where the results of tests have shown, in the opinion of the Scottish Ministers, that the provisions of this Contract have not been met, the Scottish Ministers may instruct additional tests. The costs of such testing shall be borne by the Operating Company whatever the results.

4.12 Operating company weekly non-conformance reports

- 4.12.1 The Operating Company shall produce a report, in addition to the records and reports set out in Schedule 2 Scope, Section 2 Defects, Hazard Notices & Observations Resulting from Inspections, to be issued to the Director and the Performance Audit Group at weekly intervals from the Operations Commencement Date to the Service End Date, which shall schedule:

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- (a) The number,
 - (b) The nature, and
 - (c) Details (sufficient to explain the nature and extent of the Non-Conformance),
- of the Non-Conformances which have been recorded in the Operating Company's Management System by the Operating Company.

The Weekly Non-conformance Report shall include the accumulated total of outstanding Non-Conformances which have not been closed out by the Operating Company in accordance with the requirements of the Operating Company's Management System at the time of preparing the report.

4.13 Rights on default without prejudice to termination rights

- 4.13.1 For the avoidance of doubt the Scottish Ministers' rights under any provision of this Contract are without prejudice to, and in addition to the rights of the Scottish Ministers under Schedule 1 Conditions of Contract, Clause 9 Termination.

4.14 Notices of non-conformance

- 4.14.1 The Director, or the Performance Audit Group on the Director's behalf, may issue to the Operating Company a Notice of Non-Conformance in respect of any Non-Conformance, provided that the Scottish Ministers, in exercise of their discretion, have not at that time issued a Remedial Notice in accordance with Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.15 Remedial Notices in respect of that Non-Conformance.

A Notice of Non-Conformance shall contain details of the Non-Conformance, a reference to the contractual basis of the Non-Conformance, a period of time or a date by which the Non-Conformance is to be corrected, and, if appropriate, other information and requirements of the Scottish Ministers applicable to the correction of the Non-Conformance.

A Notice of Non-Conformance shall be valid if it contains a description of the Non-Conformance and the date when the existence of the Non-Conformance became known to either the Scottish Ministers or the Performance Audit Group.

- 4.14.2 On receipt of a Notice of Non-Conformance, the Operating Company shall, within any timescale referred to in such Notice of Non-Conformance or as subsequently agreed with the Performance Audit Group, correct such Non-Conformance, including where appropriate:
- (a) Remediating the Default,

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- (b) Correcting the Non-Conformance,
- (c) Taking action to achieve the required standard of service,
- (d) Performing its obligation in accordance with this Contract in a timely manner and without delay,
- (e) Processing the Non-Conformance in accordance with the Operating Company's Management System, including placing an entry in the Operating Company's internal Non-Conformance register
- (f) Take action to prevent a reoccurrence of the Non-Conformance.

The Operating Company shall, within any timescale referred to in such Notice of Non-Conformance or as subsequently agreed with the Performance Audit Group, submit a report of the resolution of the Non-Conformance to the Performance Audit Group for its consideration.

- 4.14.3 Where a Non-Conformance has not been resolved to the satisfaction of the Performance Audit Group or the Performance Audit Group considers the Operating Company's report of the resolution of the Non-Conformance to be unsatisfactory, the Performance Audit Group shall give its reasons to the Operating Company within fourteen (14) days of receipt of the Operating Company's report. Within seven (7) days of the Performance Audit Group's notification, the Operating Company shall notify the Performance Audit Group of the further action that the Operating Company will take in relation to the Non-Conformance, together with the timescales for such action.

If the Performance Audit Group remains dissatisfied by the Operating Company's proposals or the resolution of the Non-Conformance, the Performance Audit Group shall so advise the Scottish Ministers.

The Scottish Ministers will consider the advice of the Performance Audit Group and, if satisfied that the Operating Company has committed a Default, the Scottish Ministers will issue a Remedial Notice under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.15 Remedial Notices. If the Default has been remedied by the Scottish Ministers and further remedial action is not required, a Remedial Notice may nevertheless be issued to record the Default.

- 4.14.4 The Operating Company shall, in addition to the reports and records set out in Schedule 2 Scope, Section 2 Defects, Hazard Notices & Observations Resulting from Inspections, maintain a register of Notices of Non-Conformance and Remedial Notices which has the

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functionality to identify individual Notices of Non-Conformances which are the subject of a subsequent Remedial Notice.

A copy of the register shall be provided by the Operating Company at weekly intervals to the Director together with a report on the progress made by the Operating Company in resolving each Non-Conformance.

The rights of the Scottish Ministers under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.15 Remedial Notices to issue a Remedial Notice shall not be affected by the issue, or the non- issue, of a Notice of Non-Conformance in relation to any matter or to any action taken or not taken by the Operating Company.

4.15 Remedial notices

4.15.1 Where the Operating Company commits any Default that is capable of remedy, the Scottish Ministers may, subject to the provisions of Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.1 and 4.3.2, issue a Remedial Notice requiring the Operating Company to remedy such Default.

The Scottish Ministers, having reasonable regard to the nature of the Default, will specify in a Remedial Notice the Remedial Period during which the Default shall be remedied.

The Operating Company shall remedy the Default during the Remedial Period.

4.15.2 The Operating Company shall only be entitled to dispute a Remedial Notice or the reasonableness of the Remedial Period if it gives written notice of such a Dispute to the Scottish Ministers within fourteen (14) days of receipt of such Remedial Notice.

4.16 Scottish Ministers step in rights – Defaults

4.16.1 Where, by the expiry of the Remedial Period specified in a Remedial Notice, the Operating Company has failed to remedy the Default and the Scottish Ministers do not opt to exercise their option to terminate this Contract under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.3, the Scottish Ministers shall be entitled to remedy such Default themselves or to employ other persons to remedy such Default, provided that the Scottish Ministers first notify the Operating Company in writing of their intention to do so.

4.16.2 If the Scottish Ministers opt to remedy an Operating Company's Default, they may take such actions as they consider prudent or necessary as a consequence of such Default. At the sole discretion of the Scottish Ministers, the Default may be remedied by a third party.

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Subject to the provisions of the Contract, and should the Default be remedied by a third party that includes an operating company from another Unit, then payment to the operating company that remedies the Default in another Unit will be estimated and calculated in accordance with Schedule 4 Measurement, Rates & Prices, Series 6800 Carrying out Operations in another Unit.

- 4.16.3 The Scottish Ministers shall be entitled to recover from the Operating Company all and any proper and reasonable costs and expenses incurred by the Scottish Ministers, or incurred on their behalf, to remedy such Default under this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.16 Scottish Ministers Step in Rights - Defaults. Costs payable by the Operating Company under this Schedule 1 Conditions of Contract, Clause 4.16 Scottish Ministers Step in Rights - Defaults include any payments made by the Scottish Ministers to third parties as a result of the Operating Company's Default. If the Operating Company's Default leads the Scottish Ministers to believe that there may be further Defaults by the Operating Company which at the time have not been discovered by the Scottish Ministers or the Performance Audit Group, the Scottish Ministers may take such other additional actions, or instruct others to take such additional actions on their behalf to establish the extent of any further Defaults.
- 4.16.4 For the purpose of this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.16 Scottish Ministers Step in Rights - Defaults, the additional actions may include actions taken for an indefinite period as a result of the Scottish Ministers' concern that a Default or Defaults may otherwise occur or continue to occur.
- All liability, costs, loss, expense and claims properly incurred by the Scottish Ministers, or on their behalf, as a consequence of such additional actions shall be payable by the Operating Company.
- 4.16.5 All liability, costs, loss, expense and claims incurred by the Scottish Ministers, or on their behalf, arising as a consequence of the Operating Company's Default, shall be payable by the Operating Company.
- 4.16.6 In addition to any payments due to the Scottish Ministers under this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.16 Scottish Ministers Step in Rights - Defaults as a consequence of a Default by the Operating Company, the Operating Company shall pay to the Scottish Ministers "the Non-Execution Adjustment".
- The Non-Execution Adjustment is calculated by multiplying the sum of all other amounts due under this Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.16 Scottish Ministers Step in Rights - Defaults by the Non-Execution Adjustment percentage.

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The Non-Execution Adjustment percentage is 12.5%.

- 4.16.7 All liability, costs, loss, expense and claims together with the Non- Execution Adjustment shall be deducted from the next payment or any subsequent payment due to the Operating Company pursuant to the provisions of this Contract or, at the sole discretion of the Scottish Ministers, shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers.

4.17 Lane occupation charges

4.17.1 Where there is a Lane Occupation and the Operating Company has either:

- (a) Abandoned the execution of the Operations for a period exceeding twenty-four (24) hours to the extent that no material progress has (in the opinion of the Scottish Ministers) been achieved in that period in the execution of the Operations, or
- (b) Not (in the opinion of the Scottish Ministers) progressed with due skill, care and diligence and this has (in the opinion of the Scottish Ministers) resulted in a delay to the execution of the Operations,

the Scottish Ministers shall be entitled to charge the Operating Company a Lane Occupation Charge, for each calendar day or part thereof that the said Operations have been abandoned or delayed, at the appropriate charge rates as set out in Schedule 1 Conditions of Contract, Appendix 6 Lane Occupation Charges.

4.18 Scottish Ministers redress - Failure to comply with audit requirements

4.18.1 Notwithstanding any other failure by the Operating Company in the performance of its obligations under this Contract, where, in accordance with the requirements of Schedule 3 Contract Management, Section 9 Measuring Performance, 9.1 Audits by the Performance Audit Group, the Scottish Ministers or the Performance Audit Group:

- (a) Have served due notice of an intention to execute an audit, or
- (b) Execute an ad-hoc unannounced audit,

and the Operating Company:

- (c) Fails to allow unrestricted access to the Scottish Ministers or the Performance Audit Group on any date or at any time or location identified in such notice or fails to allow unrestricted access for an ad hoc unannounced audit, or
- (d) Fails to provide all necessary resources and assistance (including but not limited to Contract Personnel), or

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- (e) Fails to provide the information required under this Contract to be available for the audit, or
- (f) Fails to provide and make available information that should be available in accordance with the provisions of this Contract, or
- (g) Withholds information from the Scottish Ministers or the Performance Audit Group, or
- (h) Provides information that is found to be incorrect in that it does not comply with the requirements of this Contract,

the Operating Company shall be liable for all abortive and additional costs, including but not limited to the costs of:

- (i) Carrying out additional audits, and
- (j) Procuring additional audit resources to re-execute such audits, and
- (k) Procuring all necessary information that should be properly made available by the Operating Company at such audits,

incurred by the Scottish Ministers and the Performance Audit Group associated with any such failure.

4.19 Recovery of Scottish Ministers costs

4.19.1 The Scottish Ministers shall be entitled to recover from the Operating Company all losses, expenses, abortive costs and additional costs referred to in this Schedule 1 Conditions of Contract, Clause 4 Quality Management.

Without prejudice to the other rights and obligations that the Scottish Ministers may have, the Scottish Ministers shall be entitled to and shall recover such losses, costs and expenses from the next payment or any subsequent payments thereafter due to be paid to the Operating Company pursuant to the other provisions of this Contract or, at the sole discretion of the Scottish Ministers, shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers.

4.20 No waiver

4.20.1 A waiver by the Scottish Ministers of any Default of the Operating Company shall not constitute a waiver of any subsequent Default.

Failure by the Scottish Ministers at any time to enforce any provisions of this Contract, to require strict performance by the Operating Company of any of the provisions of this

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Contract or to exercise any right or remedy to which they are entitled hereunder shall not be construed as a waiver of any such provision. Such failure shall not affect the validity of this Contract or any part thereof or the right of the Scottish Ministers to enforce any provision in accordance with its terms, require strict performance or exercise any other rights or remedy to which Scottish Ministers is entitled.

4.21 Other rights

4.21.1 The rights of the Scottish Ministers under this Schedule 1 Conditions of Contract, Clause 4 Quality Management are in addition and without prejudice to any other right the Scottish Ministers may have to claim the amount of any loss or damage suffered by the Scottish Ministers on account of the acts, omissions or Default of the Operating Company (whether or not pursuant to any bond, guarantee or surety held by the Scottish Ministers) in connection with any part of the execution of the Operations or on account of any other matter for which it is liable in connection with this Contract.

4.21.2 Any breach by either party of the stated or implied (if any) terms of this Contract shall be deemed a Default and shall be remedied within the terms of this Contract. The Parties hereby waive any right to recourse or action through any other mechanism.

4.22 Scottish Ministers default

4.22.1 Compensation in respect of a Default or other breach by the Scottish Ministers shall be deemed measurable and shall be evaluated in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments.

4.23 Damages

4.23.1 The Parties acknowledge that any Payment Adjustment Factor, Lane Occupation Charge or Non-Execution Adjustment is reasonable in order to compensate the Scottish Ministers for the administrative costs of a Default or other Non-Conformance by the Operating Company.

4.23.2 The Parties acknowledge that such Payment Adjustment Factor, Lane Occupation Charge or Non-Execution Adjustment is not intended to compensate the Scottish Ministers for any other costs, loss, expense and claims including the cost of remedying any Default or other Non-Conformance by the Operating Company which shall be the subject of additional compensation.

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5 Payments

5.1 Measurement of operations

5.1.1 Any error in description in Schedule 4 Measurement, Rates & Prices or omission therefrom shall not vitiate this Contract nor release the Operating Company from the execution of the whole or any part of the Operations according to the relevant Order and the Scottish Ministers' Requirements, or any of its other obligations or liabilities under this Contract.

Subject to the other provisions of this Contract, the Scottish Ministers will correct any such error or omission. If as a result of such a correction the Operating Company believes that a new rate or price should be used, the Operating Company shall follow the procedures given in Schedule 4 Measurement, Rates & Prices.

Notwithstanding the foregoing, there shall be no rectification of any errors, omissions, or wrong estimates in the rates or prices inserted by the Operating Company in the Schedule 4 Measurement, Rates & Prices.

5.1.2 Except where any statement or general or detailed description of the work for the Operations contained in Schedule 1 Conditions of Contract or Schedule 4 Measurement, Rates & Prices expressly shows to the contrary, quantities shall be deemed to be measurable and measurements shall be made according to the procedure set forth in Schedule 4 Measurement, Rates & Prices, notwithstanding any general or local custom.

5.1.3 Value Added Tax and Contract Price Fluctuation shall be excluded when valuing:

- (a) Incidents in order to determine whether or not the value of Incident Response at any one Incident is less or more than fifty-thousand Great British Pounds and Zero Pence (£50,000), and
- (b) Repairs to Damage to Crown Property in order to determine whether or not the value of repair is more than fifty-thousand Great British Pounds and Zero Pence (£50,000).

5.1.4 The Operating Company shall measure and value the Operations executed in accordance with this Contract.

5.1.5 If the Scottish Ministers require any part of the Operations to be measured by themselves or by the Performance Audit Group, they will give not less than five (5) Working Days' notice to the Operating Company who shall attend and assist in making such measurement and shall provide all particulars required by either the Scottish Ministers or the Performance Audit Group.

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Where the Operating Company does not for any reason attend, then the measurement made by or on behalf of the Scottish Ministers shall be deemed to be the correct measurement of such Operations.

- 5.1.6 Orders placed following an acceptance, by the Scottish Ministers, of a Lump Sum Quotation are not re-measurable.
- 5.1.7 The figure titled "Contractual Provisions for Dealing with Incidents" set out in Schedule 1 Conditions of Contract, Appendix 7 Flow Charts shall be used by the Operating Company to establish:
- (a) Whether any Incident is to be treated as Core Operations or Ordered Operations,
 - (b) Whether or not any Incident is to be treated as Damage to Crown Property,
 - (c) The appropriate classification, and
 - (d) The measurement applicable to the Operations relating to the Incident.
- 5.1.8 The figure titled "Contractual Provisions for Design Associated with Schemes" set out in Schedule 1 Conditions of Contract, Appendix 7 Flow Charts shall be used by the Operating Company to establish whether the Design for a Scheme is to be treated as Core Operations or Ordered Operations.
- 5.1.9 Ten percent (10%) of the value of the Operations described in Schedule 2 Scope, Section 1 Introduction, 1.5 Inventory Validation Collection and Updating is retained by Scottish Ministers in assessments of the amount due until the Operating Company has submitted the audit logs of the updates made to the Inventory contained in the Asset Management Performance System showing the asset data which this Contract requires is included in the Asset Management Performance System.

5.2 Valuation of operations

- 5.2.1 The value of the Operating Company's Operations shall be determined by the following five principles in descending order:
- (a) No value. Where, as an example, any Order requires the Operating Company to rectify or remedy any Operating Company Non-Conformance, or the consequence of any Operating Company Non-Conformance, the Order shall be valued as having no value, or
 - (b) Measured and valued in accordance with the applicable rates and prices set out in Schedule 4 Measurement Rates & Price, adjusted in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract

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Price Fluctuations and any Payment Adjustment Factors calculated in accordance with Schedule 3 Contract Management, Section 9 Measuring Performance, 9.3 Payment Adjustment Factors, or

- (c) Where in the opinion of the Scottish Ministers the rates and prices set out in Schedule 4 Measurement Rates & Prices do not apply to Operations performed, new rates and or prices will be calculated using appropriate rates or prices set out in Schedule 4 Measurement Rates & Prices, so far as shall be reasonable to do so and adjusted in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations. The establishment of such rates and prices shall be based on the Schedule of Rates and Prices as set out in Schedule 4 Measurement Rates & Prices, Appendix 2 Breakdown to Schedule of Rates and Prices, or
- (d) If the Scottish Ministers accept a Lump Sum Quotation submitted by the Operating Company for work, and have issued an Order for that work which states that the work is to be valued at the amount of the corresponding Lump Sum Quotation, the Order is valued accordingly. The value of the Order shall not be changed if the assumptions upon which the Lump Sum Quotation is based are shown by recorded information to have been wrong, or
- (e) Where in the opinion of the Scottish Ministers none of the principles in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.1 (a) to (d) apply, then by measurement and valuation in accordance with rates and prices obtained competitively by the Operating Company from a minimum of no less than three (3) subcontractors and/or suppliers.

If in the opinion of the Scottish Ministers there is no rate or an existing rate does not provide value for money for any potential Order for Schemes, then at the sole discretion of the Scottish Ministers any potential Order may be delivered as Third Party Works. In this instance, the Operating Company is to obtain a minimum of three (3) quotations for the potential Order unless the Scottish Ministers have given written approval to proceed otherwise.

If the potential Order for Schemes is delivered as Third Party Works then at the sole discretion of the Scottish Ministers the five valuation principles detailed under this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.1 will not apply and the valuation of the Operations will be in accordance with Schedule 4 Measurement, Rates & Prices, Series 6600 Third Party Works.

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5.2.2 Where the Scottish Ministers require the Operating Company to pay for Time Works, or payment of accounts, the Scottish Ministers may issue an Order for such Operations whereby all or any part of such an Order to pay for Time Works, or payment of accounts shall be valued in accordance with the applicable rates and prices in Schedule 4 Measurement, Rates and Prices, Series 6500 Time Work Schedule and 7000 Lump Sum Price Quotation.

5.2.3 For any Operations executed on the basis of Schedule 4 Measurement, Rates & Prices, Series 6200 Professional Services and 6500 Time Work Schedule, the Operating Company shall for such Operations produce and retain:

- (a) A summary in the form of an Excel spreadsheet listing hours and rates calculated up to a total for all labour, plant and materials for each calendar week in respect of each Operations Instruction,
- (b) Daily Records of the hours worked by each Contract Personnel including the employees,
- (c) A verifiable register of the annual salaries of all Contract Personnel including employees engaged in such Operations,
- (d) Daily Records showing the hours worked using Constructional Plant and the quantities of materials used in such Operations, and
- (e) Invoices for materials used in such Operations.

All such information, Records, registers and all other like information referred to in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.3 shall be retained and maintained by the Operating Company in the Central Office until the Service End Date and for the remainder of the Contract Period.

5.2.4 Notwithstanding the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.1 to 5.2.3 the Scottish Ministers will in exceptional circumstances and at their sole discretion be entitled to value Operations by any of the principles contained within the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.1 to 5.2.3, providing the method of valuation is contained within the relevant Order. The provisions of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.4 may not be used to value Operations for which a valuation can be correctly made under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations, 5.2.1 (b) using existing rates and prices contained in Schedule 4 Measurement, Rates & Prices unless the Scottish Ministers consider at their sole discretion that the provisions of Schedule 1

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Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes Threshold Values and Bids, 6.2.11 apply.

5.2.5 If requested in writing by the Scottish Ministers, the Operating Company shall provide to the Scottish Ministers such information as may be necessary to satisfy the Scottish Ministers in respect of any amount to be paid or to subsequently verify any payment previously made by the Scottish Ministers under the other provisions of this Contract.

5.2.6 For any part of the Operations executed in accordance with the provisions of Schedule 1 Conditions of Contract. Clause 6 Change Control, 6.2 Orders, Schemes Threshold Values and Bids, 6.2.1 (f) the Operating Company shall, subject to the other provisions of this Contract, be reimbursed in respect of the price payable by it to the contractor, sub-contractor and or supplier of any tier after the deduction of any discount, rebate or allowance to which the Operating Company shall be entitled (whether at that time or subsequently) with the addition of the applicable Operating Company's percentage adjustment. The Operating Company's percentage adjustment shall be applied after discounts or rebates have been deducted.

Any payment is subject to the Scottish Ministers being satisfied that in their opinion the price payable to such contractor, sub-contractor and or supplier of any tier is fair and reasonable in all the circumstances.

5.2.7 The value of any Order shall not be determined in accordance with the rates and prices in Schedule 4 Measurement, Rates & Prices, Chapter IV Units and Methods of Measurement, Series 6500 Time Work Schedule unless the Scottish Ministers have notified the Operating Company of such method of valuation as part of the Order or have notified the Operating Company of such method of valuation in writing prior to such Operations commencing.

5.2.8 Subject to any other provisions of this Contract, the value of Operations executed in accordance with this Contract during the Contract Period shall be determined in accordance with the applicable rates and prices in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations.

5.2.9 Subject to any other provisions of this Contract, the value of the Winter Service Core Operations executed in accordance with this Contract during the Contract Period shall be subject to the Winter Severity Adjustment for salt usage that is detailed in Schedule 4 Measurement, Rates & Prices, Series 6100 Core Operations.

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5.3 Payments to subcontractors

5.3.1 Before making any payment under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, the Scottish Ministers shall be entitled to receive from the Operating Company reasonable proof that all sums (less contractual deductions including but not limited to retentions provided for in the sub-contract) included in previous payments for the Operations provided by any sub-contractors and or supplier of the Operating Company have been paid to such sub-contractors and or supplier or discharged by the Operating Company.

In the absence of such proof, unless the Operating Company:

- (a) Provides written details to the Scottish Ministers of any reasonable cause it may have for withholding, paying less or refusing to make such payment, and
- (b) Provides written proof to the Scottish Ministers that it has so notified in writing any such sub-contractor and or supplier,

the Scottish Ministers will be entitled to pay direct to any sub-contractor and or supplier all payments (less contractual deductions including but not limited to retentions provided for in the sub-contract) which the Operating Company has failed to make to any sub-contractor and or supplier

5.3.2 Notwithstanding any other provision of this Contract, when the Scottish Ministers is entitled to deduct, withhold, retain or set-off any sum of money, sum, amount, cost, claim, liability or expense (together "Sum") under any provision of this Contract then any such Sum may be deducted, withheld, set-off or retained from any payment due to the Operating Company pursuant to the provisions of this Contract and/or shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers and/or may be withheld, deducted, retained, set-off against any Sum under any other contract as provided for in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.7 Money Recoverable under the Contract, 5.7.1.

5.4 Payments under this contract

5.4.1 Subject to the other provisions of this Contract, unless otherwise agreed in writing by the Scottish Ministers, the Operating Company shall submit the first Application for Payment to the Scottish Ministers between the eighth and twelfth day of the first calendar month following the Operations Commencement Date and thereafter within fourteen (14) days after the end of each calendar month. Each Application for Payment shall: be in accordance with the Scottish Ministers' Requirements; set out the sum that the Operating Company considers will become due on the payment due date for that Application for

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Payment and the basis on which that sum is calculated and show the actual value of the Operations executed up to the end of the calendar month in question; and contain the following information:

- (a) The amounts to which the Operating Company considers itself entitled in connection with all other matters for which provision is made under this Contract, separately identified for each Order,
- (b) Subject to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.2 the value of materials delivered to the Unit but not incorporated into the Operations,
- (c) The amounts paid to date for each Order,
- (d) The amount now considered due for payment for each Order,
- (e) The amounts paid to date for Core Operations separately identified for each Work Code,
- (f) The amount now considered due for payment for Core Operations, separately identified for each Work Code,
- (g) Deductions for retention including amounts not due until the Operating Company has submitted the audit logs of the updates made to the Inventory contained in the Asset Management Performance System showing the asset data which this Contract requires is included in the Asset Management Performance System,
- (h) Any other deductions made in accordance with this Contract,
- (i) Any amount under Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.3 Cancellation of Orders, 6.3.2, and
- (j) Summary totals for all Orders under the above headings.

5.4.2 For payment of goods or materials included in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract 5.4.1 (b) above, the Application for Payment shall include a list of any such goods or materials and their value that have not yet been delivered to the Unit, but of which the property has vested in the Scottish Ministers pursuant to Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials Not on Unit, 7.2.1 to 7.2.6. The property of goods and materials delivered to the Unit must be vested in the Scottish Ministers to qualify for payment.

5.4.3 Within any Application for Payment, the Operating Company shall only include items in respect of which:

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- (a) All supporting measurement Records are lodged within the Asset Management Performance System,
- (b) All inspection and testing stipulated in the relevant inspection and test plan has been completed,
- (c) All results of such inspection and testing show that the work is fully compliant with the requirements of this Contract,
- (d) All Records of such inspection and testing are lodged within the Asset Management Performance System,
- (e) Rates and prices are contained in Schedule 4 Measurement, Rates & Prices,
- (f) All rates not included in (e) but have been established in accordance with the provisions of the Contract,
- (g) Rates and prices have been fixed or determined by the Director subsequent to the Operations Commencement Date and have been added to the Asset Management Performance System.

5.4.4 Subject to the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.1, payment for the provision of the Operating Company's Management System and Quality Plan as consented to in writing by the Scottish Ministers will only be made following the first acceptance of same by the Scottish Ministers.

5.4.5 In the event that any Application for Payment prepared in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.1 to 5.4.4 shows a sum being due by the Scottish Ministers which is less than fifty thousand Great British Pounds and Zero Pence (£50,000) (a "Low Value Application") then the Operating Company agrees that a Low Value Application shall not be a valid Application for Payment under this Contract nor shall it qualify as a claim under Schedule 1 Conditions of Contract, Clause 5 Payment, 5.9 Additional Payment and Claims and or any other provision of this Contract. The Operating Company agrees and undertakes not to submit any Low Value Application to the Scottish Ministers for payment under this Contract. The Operating Company agrees and to roll over and include any sums in any Low Value Application in the subsequent Application for Payment (and if applicable any subsequent Applications for Payment) until such time as an Application for Payment shows an amount due equal to or more than fifty thousand Great British Pounds and Zero Pence (£50,000). The due date for payment and final date for payment of any Low Value Application shall be deemed to be the due date for payment and the final date

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for payment of the first subsequent Application for Payment which includes the sums in the Low Value Application and is for an amount equal to or more than fifty thousand Great British Pounds and Zero Pence (£50,000).

- 5.4.6 The Scottish Ministers shall not be bound to make a payment and no Application for Payment shall include any sum pertaining to excess costs identified in accordance with Schedule 3 Contract Management, Section 4 Systems, Plans and Records and or any other provisions of the Contract.
- 5.4.7 The date on which an interim payment becomes due under Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 ("payment due date") shall be the date sixteen (16) calendar days after receipt by the Scottish Ministers of the Operating Company's Application for Payment in accordance with and which complies with Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.1 to 5.4.6, with the final date for payment for each interim payment being twelve (12) calendar days after the payment due date.
- 5.4.8 Not later than five (5) calendar days after each payment due date the Scottish Ministers or the Specified Person shall give a notice ("payment notice") to the Operating Company which payment notice shall, in respect of the relevant Application for Payment, specify the sum ("the notified sum") that the Scottish Ministers or the Specified Person considers to have been due at the payment due date calculated in accordance with Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.1 to 5.4.6 and less any retention as provided for in Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.18, and the basis on which that sum has been calculated. It is immaterial that the notified sum may be zero.
- 5.4.9 Where the Scottish Ministers intend to pay less than the notified sum stated as due in a payment notice or the Application for Payment the Scottish Ministers or the Specified Person shall, not later than two (2) calendar days before the final date for payment, give a notice ("pay less notice") to the Operating Company of the Scottish Ministers' intention. The pay less notice shall specify the sum which the Scottish Ministers considers to be due to the Operating Company at the date the notice is given and the basis on which that sum is calculated. It is immaterial that the amount then considered to be due may be zero.
- 5.4.10 The payment notice and the pay less notice are separate notices and shall not be combined.

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- 5.4.11 Subject to any pay less notice given by the Scottish Ministers or the Specified Person under this Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.9, the Scottish Ministers shall pay the sum stated as due in the payment notice on or before the final date for payment. If a payment notice is not given in accordance with Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.8 the Scottish Ministers shall, subject to any pay less notice under Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.9 pay the Operating Company the sum stated as due in the Application for Payment. If the payment notice (or the Application for Payment in the absence of a payment notice) shows any sum due to the Scottish Ministers the Operating Company shall pay the sum stated as due to the Scottish Ministers in the payment notice (or Application for Payment, as applicable) on or before the final date for payment.
- 5.4.12 Within twelve (12) weeks after the expiry of the Non-Conformance Liability Period, the Operating Company shall issue to the Scottish Ministers a final Application for Payment which in the Operating Company's opinion is the final value of the Operations executed under this Contract. The Application for Payment shall set out the sum that the Operating Company considers will become due on the payment due date for that Application for Payment and the basis on which that sum is calculated and show:
- (a) All amounts previously paid by the Scottish Ministers under this Contract,
 - (b) The amount of retention (if any) held by the Scottish Ministers,
 - (c) The amount (if any) for any costs, expenses, liabilities and or losses incurred by or on behalf of the Scottish Ministers in respect of (1) any Non-Conformance pursuant to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.9 Failure by the Operating Company to Perform its Obligations and or (2) any Defects pursuant to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.5 Correction of Defects,
 - (d) All sums due to the Scottish Ministers from the Operating Company to which the Scottish Ministers are entitled under this Contract, and
 - (e) The balance (if any) due by the Scottish Ministers to the Operating Company or by the Operating Company to the Scottish Ministers as the case may be. Such balance shall, subject to the other provisions of this Contract, be paid to or by the Operating Company as the case may require.
 - (f) Subject to the other provisions of this Contract, no retention shall be made pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this

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Contract, 5.4.1 in respect of Operations except as set out below in Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18.

- 5.4.13 The date on which the final payment becomes due under Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 ("final payment due date") shall be the date sixteen (16) calendar days after receipt by the Scottish Ministers of the Operating Company's final Application for Payment in accordance with and which complies with Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.12, with the final date for payment for such final payment being twelve (12) calendar days after the final payment due date.
- 5.4.14 Not later than five (5) calendar days after the final payment due date the Scottish Ministers or the Specified Person shall give a notice ("final payment notice") to the Operating Company which final payment notice shall specify the sum ("final notified sum") that the Scottish Ministers or the Specified Person considers to have been due at the final payment due date calculated in accordance with Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.12 and the basis on which that sum has been calculated. It is immaterial that the final notified sum may be zero.
- 5.4.15 Where the Scottish Ministers intend to pay less than the final notified sum stated as due in the final payment notice or the final Application for Payment the Scottish Ministers or the Specified Person shall, not later than one (1) calendar day before the final date for payment, give a notice ("pay less notice") to the Operating Company of the Scottish Ministers' intention. The pay less notice shall specify the sum which the Scottish Ministers considers to be due to the Operating Company at the date the notice is given and the basis on which that sum is calculated. It is immaterial that the amount then considered to be due may be zero.
- 5.4.16 Subject to any pay less notice given by the Scottish Ministers or the Specified Person under Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.15, the Scottish Ministers shall pay the sum stated as due in the final payment notice on or before the final date for payment. If a final payment notice is not given in accordance with Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.14 the Scottish Ministers shall, subject to any pay less notice under Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.15 pay the Operating Company the sum stated as due in the final Application for Payment. If the final payment notice (or the final Application for Payment in the absence of a final payment notice) shows any sum due to the Scottish Ministers the Operating Company shall pay the sum stated as due to the Scottish Ministers in the final

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payment notice (or final Application for Payment, as applicable) on or before the final date for payment.

- 5.4.17 In the event that the Operating Company becomes insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended), the Scottish Ministers shall have no obligation to pay any part of any amount due to the Operating Company in respect of any payment that would otherwise be due and payable to the Operating Company under this Contract unless and until the sum or any part of the sum becomes payable under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, Clause 9.1.7.
- 5.4.18 Where the Operating Company fails to deliver the Bond and Undertaking validly executed in a self-proving manner to the Scottish Ministers by the due date referred to in Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.1, or where the Bond and Undertaking is not acceptable to the Scottish Ministers, the Scottish Ministers will immediately accumulate a retention fund in their favour in lieu of the provisions of the Bond and Undertaking from any amount due to the Operating Company on and after the said date. The total of the retention fund accumulated shall not exceed two million Great British Pounds and Zero Pence (£2,000,000).

Any such fund retained pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18 shall not be released until either:

- (a) The Operating Company provides the Bond and Undertaking pursuant to Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.1, or
- (b) If no Bond and Undertaking is provided, the later of the end of the Contract Period and the settlement of the final account pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18 except in respect of any demand in writing made before such date.

Subject to the provisions of Schedule 1 Conditions of Contract, Clause 5.4 Payments under this Contract, 5.4.18 and 5.4.19, the said retention fund referred to in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18 shall be retained from the Operating Company for the same period of time as that which would have been required from the guarantor under the Bond and Undertaking or until such time as the Operating Company provides a Bond and Undertaking in the terms set

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out in Schedule 1 Conditions of Contract, Clause 2 Operating Company Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.1 and that such Bond and Undertaking is acceptable to the Scottish Ministers.

Notwithstanding the other provisions of this Contract, the Operating Company shall not receive any further payments from the Scottish Ministers until such time as the aggregate payments due to the Operating Company under the other provisions of this Contract exceed the amount of the said retention fund retained from the Operating Company under this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18.

Such retention fund held by the Scottish Ministers shall be used by the Scottish Ministers as if it was the sum of money referred to within the Bond and Undertaking and shall be drawn from by the Scottish Ministers in the event of every circumstance described within the terms of the Bond and Undertaking contained in Schedule 1 Conditions of Contract, Appendix 3 Form of Model Bond & Undertaking and Parent Company Guarantee, that would have required the guarantor of the Bond and Undertaking to pay money to the Scottish Ministers.

The Scottish Ministers will pay, subject to the other provisions of this Contract, any remaining balance of the retention fund to the Operating Company:

- (a) Within fourteen (14) calendar days of the Scottish Ministers having received a proper and acceptable Bond and Undertaking pursuant to Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.1, or
- (b) In accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18,

whichever is the earlier.

5.4.19 If either the Scottish Ministers or the Operating Company fail to make payment to the other party in accordance with this Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, the party in Default shall pay to the other interest upon any payment overdue at a rate per annum equivalent to three percent (3%) above the Base Lending Rate. Interest shall be calculated daily and compounded annually on 31 March.

In the event of any variation in the said Base Lending Rate being announced whilst such payment remains overdue, the interest payable by the party in Default of payment to the

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other shall be correspondingly varied from the date of each change in Base Lending Rate.

Notwithstanding any other provision of this Contract, a payment due to be made by the one party to the other shall only be overdue for the purposes of this Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.19 where such payment has not been made on or prior to the applicable final date for payment.

If the Operating Company fails to provide the Bond and Undertaking to the Scottish Ministers in terms of Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.1, or where the Bond and Undertaking is not acceptable to the Scottish Ministers, by the due date under Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.1 then any payment due to the Operating Company by the Scottish Ministers pursuant to the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, that is retained in a retention fund in lieu of an acceptable Bond and Undertaking under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.18, shall not be construed as being a late payment for the purposes of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract.

5.4.20 Without prejudice to the other provisions of this Contract, the Scottish Ministers may, by means of a payment notice, a final payment notice and or a pay less notice issued pursuant to the applicable provisions of Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, charge, deduct, withhold, retain and/or set-off amounts in respect the value of any part of the Operations with which the Scottish Ministers or the Director is dissatisfied and for that purpose (or for any other reason which in their respective opinions may seem proper) may deduct, withhold, retain, set-off, correct or modify any sum previously paid by the Scottish Ministers to the Operating Company.

5.4.21 Payment by the Scottish Ministers of any sum due to the Operating Company shall be without prejudice to any rights that the Scottish Ministers may have against the Operating Company.

Such payment shall not constitute or be deemed to constitute any admission by the Scottish Ministers as to the performance by the Operating Company of any of its obligations under this Contract.

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5.4.22 The Operating Company shall, from the Operations Commencement Date until the Service End Date, keep and maintain until the later of five (5) years after the Service End Date or five (5) years after the final date of the final payment of any sums due to the Operating Company under this Contract have been made by the Scottish Ministers:

- (a) Financial accounts and Records of all expenditures incurred and payments received in executing the Operations, and
- (b) All data entered on, or generated by, the Asset Management Performance System.

All to the satisfaction of the Scottish Ministers.

5.4.23 On request, the Operating Company shall allow and permit:

- (a) The Scottish Ministers,
- (b) Any auditors of the Scottish Ministers or any other organisation or body which may from time to time have right and cause to audit the Scottish Ministers accounts,
- (c) And the Performance Audit Group,

at any time during the period referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.22 to:

- (d) Inspect all such financial accounts and Records as referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.22, and
- (e) Have access to the Asset Management Performance System.

The Operating Company shall provide such further explanation in writing as may be required in relation to any matter arising out of or in connection with any such:

- (a) Inspection of such financial accounts and Records, and
- (b) Access to the Asset Management Performance System,

as the Scottish Ministers, any auditor or the Performance Audit Group may require.

5.4.24 Nothing contained in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract shall relieve the Operating Company of any of its obligations under or arising out of or in connection with this Contract.

5.4.25 If the Scottish Ministers fail to pay the Operating Company an amount which is due and is not disputed or is not subject of a pay less notice, by the final date for payment as required by this Contract, the Operating Company shall give written notice to the Scottish Ministers at least fourteen (14) calendar days' notice of the Operating Company's

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intention to suspend performance of any or all its obligations under this Contract, and the ground or grounds on which it is intended to suspend performance, and in the event that the failure to pay continues after the expiry of said fourteen (14) calendar days' notice period, the Operating Company may suspend such performance until payment of the undisputed amount which is due is made in full. Where the right to suspend under this Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.25 is exercised by the Operating Company, the Scottish Ministers shall be liable to pay the Operating Company the reasonable costs and expenses reasonably and properly incurred by the Operating Company in remobilisation of the Operations following any period of valid suspension pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payment, 5.4 Payments under this Contract, 5.4.25.

5.4.26 Applications for Payment pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract and Claim Notifications pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5 Payments under this Contract, 5.9 Additional Payment and Claims may be submitted by the Operating Company to the Scottish Ministers by way of an electronic invoice using the national purchase-to-pay (P2P) platform, PECOS, and subject to the Operating Company complying with the other requirements of this Contract as regards Applications for Payment and Claims Notifications, any Application for Payment and/or Claims Notification which is submitted as an electronic invoice must, to be a valid electronic invoice contain and specify in sufficient detail for the Scottish Ministers to process the information, the Einvoice Requirements as detailed in Schedule 1 Conditions of Contract, Appendix 8 Einvoice Requirements.

5.5 Prompt payment to subcontractors and suppliers

5.5.1 The Operating Company shall, where entering into any sub-contract and or orders for goods and services, for the execution of any part of the Operations, incorporate in such sub-contract and or orders for goods and services provisions for timely payment of the sub-contractor and or supplier of goods and services on terms consistent with relevant Scottish Government policy or Legislation or no later than thirty (30) days after receiving an application for payment, prepared and submitted in accordance with the terms of a sub-contract and or Order, from the sub-contractor and or supplier of goods and services whichever is the earlier.

Pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.3 Payments to Subcontractors, 5.3.1, the Operating Company will submit full details as requested by the Scottish Ministers, to confirm compliance with the time period stated under this Schedule

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1 Conditions of Contract, Clause 5 Payments, 5.5 Prompt Payment to Subcontractors and Suppliers.

5.6 Over payment

5.6.1 Where payment has been made for any Application for Payment and it is found that the payment includes any amount that is in excess of that to which the Operating Company is entitled, the Operating Company shall deduct from the next Application for Payment that it submits to the Scottish Ministers:

- (a) The difference between that amount and the due amount, and
- (b) Interest upon that difference, at the rate stated in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.19, calculated from the date of that payment until the date of repayment.

5.7 Money recoverable under the contract

5.7.1 Wherever under this Contract any sum of money shall be recoverable from or payable by the Operating Company, without prejudice to the other provisions of this Contract and in addition to any other right or remedy that the Scottish Ministers may have, such sum may be deducted from or reduce the value of the amount of any sum or sums then due or which at any time thereafter may become due to the Operating Company under this Contract, or under any other contract with:

- (a) The Scottish Ministers, or
- (b) Any Operational Partner, Relevant Organisation, department, office, agency, authority or other such like organisations of the Crown.

5.8 Contract price fluctuations

5.8.1 The amount payable by the Scottish Ministers to the Operating Company in any payment under this Contract (other than amounts due under this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations) shall only be increased or decreased in accordance with the provisions of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations if there shall be any changes in the Price Adjustment Formulae Indices Series 4 – Highways Maintenance published by the Building Cost Information Services (BCIS).

Any adjustments arising from application of these indices are the Contract Price Fluctuation amounts. Schedule 1 Conditions of Contract, Appendix 9 Contract Price Fluctuations details the indices assigned for each Work Category. Any Operations executed prior to April 2022 will not be subject to Contract Price Fluctuations. The first

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adjustment will apply to Operations executed from April 2022 until March 2023 using the Current Index Figure for March 2022. Subsequent adjustments will be applied on an annual basis from April each year for Operations performed within each Annual Period using the appropriate Current Index Figure.

The net total of such increases and decreases shall be taken account of in determining any sums payable to the Operating Company.

5.8.2 For the purpose of this Contract:

- (a) "Final Index Figure" means any Work Category index figure appropriate to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.1 that is described in the said Building Cost Information Services publication as "Firm" unless any index figure described in the said publication as "Firm" is subsequently amended and described as "Revised", in which case the revised figure will be the Final Index Figure,
- (b) "Base Index Figure" means the appropriate Final Index Figure applicable to the date forty-two (42) days prior to the date for the return of the Final Tender Submission,
- (c) "Current Index Figure" means the appropriate Final Index Figure to be applied to any payment made or due to be made by the Scottish Ministers pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract and shall be the appropriate Final Index Figure applicable to the date forty-two (42) days prior to the last day of the period to which the annual payment relates. For any payments made after the Termination Date, the Current Index Figure shall be the appropriate Final Index Figure applicable to the date forty-two (42) days prior to the Termination Date, and
- (d) The "Effective Value" in respect of the whole or any part (for each Work Category) means the difference between:
 - (i) The amounts in the appropriate categories given in Schedule 1 Conditions of Contract, Appendix 9 Contract Price Fluctuations of which Contract Price Fluctuation applies and that, in the opinion of the Scottish Ministers, is due to the Operating Company either under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.1 (a), or in the case of the final payment, the amount (if any) due to the Operating Company under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments

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under this Contract, 5.4.18 (but in each case before deducting sums previously paid on account), and

- (ii) The amount calculated in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.2 (d) (i) and included in the last preceding interim payment made by the Scottish Ministers in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.1 to 5.4.18,

provided that in the case of the first payment, the Effective Value shall be the amount calculated in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.2 (d), (i).

5.8.3 Any increase or decrease in the amounts otherwise payable under Schedule 1 Conditions of Contract, Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract for items in each Work Category pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.2 shall be calculated as the net sum of the products obtained by multiplying each of the Effective Value proportions for each Work Category given in Schedule 1 Conditions of Contract, Appendix 9 Contract Price Fluctuations by a fraction, the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which shall be the relevant Base Index Figure. This net sum shall be reduced by 10 percent for the Non-Adjustable Element.

Where in Schedule 1 Conditions of Contract, Appendix 9 Contract Price Fluctuations there is no Work Category assigned to a particular item in Schedule 4 Measurement, Rates & Prices, Appendix 1 - Rates and Prices, such item shall not be subject to adjustment in accordance with the provisions of Clause 5.8 Contract Price Fluctuations.

5.8.4 Final Index Figures in the publication referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.1 shall be used for the adjustment of interim valuations.

5.8.5 Contract Price Fluctuation adjustment under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations shall not apply to any agreed or determined amounts in respect of any Disputes under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes, 5.14 Adjudication and 5.15 Arbitration except where such adjustment forms the basis of such Dispute.

5.8.6 Contract Price Fluctuation adjustment under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations, 5.8.1 shall not apply to any adjustments to the

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Contract Price made under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.17 Tax Matters.

5.8.7 This Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations shall not apply when valuing Orders based on Lump Sum Quotations.

5.9 Additional payment and claims

5.9.1 Where the Operating Company considers the methods of measurement, rates and prices within the Schedule of Rates and Prices are not applicable to the Operations undertaken or to be undertaken and considers that additional payment should be made, it shall:

- (a) Comply with the requirements in Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.11 New Rates, and
- (b) Keep such Contemporary Records as may be necessary to substantiate any claim.

5.9.2 Where the Operating Company is of the opinion the Operating Company is entitled to a payment in addition to the sums calculated in accordance with Schedule 4 Measurement, Rates & Prices, for Operations undertaken, the Operating Company shall:

- (a) Comply with the requirements of Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.13 9901 Activation which involves a 9901 Activation supported by a Claim Notification at the same time, and
- (b) Keep such Contemporary Records as may be necessary to substantiate any claim.

The Claim Notification shall be submitted in the format shown in Schedule 1 Conditions of Contract, Appendix 10 Claim Notification Form and shall be given as soon as is practicable without delay and not later than twenty-eight (28) days after the Operating Company became aware, or should have become aware, of the event or circumstance.

The Claim Notification shall be submitted simultaneously to the Director, any persons acting on behalf of the Director identified in Schedule 3 Contract Management, Section 2 Key People and as part of and in support of a 9901 Activation.

If the Operating Company fails to submit a Claim Notification as set out above within such period of twenty-eight (28) days, the Operating Company shall not be entitled to additional payment and the Scottish Ministers will be discharged from all liability in connection with the claim.

5.9.3 Claim Notification form(s) shall be sent separately from any other communication(s).

5.9.4 Within ninety-one (91) days of the Claim Notification the Operating Company shall submit to the Scottish Ministers:

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- (a) A calculated and demonstrated claim that includes all supporting information and shall be clearly stated as being pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payment and Claims;
- (b) Justification of its entitlement to the additional payment including all arguments; and
- (c) The amount that it considers due,

which the Operating Company intends to rely upon in resolving any dispute relating to the matter. All submissions in compliance with this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payment and Claims, shall be provided in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 1 General, 1.10 Provision of Documents.

The Scottish Ministers may at their sole discretion agree in writing to such other period as they consider appropriate.

Compliance in full by the Operating Company with the terms of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims, 5.9.4 shall be a condition precedent to the payment of any claim for additional payment and if the Operating Company fails to comply with the requirements of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims, 5.9.4, the Operating Company shall not be entitled to additional payment and the Scottish Ministers will be discharged from all liability in connection with the claim.

- 5.9.5 On receipt of the claim, supporting information and justification of the additional payment considered due, together with any other information subsequently requested and received within the timescales given by the Scottish Ministers, the Scottish Ministers will review and discuss the submissions with the Operating Company.

The Operating Company shall provide, within five (5) Working Days of the date of the request, any information relating to the claim that the Director and or Scottish Ministers may request.

Within the later of one hundred and eighty-two (182) days of the Claim Notification or forty-two (42) days of the latest date for receipt of information specified by the Scottish Ministers, the Scottish Ministers will state what (if any) additional payment they consider is due or to be paid in accordance with the Contract on completion of the relevant Operations and notify the Operating Company accordingly. Any such additional payment shall become due sixteen (16) days after the date of the Scottish Ministers notification pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims, 5.9.5 with the final date for payment being twenty-eight (28) days

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after the date of the Scottish Ministers notification pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims, 5.9.5.

5.9.6 The additional payment (if any) notified will be in the form of determined rates and prices and corresponding quantities. Alternatively payments may be stated as lump sums.

The notification shall include the item descriptions for the new rates, prices and lump sums. Unless the item description specifically states otherwise, the new rates and prices will be applicable for Operations at any location.

The notification shall be accompanied by supporting particulars demonstrating the reasoning behind the Scottish Ministers' determination of the contract provisions.

5.9.7 Each Party shall not give effect to the notification unless and until it is revised under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes.

5.9.8 The Scottish Ministers may, upon receipt of a Claim Notification, instruct the Operating Company to keep such Records that in the opinion of the Scottish Ministers are required. The Operating Company shall keep such Records and shall permit the Scottish Ministers to inspect all Records kept pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payments and shall supply the Scottish Ministers with originals and or copies thereof as and when they shall so instruct.

5.9.9 Any instruction given under this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims is not an admission of liability by the Scottish Ministers.

5.9.10 The requirements of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims are in addition to those of any other Clauses that may apply to a claim. If the Operating Company fails to comply with this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims or any other Clause relating to any claim then any additional payment shall take account of the extent (if any) to which failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the last paragraph of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payments and Claims, 5.9.2.

5.9.11 If the Scottish Ministers do not make the notification required by Schedule 1 Clause 5 Payments, 5.9 Additional Payment and Claims, 5.9.5, within the timescales stated, the Operating Company may notify a Dispute using the procedures given in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes.

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5.10 Valuation of claims

5.10.1 Any additional payment due in respect of a claim for which a valid Claim Notification has been made, shall be determined by the Scottish Ministers in accordance with the principles set out in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.2 Valuation of Operations.

5.11 On-account payments

5.11.1 The Operating Company will not be entitled to any on-account payment of any disputed amounts prior to the fixing or determination of rates and prices by the Scottish Ministers. The Scottish Ministers may make an on-account payment at their sole discretion.

5.11.2 The Operating Company will not be entitled to interest on any claimed amounts between the date of completion of the relevant Operations and the date of determination by the Scottish Ministers.

5.12 Scheme completion date and scheme closure date

5.12.1 No later than fifty-six (56) days after the Scheme Completion Date the Operating Company shall enter the Scheme Closure Date within the Asset Management Performance System.

By entering a Scheme Closure Date in the Asset Management Performance System, the Operating Company certifies that:

- (a) The payment claimed by the Operating Company for any such Scheme is the final and conclusive payment claimed,
- (b) Subject to the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.20 no further payment of whatsoever nature will be claimed by the Operating Company in respect of or in connection with the Scheme, and
- (c) Any such final and conclusive payment claimed by the Operating Company for such Scheme:
 - (i) Is based on accurate final quantities (where applicable),
 - (ii) Has full supporting documentation, and
 - (iii) Has been properly claimed in accordance with this Contract.

5.12.2 If at any time subsequent to the Scheme Closure Date the Scottish Ministers believe that the basis of the final and conclusive payment claimed or paid may be incorrect, they may,

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after notifying the Operating Company, open up and review the final Scheme value due or paid by the Scottish Ministers.

5.12.3 For Core Operations, the Operating Company shall enter a Core Operations Closure Date for each of the Core Operations within fourteen (14) days of the end of the Financial Year.

By entering a Core Operations Closure Date in the Asset Management Performance System, the Operating Company certifies that:

- (a) The payment claimed by the Operating Company for the Core Operations for the preceding Financial Year is the final and conclusive payment claimed,
- (b) Subject to the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.20 no further payment of whatsoever nature will be claimed by the Operating Company in respect of or in connection with the Core Operation, and
- (c) Any such final and conclusive payment claimed by the Operating Company for such Core Operation:
 - (i) Has full supporting documentation, and
 - (ii) Has been properly claimed in accordance with this Contract.

5.12.4 If at any time subsequent to the Core Operations Closure Date the Scottish Ministers believe that the basis of the final and conclusive payment claimed or paid may be incorrect, the Scottish Ministers may, after notifying the Operating Company, open up and review the final annual Core Operation value due or paid by the Scottish Ministers.

5.12.5 The Scottish Ministers will be entitled at any time to recover from the Operating Company any value that has been incorrectly claimed by the Operating Company and, subject to the other provisions of this Contract, the Scottish Ministers may at their option, either deduct the same from the next payment or any subsequent payment due to the Operating Company or recover the same on demand from the Operating Company as a debt due to the Scottish Ministers.

5.12.6 Interest shall be paid by the Operating Company in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.19 on any incorrectly claimed amounts.

5.12.7 If the Operating Company does not enter either a Scheme Closure Date or a Core Operations Closure Date into the Asset Management Performance System within the prescribed period, the closure dates shall be fifty-six (56) days or fourteen (14) days

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respectively after the Scheme Completion Date or end of the Financial Year in which the Core Operations in question were undertaken. In these circumstances:

- (a) The final payment claimed shall be that recorded in the Asset Management Performance System on the Closure Date and shall not be changed by the Operating Company after that date, and
- (b) The Scottish Ministers are not obliged to consider any supporting documentation submitted by the Operating Company after the Closure Date in their assessment of the final Scheme value.

5.13 Disputes

5.13.1 As soon as the Scottish Ministers or Operating Company are aware of a Dispute, they shall so notify the other Party in writing.

The Director and the Operating Company shall meet within seven (7) days of receipt of such notification to try to resolve the Dispute.

If the Dispute is not resolved within a period of time to be agreed by the Director and Operating Company at the aforementioned meeting the Parties shall define in writing those parts of the Dispute that remain unresolved.

5.13.2 Disputes shall be resolved in accordance with the provisions set out in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes. The disputes resolution procedures are adjudication and arbitration which are set out in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.14 Adjudication and 5.15 Arbitration.

Notwithstanding the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes, 5.13.1, where any Dispute arises between the Parties either Party may serve notice in writing (hereinafter referred to as a "Notice of Dispute") at any time on the other to refer the Dispute to adjudication.

5.13.3 The Notice of Dispute shall contain but not be limited to the following:

- (a) Date of the Notice of Dispute,
- (b) A summary of the nature and background of the Dispute and the issues arising,
- (c) The relevant clauses in this Contract that the party giving notice believes give the basis of entitlement,
- (d) A statement of the relief claimed,
- (e) The date that the referring Party became aware of the circumstances leading to the relevant Claim Notification (if relevant),

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- (f) The date of the relevant Claim Notification (if relevant), and
- (g) If not previously appointed, suggested name (or names) of an Adjudicator.

5.13.4 Unless this Contract has already been terminated or abandoned pursuant to the other provisions of this Contract, the existence of a Dispute shall not alter the obligations of the Parties under this Contract.

5.13.5 The decision of the Adjudicator shall be binding upon the Parties, unless and until the Dispute is either:

- (a) Finally determined by legal proceedings, or
- (b) Finally determined by agreement between the Parties, or
- (c) Finally determined by arbitration, as provided for in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.15 Arbitration.

5.13.6 Unless this Contract has already been terminated by the Scottish Ministers the Operating Company shall in every case continue to proceed with the Operations with all due diligence regardless of the nature of any Dispute.

5.13.7 Where either Party intends to register any decision of an Adjudicator in the Books of Council and Session for preservation and execution the other Party, shall on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

5.14 Adjudication

5.14.1 Where any Party refers a matter to adjudication in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes, 5.13.2, then in addition to the requirements in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.15 Arbitration, 5.15.3, the Parties shall comply with, and shall oblige any Adjudicator appointed to conduct the adjudication in accordance with, and the adjudication shall be governed by, the adjudication procedure set out in Schedule 1 Conditions of Contract, Appendix 11 Adjudication Procedure.

5.14.2 Unless the Parties agree otherwise in writing:

- (a) Any concessions made by one Party to the Adjudicator, or
 - (b) Any concessions or agreements (other than a subsequent agreement) that are made in the course of discussions pursuant to agreement of a Dispute,
- shall be without prejudice and shall not be raised by either Party in any subsequent arbitration or other legal proceedings.

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5.15 Arbitration

5.15.1 Without prejudice to the entitlement of either Party to refer any Dispute to adjudication in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes, 5.13.2, where any Dispute arises between the Parties it shall be referred to arbitration in accordance with the provisions of this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.15 Arbitration; provided that the Parties shall not be required to refer to arbitration the issue of enforcement of a decision of an Adjudicator given pursuant to an adjudication conducted in accordance with the adjudication procedure referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.14 Adjudication, nor for seeking any orders (including without limitation any interim orders) where the power to grant any such orders is within the exclusive, reserved or residual power of the courts of Scotland, and in such cases it will be competent for any Party to bring proceedings (including without limitation enforcement action) in the courts of Scotland and/or take any necessary steps for preservation and execution. To refer a Dispute to arbitration either Party shall serve a notice in writing on the other to refer the Dispute to the arbitration of a single arbitrator. Such notice shall be referred to as a "Notice of Arbitration".

5.15.2 Without limiting the Parties rights to refer any Dispute to arbitration as provided for in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.15 Arbitration, 5.15.1, for the avoidance of doubt, either Party may serve a notice in writing on the other to refer the Dispute to the arbitration of a single arbitrator by a Notice of Arbitration where any Adjudicator's decision given pursuant to an adjudication conducted in accordance with the adjudication procedure referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Disputes, 5.13.2:

- (a) Is not accepted by and or is Disputed by either of the Parties, and or
- (b) Where the Adjudicator has failed to make a decision in accordance with the procedure and timescales set out in Schedule 1 Conditions of Contract, Appendix 11 Adjudication Procedure;

and for the avoidance of doubt, neither Party is not obliged to refer a Dispute to Adjudication prior to issuing a Notice of Arbitration and or commencing any arbitration pursuant to this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.15 Arbitration.

5.15.3 The Notice of Arbitration shall contain the following:

- (a) Date of the Notice of Arbitration,
- (b) Description of the Dispute,

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- (c) Where applicable, the relevant findings in the Adjudicator's decision which the Party giving notice disputes,
- (d) A statement of the relief claimed,
- (e) Where applicable, the date of the relevant Adjudicator's decision, and
- (f) If not previously appointed, suggested name (or names) of an arbitrator.

5.15.4 The arbitrator shall be agreed in writing between the Parties or (failing such written agreement between the Parties, within thirty (30) days of either Party serving on the other a written notice to concur in the appointment of an arbitrator) a person to be appointed on the application of either Party to the President for the time being of the Institution of Civil Engineers.

5.15.5 If an arbitrator:

- (a) Declines the appointment, or
- (b) After appointment shall be removed by the parties, a third party or by order of a competent court, or
- (c) Shall be incapable of acting, or
- (d) Resigns or dies,

and the Parties do not within thirty (30) days of the vacancy arising fill the vacancy then the President of the Institution of Civil Engineers may on the application in writing of either Party appoint an arbitrator to fill the vacancy.

5.15.6 Any such referral to arbitration shall be made, and any arbitration shall be conducted, in accordance with the Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules as supplemented by, and insofar as not inconsistent with, the procedures set out in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.15 Arbitration.

5.15.7 The powers of the arbitrator shall be as set out in the Arbitration (Scotland) Act 2010 and the Scottish Arbitration Rules together with the following additional powers:

The arbitrator shall have power to:

- (a) Ascertain and award any sum which ought to have been referred to, or included, in any Application for Payment and/or any Claim Notification, and
- (b) Open up, review, and revise any decision, opinion, instruction, direction, notice (with the exception of statutory notices), objection, certificate, Application for Payment, Claim Notification or any other documentation relevant to the Dispute referred to arbitration, of any person given or made pursuant to this Contract

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relating in any way to the Dispute referred to arbitration save as otherwise expressly provided within this Contract, and

- (c) Determine all matters in dispute which shall be submitted to arbitration as if no such decision, opinion, instruction, direction, notice (with the exception of statutory notices), objection, certificate, Application for Payment, Claim Notification or any other documentation relevant to the Dispute referred to arbitration had been given.

5.15.8 The award of the arbitrator shall be final and binding on the Parties.

5.15.9 A person who has acted as adjudicator in a Dispute arising out of or concerning this Contract shall not be eligible for appointment as an arbitrator unless the Parties both agree otherwise in writing.

5.16 Royalties

5.16.1 Subject to the other provisions of this Contract the Operating Company shall pay all:

- (a) Tonnage royalties and other such payments,
- (b) Other royalties,
- (c) Rent,
- (d) Other payments, and
- (e) Compensation (if any),

for supplying materials required for Operations.

5.17 Tax matters

5.17.1 The rates and prices contained in the Schedule of Rates and Prices are deemed to take account of the levels and incidence forty-two (42) days prior to the date for the return of the Final Tender Submission of:

- (a) The taxes, levies, contributions, premiums, or refunds, that shall be by law payable by or to the Operating Company in respect of their Contract Personnel,
- (b) Any landfill tax payable by the Operating Company pursuant to the Finance Act 1996 and Landfill Tax Regulations thereof for the time being in force, and
- (c) Any aggregates levy payable by the Operating Company, its contractors, sub-contractors or suppliers of any tier pursuant to Legislation.

The rates and prices contained in the Schedule of Rates and Prices shall not take account or be deemed to take account of any level or incidence of the matters, referred to

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in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.17 Tax Matters, 5.17.1 (a), (b) and (c) above, foreseeable or known to take effect at some later date.

- 5.17.2 If after the date forty-two (42) days prior to the date for return of the Final Tender Submission there shall occur any change in the level or incidence of any such taxes, levies, contributions, premiums, or refunds, (including such landfill tax or aggregates levy) (but excluding income tax and any levy payable under the Industrial Training Act 1982 thereof for the time being in force) the Operating Company shall so notify in writing the Scottish Ministers.

Notwithstanding any other provisions of this Contract the Operating Company shall provide all the information that in the opinion of the Scottish Ministers is necessary to demonstrate any proposed adjustment to the Contract Price resulting from any such change. Such information shall include, but should not be limited to, proof of payments actually made before and after the change for which the Operating Company seeks additional reimbursement.

All payments to the Operating Company by the Scottish Ministers after the provision of such information shall take account of the net amount of such additions or deductions to which such information relates.

- 5.17.3 Schedule 1 Conditions of Contract, Clause 5 Payments, 5.17 Tax Matters, 5.17.2 shall only apply to a matter whose effect on prices is not included in the calculation of any of the indices referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.8 Contract Price Fluctuations.

5.18 Value added tax

- 5.18.1 The Operating Company is deemed not to have allowed in the Schedule of Rates and Prices for any Value Added Tax that may be chargeable on any taxable supplies made to the Scottish Ministers made under this Contract.
- 5.18.2 The Operating Company shall not include in any Application for Payment submitted under Schedule 1 Conditions of Contract, Clause 5 Payments any element on account of Value Added Tax in any item or claim contained in or submitted with any such Application for Payment.
- 5.18.3 Without prejudice to the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.18 Value Added Tax, 5.18.4, the Operating Company shall concurrently with the submission of every Application for Payment referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.18 Value Added Tax, 5.18.2 provide to the Scottish Ministers a written assessment showing those supplies of goods and services and the

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values thereof included in each said Application for Payment and on which Value Added Tax is properly chargeable on the supply to the Scottish Ministers of any goods or services by the Operating Company under this Contract.

- 5.18.4 In addition to the payments due to the Operating Company by the Scottish Ministers pursuant to the other provisions of this Contract, the Scottish Ministers shall separately identify and pay to the Operating Company any Value Added Tax properly chargeable by the Operating Company on the supply to the Scottish Ministers of any goods or services by the Operating Company under this Contract in exchange for the issue of a valid Value Added Tax invoice by the Operating Company to the Scottish Ministers.
- 5.18.5 If any dispute arises between either the Scottish Ministers or the Operating Company and Her Majesty's Revenue and Customs in connection with any Value Added Tax chargeable or alleged to be chargeable in connection with this Contract, including but not limited to the execution of the Operations, the Scottish Ministers and the Operating Company shall provide each other with any support and assistance as may be necessary to resolve such dispute.
- 5.18.6 Schedule 1 Conditions of Contract, Clause 5 Payments, 5.13 Dispute does not apply to any disputes arising under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.18 Value Added Tax, 5.18.1 to 5.18.3.

5.19 Construction industry training schemes

- 5.19.1 The Operating Company is deemed a Construction Industry Scheme contractor and shall be required to register accordingly with Her Majesty's Revenue and Customs.
- 5.19.2 In accordance with the requirements of the Construction Industry Scheme, the Operating Company shall verify the tax status of all sub-contractors it uses each month to ensure the correct payment treatment is applied along with confirming that the employment status of each sub-contractor engaged by it during the Contract Period has been fully considered and that where applicable each sub-contractor is genuinely self-employed.
- 5.19.3 The Operating Company shall keep Records of the gross amount of:
- (a) Each payment it makes to a sub-contractor, excluding any Value Added Tax applicable,
 - (b) The amount of any deduction it makes from a payment before it is paid to the sub-contractor, and
 - (c) If a deduction was made, the amount of the actual costs incurred by the sub-contractor on any materials, consumable stores, fuel (except fuel incurred in

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relation to travelling as set out at Schedule 1 Conditions of Contract, Clause 5 Payments, 5.19 Construction Industry Training Scheme, 5.19.5 below), certain plant hire and the manufacture or prefabrication of materials (and any other amount excluded from the amount of the contract payment from which the contractor is required to make a deduction under section 61(1) of the Finance Act 2004), excluding any Value Added Tax where applicable.

- 5.19.4 If the sub-contractor does not provide the Operating Company with details of any costs referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.19 Construction Industry Training Schemes (5.19.3 (c), the Operating Company shall be required to make a reasonable estimate of such costs.
- 5.19.5 Any travel expenses (including fuel costs) and subsistence paid to the sub-contractor by the Operating Company must be included in the gross amount of the contract payment from which the Operating Company is required to make a deduction.
- 5.19.6 The Operating Company shall keep such Records referred to in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.19 Construction Industry Training Scheme, 5.19.3 for at least six (6) years after the end of the tax year to which they relate. If requested by the Scottish Ministers during the period stated in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.19 Construction Industry Training Schemes, the Operating Company shall make such Records available to the Scottish Ministers.
- 5.19.7 All terms in this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.19 Construction Industry Training Schemes not otherwise defined in this Contract shall be interpreted in accordance with the Construction Industry Scheme.

5.20 Project Bank Accounts

- 5.20.1 This Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts shall only apply for Ordered Operations where the value is greater than five million Great British Pounds and Zero Pence (£5,000,000) subject to the provisions of Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, 6.2 Threshold Values and Bids, 6.2.6, where the Ordered Operations to be undertaken by the Operating Company are of a nature that involve bridge and or road works.
- 5.20.2 Contemporaneously with the execution of this Contract the Operating Company shall deliver to the Scottish Ministers the Project Bank Account Documents.
- 5.20.3 If the Operating Company sub-lets any part of the Works or enters into any sub-contract for goods or services in connection with the Contract then the Operating Company shall

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inform any such subcontractors of the arrangements under this Contract for the operation of a Project Bank Account and shall invite such subcontractors to participate.

- 5.20.4 The Operating Company shall incorporate into sub-contracts with its subcontractors provisions in similar terms to those set out in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.3 (and shall use its best endeavours to ensure that all Supply Chain Member subcontracts contain similar provisions) subject only to modification to refer to the correct designation of the equivalent party as the subcontractor or Supply Chain Member as the case may be. The Operating Company shall also incorporate into sub-contracts with its subcontractors (and use its best endeavours to ensure that all Supply Chain Member subcontracts contain a similar provision) a provision in similar terms to those set out in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.8 which informs the subcontractors and Supply Chain Members of the grounds on which they may not be permitted to participate in the Project Bank Account arrangements.
- 5.20.5 In addition to the above, the Operating Company shall:
- (a) Incorporate into sub-contracts with its Named Subcontractors;
 - (b) Ensure that its subcontractors incorporate into sub-contracts with Named Subcontractors; and
 - (c) Use its best endeavours to ensure that Supply Chain Members incorporate into sub-contracts with their Named Subcontractors,
- the arrangements as set out in this Contract for the operation of the Project Bank Account.
- 5.20.6 The Operating Company shall ensure Named Subcontractors required to perform Ordered Operations as stated in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.1 will enter into an Additional Party Agreement prior to any such works starting. The Scottish Ministers, the Operating Company and the Named Subcontractor shall execute the Additional Party Agreement as soon as practicable prior to work commencing.
- 5.20.7 If any subcontractor informs the Operating Company that it (or any Supply Chain Member) does not wish to participate in the Project Bank Account arrangements then the Operating Company shall require the subcontractor to provide in writing its, or the Supply Chain Member's reason for non-participation. The Operating Company shall forthwith provide the Scottish Ministers with a copy of the subcontractor's or Supply Chain Member's reason for non-participation.

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- 5.20.8 Subject to Schedule 1 Conditions of Contract, Clause 5 Payment, 5.20 Project Bank Accounts, 5.20.9, the Operating Company, acting reasonably, may decide that it is not appropriate or reasonable in all the circumstances for a subcontractor or Supply Chain Member to participate in the Project Bank Account arrangements. Such a decision shall be deemed to be reasonable if it falls within one or more of the following (non-exhaustive) grounds; the value of the sub-contract is below 1% of the contract award value (excluding VAT); the duration of the sub-contract is less than one calendar month; the payment provisions of the sub-contract are more frequent than those set out in this Contract, or cannot otherwise be aligned with the payment provisions of this Contract.
- 5.20.9 The Operating Company shall ensure that subcontractors and Supply Chain Members whose participation in the Project Bank Account is deemed not appropriate in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.8 only insofar as the value of their subcontract being below 1% of the main contract award value but who wish to participate in the Project Bank Account are permitted to do so. The Scottish Ministers, the Operating Company and the subcontractor or Supply Chain Member shall execute the Additional Party Agreement as soon as practicable following the appointment of any such additional subcontractors or Supply Chain Members.
- 5.20.10 The Scottish Ministers shall pay into the Project Bank Account no later than one (1) day before the final date for payment each payment due in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.11 and or 5.4.16, as applicable, or the amount stated as due in the relevant pay less notice issued in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.9 and or 5.4.15.
- 5.20.11 The Scottish Ministers and the Operating Company shall utilise the Project Bank Account Online Banking, and once a payment has been made into the Project Bank Account by the Scottish Ministers in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.10 the Operating Company shall without delay complete an Authorisation (online) in respect of the payment specifying the sums due to the Named Subcontractors and the balance due to the Operating Company (which for the avoidance of doubt shall not exceed the total amount due in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.11 and or 5.4.16 or the amount stated as due in the relevant pay less notice issued in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, 5.4.9 and or 5.4.15 and the Operating Company shall at the same time notify the Scottish Ministers that the Operating Company has completed

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the Operating Company's Authorisation (online) and the Scottish Ministers shall then without delay complete an Authorisation (online) in order to release payments in accordance with the Operating Company's Authorisation (online).

- 5.20.12 This Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.12 shall apply at the Scottish Minister's entire discretion (in particular it is intended that this Schedule 1 Conditions of Contract, Clause 5 Payments, 5.20 Project Bank Accounts, 5.20.12 will apply in circumstances where the Project Bank Account Online Banking is not functioning). In respect of each payment due, the Operating Company shall prepare and sign the Authorisation (written), setting out the sums due to the Named Subcontractors and the balance due to the Operating Company (which for the avoidance of doubt shall not exceed the total amount due in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5 Payments under this Contract, 5.4.11 and or 5.4.16 or the amount stated as due in the relevant pay less notice issued in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5 Payments under this Contract, 5.4.9 and or 5.4.15 and shall submit the Authorisation (written) to the Scottish Ministers no later than one (1) day before the final date of payment. The Scottish Ministers shall sign the Authorisation (written) and submit it to the Project Bank no later than one (1) day before the final payment date.
- 5.20.13 The Operating Company and the Named Subcontractors shall receive a payment of the sums set out in the Authorisation by the final date for payment.
- 5.20.14 Payment into the Project Bank Account shall discharge the Scottish Minister's obligation to make payment under this Contract, to the extent of that payment.
- 5.20.15 The Operating Company shall ensure that any subcontractors and suppliers who shall be non-participants in the Project Bank Account, shall be entitled to prompt payment in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.5 Prompt Payment to Subcontractors and Suppliers.

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6 Change control

6.1 General

- 6.1.1 Subject to the other provisions of this Contract, Bids shall comply with the requirements of Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.6 Bids.
- 6.1.2 Bids shall be in the form specified by the Scottish Ministers within this Contract and, when subject to a direction or an Order from the Scottish Ministers, be in accordance with such direction or Order.
- 6.1.3 Estimated Bid Values shall be in accordance with Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.6 Bids, and be provided irrespective of the value of work involved and the Threshold Values given in this Contract.
- 6.1.4 Bids shall remain open for acceptance by the Scottish Ministers for sixty-three (63) days from the date of receipt of the Bid by the Scottish Ministers.
- 6.1.5 The Scottish Ministers may instruct the Operating Company to provide a Bid for Operations under consideration. The Bid shall be provided within the time period given in the instruction or when no time period is given in an instruction, the Bid shall be submitted within twenty-eight (28) days of receipt of such instruction.
- 6.1.6 Save for the provisions of:
- (a) Schedule 2 Scope, Section 2 Defects, Hazard Notices & Observations Resulting from Inspections, 2.2 Rectification of Defects, and
 - (b) Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management,
- the Scottish Ministers are not obliged to issue to the Operating Company an Order or Orders in any Annual Period or at any other time during the Contract Period.
- 6.1.7 The Operating Company is not entitled to any payment in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payment and Claims on the basis that at the time of entering into the Agreement the Operating Company expected the Scottish Ministers to issue an Order or Orders in any Annual Period or at any other time during the Contract Period.

For the avoidance of doubt the only guaranteed activities to be undertaken by the Operating Company by entering into the Agreement during the Contract Period are Core Operations.

- 6.1.8 Save for the provisions of:

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- (a) Schedule 2 Scope, Section 2 Defects, Hazard Notices & Observations Resulting from Inspections, 2.2 Rectification of Defects, and
- (b) Schedule 2 Scope, Section 7 Network Operations – Disruption Risk Management, where the Operating Company carries out activities that would be Ordered Operations if subject to an Order and no such Order has been issued in respect of such activities, the Operating Company is deemed to carry out such activities at its own risk and has no entitlement to any additional payment in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.9 Additional Payment and Claims. For any avoidance of doubt the Scottish Ministers are under no obligation to make any payment in respect of such activities.

6.2 Orders, schemes, threshold values and bids

6.2.1 The Scottish Ministers may during the Contract Period issue Orders to the Operating Company under this Contract.

Such Orders shall, subject to Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids, 6.2.9, relate to the Unit and may include, without prejudice to the generality of the foregoing:

- (a) Executing work,
- (b) Making additions, omissions, substitutions, alterations or changes in quality, form, character, timing or kind, relative to those referred to in the Scottish Ministers' Requirements,
- (c) Making additions, omissions, substitutions, alterations or changes to the extent of the Unit,
- (d) Making changes to the Scottish Ministers' Requirements pursuant to Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.5 Operating Company's Change Proposals,
- (e) Executing Operations relating to Non-Conformances,
- (f) Entering into a contract with a third party (or parties) for the execution of work or of supply, and
- (g) Executing such other Operations, activities, duties and responsibilities by the Operating Company as the Scottish Ministers may require to place on the Operating Company.

6.2.2 Subject to the other provisions of this Contract, for any Scheme with an Estimated Bid Value of not more than five million Great British Pounds and Zero Pence (£5,000,000),

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the Scottish Ministers may from time to time issue Order(s) to the Operating Company to execute Operations and the Operating Company shall execute such Operations for any such Scheme.

Subject to the other provisions of this Contract, Operations for any such Scheme may include any operations, activities, duties and responsibilities in connection with the management and maintenance of the Trunk Road network as the Scottish Ministers may at their discretion place on the Operating Company.

6.2.3 For non-Bridge Schemes with an Estimated Bid Value of less than one million Great British Pounds and Zero Pence (£1,000,000), subject to an Order, the Operating Company shall undertake the Ordered Operations.

For Bridge Schemes with an Estimated Bid Value of less than one million, five hundred thousand Great British Pounds and Zero Pence (£1,500,000), subject to an Order, the Operating Company shall undertake the Ordered Operations.

For Major Bridge Schemes with an Estimated Bid Value of less than two million Great British Pounds and Zero Pence (£2,000,000), subject to an Order, the Operating Company shall undertake the Ordered Operations.

6.2.4 For non-Bridge Schemes with an Estimated Bid Value of more than one million Great British Pounds and Zero Pence (£1,000,000) and less than five million Great British Pounds and Zero Pence (£5,000,000), Bridge Schemes with an Estimated Bid Value of more than one million, five hundred thousand Great British Pounds and Zero Pence (£1,500,000) and less than five million Great British Pounds and Zero Pence (£5,000,000), and Major Bridge Schemes with an Estimated Bid Value of more than two million Great British Pounds and Zero Pence (£2,000,000) and less than five million Great British Pounds and Zero Pence (£5,000,000), the Scottish Ministers may proceed with one of the following procurement options:

- (a) Issue an Order or Orders to the Operating Company to undertake the work as Ordered Operations, or
- (b) Issue an Order to the Operating Company to provide investigation, design, and other necessary services to execute the works and or provide investigation, design, procurement and other services necessary for a subsequent Works Contract procured by the Scottish Ministers, or
- (c) Issue an Order to the Operating Company to provide all assistance to third parties to enable the Scottish Ministers to procure the Scheme using third parties.

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The above Threshold Values of one million Great British Pounds and Zero Pence (£1,000,000), one million, five hundred thousand Great British Pounds and Zero Pence (£1,500,000), two million Great British Pounds and Zero Pence (£2,000,000), and five million Great British Pounds and Zero Pence (£5,000,000) shall be adjusted using the average of the Contract Price Fluctuation Work Categories 4/HM/WC/01 to 4/HM/WC/09 that are detailed in the Price Adjustment Formulae Indices Series 4 – Highways Maintenance. The Threshold Values shall be adjusted on an annual basis in the month of April and rounded to the nearest fifty thousand Great British Pounds and Zero Pence (£50,000). In the event of deflation occurring, the Threshold Values will not be subject to adjustment.

- 6.2.5 Where a Scheme is to be procured by a Works Contract under Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids, 6.2.4 (b), the Operating Company, in addition to its other obligations under this Contract, shall if so ordered:
- (a) Assist the Director and or Scottish Ministers to undertake a pre-qualification process,
 - (b) Prepare all necessary tender documentation, and
 - (c) Undertake the role of Contract Administrator during the construction stage.
- 6.2.6 For Schemes with an Estimated Bid Value of more than five million Great British Pounds and Zero Pence (£5,000,000), the Scottish Ministers at their sole discretion may:
- (a) Order the Operating Company to provide investigation, design, procurement and other services necessary for a subsequent Works Contract procured by the Scottish Ministers,
 - (b) Order the Operating Company to undertake the work as Operations,
 - (c) Procure the Scheme or similar work under separate contracts with others, or
 - (d) Not proceed with the Scheme.
- 6.2.7 The values given in Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids, 6.2.2, 6.2.3, 6.2.4 and 6.2.6 above are Threshold Values which may be revised from time to time by the Scottish Ministers at its sole discretion.
- 6.2.8 The Scottish Ministers may at their sole discretion issue Order(s) that combine individual Schemes, or combine individual Schemes with potential individual Schemes, or combine potential individual Schemes.

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Where individual Schemes are combined into a new single Scheme and their combined Estimated Bid Value falls within the Threshold Values stated in Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids, 6.2.2 or 6.2.4, the Scottish Ministers may proceed in accordance with Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids, 6.2.2 or 6.2.4 as appropriate for the single Scheme. The Operating Company shall execute Operations for the single Scheme in compliance with the Orders of the Scottish Ministers.

6.2.9 The Scottish Ministers may, at their sole discretion, issue Order(s) for the Operating Company to execute operations, activities, duties and responsibilities in any other part of the Trunk Road network outside the boundary of the Unit.

Such operations, activities, duties and responsibilities outside the Unit are likely to be ordered at, and require execution at, little or no notice by the Operating Company and such Operations may require:

- (a) Resources to be provided within the timescale stated in the Order by the Operating Company, and
- (b) Immediate diversion of part of the Operating Company's existing resources employed elsewhere in the Unit.

For the purposes of this Schedule 1 Conditions of Contract, Clause 6 Change Control and operation of this Contract, all such operations, activities and responsibilities that are subject to an Order under this Schedule 1 Conditions of Contract, Clause 6 Change Control shall be deemed to be Operations.

6.2.10 The Scottish Ministers will within sixty-three (63) days of the date of receipt of a Bid notify the Operating Company in writing of the actions proposed, with respect to such Scheme.

6.2.11 The Scottish Ministers may, at their discretion, issue Order(s) pursuant to the other provisions of this Contract for the Operating Company to execute any or all of the following:

- (a) Feasibility studies,
- (b) Technical investigations including but not limited to further investigations as defined in the Design Manual for Roads and Bridges,
- (c) Structures assessments, and
- (d) Design,

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for any such Operations activities duties and responsibilities that shall be the subject of a separate competitive tender as referred to in Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids 6.2.4 (b) and (c).

- 6.2.12 When considering the issue of any potential Order for any Scheme in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids 6.2.1 the Scottish Ministers, at their sole discretion, may decide:
- (a) If a potential Order for any Scheme contains any rate (or rates) contained in Schedule 4 Measurement, Rates & Prices, and
 - (b) The potential Order does not give value for money to the Scottish Ministers, to instruct that the Operations, activities, duties and responsibilities associated with such Order be executed in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2 Orders, Schemes, Threshold Values and Bids 6.2.4 (b) and (c) irrespective of the value of any such Scheme or potential Scheme.
- 6.2.13 If in the opinion of the Scottish Ministers, the Operating Company provides rates for any potential Order for any Scheme that does not provide value for money then the Operating Company may be given an opportunity to present an alternative proposal for the potential Order to demonstrate better value for money.
- 6.2.14 Where Operations are valued in whole or in part using any rate or price referred to in, or established in accordance with, this Contract such rate or price shall be deemed sufficient to carry out the full scope of any obligations of the Operating Company specified in or to be inferred from this Contract in connection with such Operations.
- 6.2.15 Subject to the other provisions of this Contract, any Order may be issued via the Asset Management Performance System, in writing, or in exceptional circumstances orally, subject to the requirements of Schedule 3 Contract Management, Section 7 Control of Core & Ordered Operations, 7.9 Oral Orders.
- 6.2.16 Any such oral Order shall be followed up by the Operating Company submitting a Bid within two Working Days of receipt of such oral Order.
- 6.2.17 The Scottish Ministers may, subject to agreement with the Operating Company, order Schemes as a Lump Sum Quotation. The Lump Sum Quotation shall be derived from the applicable Schedule of Rates and Prices items adjusted for Contract Price Fluctuations at the estimated time of Scheme execution.
- 6.2.18 Core Operations shall not be subject to an Order.

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6.3 Cancellation of orders

6.3.1 The Scottish Ministers at their sole discretion may cancel any Order, or part of an Order by issuing a written notice of cancellation. On receipt of a notice of cancellation, the Operating Company shall take all possible steps to terminate, without delay and on the best possible terms to minimise cost to the Scottish Ministers, any commitments and liabilities it has entered into, or incurred for the purposes of carrying out its obligations under the relevant Order or cancelled part of the Order.

6.3.2 Following cancellation of an Order, or part of the work within an Order, the Scottish Ministers will pay the Operating Company the following amounts:

- (a) Any amount due for completed work assessed in accordance with this Contract,
- (b) The cost of equipment and materials purchased and accepted by the Operating Company for the Order and not included in the work and in respect of which equipment and materials the Operating Company shall demonstrate to the satisfaction of the Scottish Ministers that title will pass to the Scottish Ministers upon payment. Payment will only be made for equipment and materials that cannot be used for other Operations ordered at the time of, or within one month of, the notice of cancellation,
- (c) Other costs directly incurred in the expectation of completing the whole of the Order,
- (d) The cost of removing plant, equipment and surplus materials that were on Site and necessary for the purposes of carrying out the Order, from such Site,
- (e) An allowance for profit set out in Schedule 4 Measurement, Rates & Prices in respect of such costs, and
- (f) Any amounts retained by the Scottish Ministers in respect of the cancelled Order, subject to there being no uncorrected Non-Conformances in respect of work already completed for the Order.

The Operating Company shall include details of any amounts it considers due for payment under this Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.3 Cancellation of Orders, 6.3.2 in the Application for Payments submitted in accordance with Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract.

Subject to full and documented substantiation by the Operating Company, the Scottish Ministers shall pay to the Operating Company the amount that, in the opinion of the

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Scottish Ministers on the basis of such an Application for Payment, shall be due to the Operating Company pursuant to this Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.3 Cancellation of Orders, 6.3.2 following the timings and procedures given in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract.

All amounts considered due for payment must be included in the Application for Payments within three months of the notice of cancellation. Amounts notified to the Scottish Ministers in later Application for Payments will not be eligible for payment unless prior agreement by the Scottish Ministers is given within two (2) months of the notice of cancellation.

6.4 Extensions of time for completion of operations

6.4.1 Where, for any Scheme any cause of delay occurs that is:

- (a) Provided for in this Contract,
- (b) As a result of exceptional adverse weather conditions, or
- (c) As a result of other special circumstances,

that delays Operations forming all or part of the Scheme, the Operating Company shall be entitled to an extension of time for completion of such Operations. No extensions of time shall be granted in respect of an Order issued pursuant to Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.3 Urgent Repairs, 4.3.5 unless the delay is caused by the actions of the Scottish Ministers.

Where any of such causes of delay occur which in the opinion of the Operating Company, acting reasonably, entitle the Operating Company to an extension of time for the completion of any such Operations, the Operating Company shall within seven (7) days after the cause of the delay notify the Scottish Ministers that a delay has occurred and state the timing and reason for such delay. Within fourteen (14) days of the cause of the delay or such longer period as may be consented to by the Scottish Ministers, the Operating Company shall deliver to the Scottish Ministers full and detailed particulars of any claim for extension of time to which it may consider itself entitled in order that such claim may be considered by the Scottish Ministers. The Operating Company shall provide, within five (5) days of the date of the request, any evidence relating to the Operating Company's submission for an extension of time that the Director may request.

6.4.2 The Scottish Ministers will decide whether the cause of delay entitles the Operating Company to an extension of time by the use of whatever evidence the Scottish Ministers consider appropriate. After receipt of supporting evidence of the extension of time claim

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from the Operating Company, the Scottish Ministers will grant, in a notice in writing to the Operating Company, the extension of time (if any) to which they consider the Operating Company shall be entitled for the completion of the said Operations.

Where the Scottish Ministers do not consider that any extension of time is due to the Operating Company in respect of the said Operations or any such Scheme or part of any such Scheme within the Order concerned, the Scottish Ministers will notify the Operating Company accordingly.

6.4.3 Any extended time for completion granted under Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.4 Extensions of Time for Completion of Operations, 6.4.2:

- (a) Shall not extend beyond the Termination Date, and
- (b) Shall not entitle the Operating Company to any additional payment under this Contract,

and there shall be no effect on the value of the said Scheme within the Order and the Order concerned.

6.5 Operating company's change proposals

6.5.1 The Operating Company may submit to the Scottish Ministers an Operating Company Change Proposal in relation to the Scottish Ministers' Requirements at any time following the Operations Commencement Date.

Such Operating Company Change Proposal shall be in writing and refer expressly to this Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.5 Operating Company's Change Proposals.

An Operating Company Change Proposal shall either:

- (a) Improve the efficiency of the Operations with a financial saving to the Scottish Ministers, or
- (b) Improve the efficiency of the Operations at no additional cost to the Scottish Ministers, or
- (c) Improve the efficiency of the Operations at additional cost to the Scottish Ministers.

6.5.2 Any Operating Company Change Proposal shall be accompanied by a full and detailed:

- (a) Explanation of the reasons for the proposed change,
- (b) Explanation of how any risks associated with the proposed change shall be allocated,
- (c) Explanation of how any trials of any proposed innovation shall be financed,

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- (d) Statement of any consideration that the Operating Company is seeking for making the innovation available to the Scottish Ministers, including but not limited to the release of any Intellectual Property Rights in the innovation,
- (e) Explanation of the benefits arising to the Scottish Ministers from the proposed change,
- (f) Demonstration that such proposed change has no detrimental effect on the:
 - (i) Environmental impact,
 - (ii) Safety,
 - (iii) Quality, and
 - (iv) Performance,of the Operations and the Unit,
- (g) Demonstration that such proposed change is not prejudicial in any way to the safety of users of the Unit, or any other person affected by, or involved in, the performance of the Operations,
- (h) Explanation of any consequential changes required to any of the Scottish Ministers' Requirements, and
- (i) Substantiation that such proposed change would be acceptable to any third party whom the Operating Company is obliged to consult in regard to, or whose consent is required for the implementation of, such proposed change.

6.5.3 Any Operating Company Change Proposal shall include proposed changes to Schedule 4 Measurement, Rates & Prices. Such proposed changes shall only relate to the Operating Company Change Proposal submitted.

Each rate or price change or additional rate or price proposed shall be accompanied by a submission detailing its evaluation and assessment.

If an Operating Company Change Proposal leads to cost savings resulting from a change to the Scottish Ministers' Requirements, the savings shall be shared equally between the Scottish Ministers and the Operating Company.

Any additional costs of Operations resulting from the acceptance of an Operating Company Change Proposal shall be borne by the Scottish Ministers.

For the purpose of this Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.5 Operating Company's Change Proposals, costs mean the costs to the Scottish Ministers as calculated by application of the principles referred to in Schedule 1 Conditions of

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Contract, Clause 5 Payments, 5.2 Valuation of Operations, together with other expenses incurred by the Scottish Ministers as a result of the Operating Company Change Proposal.

- 6.5.4 In the case of a proposal where the savings are shared equally between the Operating Company and the Scottish Ministers, the proposed new rates and prices shall include the share of the savings due to the Operating Company.
- 6.5.5 All the costs and expenses of whatsoever nature associated with the preparation and implementation of any proposed change to the Scottish Ministers' Requirements as a result of an Operating Company Change Proposal shall be the responsibility of the Operating Company.
- 6.5.6 The acceptance of an Operating Company Change Proposal shall be at the sole discretion of the Scottish Ministers. If the Scottish Ministers do not accept the Operating Company Change Proposal, they will inform the Operating Company in writing within fourteen (14) days of receipt of all required supporting information or the completion of any trials or demonstrations, whichever is the later.

Where the Scottish Ministers are prepared to accept any such change to the Scottish Ministers' Requirements, an Operating Company Change Proposal will be implemented by being subject to an Order issued pursuant to this Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.5 Operating Company's Change Proposals.

- 6.5.7 The Order issued to implement a change to the Scottish Ministers' Requirements may include:
- (a) Reference to this sub-clause,
 - (b) A statement of the changes made to the Scottish Ministers' Requirements,
 - (c) The effective date for such changes to the Scottish Ministers' Requirements,
 - (d) Changes made to Schedule 4 Measurement, Rates & Prices (if any), and
 - (e) A statement that the Order is not effective until the effective date stated in the Order

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7 Title

7.1 Property in materials and plant

7.1.1 For the purpose of Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant and Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.9:

(a) The expression "Plant" means any Constructional Plant, plant, equipment, temporary work materials, appliances and things required for carrying out Operations but excluding any vehicles engaged solely in transporting any labour, Constructional Plant, plant, equipment or materials to or from the Unit. "Plant" does not include things intended to form, or forming, part of the Unit, and

(b) The expression "agreement for hire" excludes any agreement for hire purchase.

7.1.2 All Plant, goods and materials owned or leased by the Operating Company or by any company in which the Operating Company has a controlling interest shall, when on the Unit or being used for the execution of the Operations, be deemed to be the property of the Scottish Ministers. Plant used as Winter Service Plant shall be deemed to be in use for Operations at all times during the Winter Service Period.

7.1.3 The Operating Company shall not bring on to the Unit and or use in the Operations any hired or leased Plant unless the agreement for the hire or lease of such Plant contains a provision that the owner of such Plant shall:

(a) On request in writing made by the Scottish Ministers within seven (7) days after the date on which any forfeiture has become effective, and

(b) On the Scottish Ministers undertaking to pay all hire or lease charges in respect of such Plant from such date,

immediately hire or lease such Plant to the Scottish Ministers on the same terms as such Plant was hired or leased to the Operating Company, except that the Scottish Ministers shall be entitled to permit the use of such Plant by any other contractor employed by them for the purpose of completing the Operations under the other terms of this Contract.

7.1.4 Where the Scottish Ministers enter into any agreement for the hire or lease of Plant pursuant to Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant, 7.1.3, all sums properly paid by the Scottish Ministers under the provisions of any such agreement and all expenses incurred by them (including stamp duties) in entering into such agreement, are deemed for the purpose of the other provisions of this Contract to be part of the cost of completing the Operations.

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- 7.1.5 Upon any written request made at any time by the Scottish Ministers in relation to any item of Plant, the Operating Company shall forthwith in writing notify to them the name and address of the owner thereof, provide a copy of the terms under which such Plant was hired or leased to the Operating Company and, in the case of hired or leased Plant, certify in writing that the agreement for the hire or lease thereof contains a provision in accordance with the requirements of Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant, 7.1.3.
- 7.1.6 If the Operating Company shall fail to remove any Plant, goods or materials, Constructional Plant, materials, rubbish, temporary work of every kind and traffic management equipment, as required pursuant to Schedule 1 Conditions of Contract, Clause 2 Operating Company Main Responsibilities, 2.17 Clearing During and On Completion of Operations, 2.17.1 within such time after execution of the Operations as may be allowed by the Scottish Ministers, then the Scottish Ministers may at their option:
- (a) Sell or otherwise dispose of any such items which are the property of the Operating Company, and
 - (b) Return any such items that are not the property of the Operating Company to the owner thereof at the Operating Company's expense,
- provided always that the Scottish Ministers will, after deducting from any proceeds of any sale the costs, charges and expenses in connection with such sale or return as aforesaid, pay the balance (if any) to the Operating Company.
- To the extent that the proceeds of any such sale are insufficient to meet all such costs, charges and expenses of the Scottish Ministers, the excess shall be a debt due from the Operating Company to the Scottish Ministers. Such excess shall be deducted from the next payment or any subsequent payment due to the Operating Company pursuant to the provisions of this Contract or, at the option of the Scottish Ministers, shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers.
- 7.1.7 Subject to the provisions of Schedule 1 Conditions of Contract, Clause 2 Operating Company Main Responsibilities, 2.15 Safety and Security, 2.15.3, Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.1 Care of Units and Operations, 8.1.3 and Schedule 1 Conditions of Contract, Clause 9 Termination, 9.4 Removal of Constructional Plant, 9.4.1, the Scottish Ministers shall not at any time be liable for the loss of, or damage to, any of the:
- (a) Plant,
 - (b) Goods, and

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(c) Materials,

that have been deemed to become or remain, the property of the Scottish Ministers.

7.1.8 The Operating Company shall, where entering into any sub-contract for the execution of any part of the Operations, incorporate in such sub-contract the provisions of Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant in relation to Plant, goods or materials brought on to the Unit, and or used in the Operations by the contractor, sub-contractor and or supplier of any tier.

7.1.9 Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant, 7.1.1 to 7.1.8 inclusive:

(a) Shall not be deemed to imply any consent or approval or acceptance by the Scottish Ministers of the Plant, goods, materials or other matters referred to therein, and

(b) Shall not prevent the rejection of any such Plant, goods or materials or other matters referred to therein at any time by the Scottish Ministers.

7.1.10 On termination of this Contract, howsoever arising, the Scottish Ministers shall be entitled to use all Plant owned and or used in the Operations by the Operating Company or by any company in which the Operating Company has a controlling interest or by any contractor, sub-contractor or supplier of any tier of the Operating Company, subject to the Scottish Ministers agreeing to pay reasonable costs for such usage, such reasonable cost to not exceed the cost that would otherwise have been incurred by the Operating Company.

7.2 Vesting of goods and materials not on unit

7.2.1 Where an Order identifies goods or materials for which payment may be made before the same are delivered to the Unit, the Operating Company may with a view to securing payment pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract for any such goods and materials, transfer the title in the same to the Scottish Ministers before delivery to the Unit provided that such goods and materials have been:

(a) Manufactured,

(b) Passed any specified factory testing,

(c) Prepared, or

(d) Made substantially ready for incorporation in the Operations,

and that the said goods and materials:

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- (e) Shall be the property of the Operating Company, or
- (f) The contract for the supply of the same expressly provides that the property therein shall pass unconditionally to the Operating Company.

7.2.2 The intention of the Operating Company to transfer the property in any goods or materials to the Scottish Ministers pursuant to Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials Not on Unit shall be evidenced by the Operating Company taking or causing the supplier of the said goods or materials to take the following actions, namely:

- (a) Provide to the Scottish Ministers documentary evidence that the property in the said goods or materials has been vested in the Operating Company,
- (b) Mark clearly or otherwise identify the said goods and materials in order to show that:
 - (i) Their destination is the Unit,
 - (ii) They are the property of the Scottish Ministers, and
 - (iii) (Where they are not stored at the premises of the Operating Company) to whose order they are held,
- (c) Set aside and store the said goods and materials so marked or identified to the satisfaction of the Scottish Ministers, and
- (d) Deliver to the Scottish Ministers a schedule listing and giving the value of every item of the goods and materials so set aside and stored and inviting them to inspect the same.

7.2.3 When the Scottish Ministers consent in writing, ownership of the said goods and materials for the purposes of Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials Not on Unit shall vest in and become the absolute property of the Scottish Ministers.

Thereafter such goods and materials shall be in the possession of the Operating Company for the sole purpose of delivering them to the Scottish Ministers and incorporating them in the Operations, provided always that:

- (a) Consent by the Scottish Ministers for the purposes of Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials Not on Unit or any payment made by them for goods and materials pursuant to Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract:

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- (i) Shall be without prejudice to the exercise of any power of the Scottish Ministers contained in this Contract to reject any goods or materials which are not in accordance with the provisions of this Contract, and
 - (ii) Upon any such rejection, the property in the rejected goods or materials shall immediately re-vest in the Operating Company,
- (b) Notwithstanding any other provisions of this Contract, the Operating Company shall be responsible for:
- (i) Any loss or damage to such goods and materials,
 - (ii) The cost of storing, handling and transporting the same, and
 - (iii) Effecting such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.

7.2.4 Neither the Operating Company nor a contractor, sub-contractor or supplier of any tier nor any other person shall have a lien on any goods or materials which have vested in the Scottish Ministers under Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials Not on Unit, 7.2.3 for any sum due to the Operating Company, sub-contractor or other person.

The Operating Company shall take all such steps as may reasonably be necessary to ensure that the title of the Scottish Ministers and the exclusion of any such lien shall be brought to the notice of contractors, sub-contractors and or suppliers of any tier and or any other persons dealing with any such goods or materials.

7.2.5 Upon cessation of the employment of the Operating Company under this Contract before the completion of the Operations for any reason, the Operating Company shall deliver to the Scottish Ministers any goods or materials the property in which has vested in the Scottish Ministers by virtue of Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials Not on Unit, 7.2.3.

Where the Operating Company fails to do so, the Scottish Ministers may:

- (a) Enter any premises of the Operating Company or of any contractor, sub-contractor and or supplier of any tier,
- (b) Remove such goods and materials, and
- (c) Recover the cost of so doing from the Operating Company.

7.2.6 The Operating Company shall incorporate provisions equivalent to those provided in Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials

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Not on Unit in every sub-contract in which provisions are made for payment in respect of goods or materials before the same have been delivered to the Unit.

7.3 Care of property belonging to Scottish Ministers

7.3.1 Where the Operating Company has taken possession of any goods, plant, materials or equipment that are, or are deemed to be, the property of the Scottish Ministers including as a minimum any goods, plant, materials or equipment referred to in Schedule 2 Scope, Section 4 Inspection & Maintenance – Structures, Schedule 3 Contract Management, Section 3 Office, Depots and Other Infrastructure, and or any goods, plant, materials or equipment that have been temporarily taken down or removed then notwithstanding any other provision of this Contract, the Operating Company shall be responsible for:

- (a) Any loss or damage to, or caused by, such goods, plant, materials or equipment,
- (b) Any Defect and or Non-Conformance and or want of repair in such goods, plant, materials, or equipment,
- (c) Ensuring such goods, plant, materials or equipment are in good condition and repair, and
- (d) Effecting such additional insurance as may be necessary to cover the risk of any such loss or damage from any cause.

All such goods, plant, materials or equipment shall remain the property of the Scottish Ministers and shall be handed back to the Scottish Ministers:

- (e) At Service End Date or such other date as may be advised by the Scottish Ministers, and
- (f) In accordance with such requirements as are advised by the Scottish Ministers, such requirements including, as a minimum, that the quantities of such goods, plant, material or equipment to be handed back will be the same as when handed over by the Scottish Ministers, and that all relevant Intellectual Property Rights, software and or licences will be transferred as required by the Scottish Ministers.

7.4 The premises

7.4.1 The Scottish Ministers shall make the Premises available, if required, to the Operating Company thirty (30) Working Days prior to the agreed entry date of the Premises until the Termination Date for uses solely relating to this Contract. Availability and use of Premises shall be in accordance with the terms of Schedule 3 Contract Management, Section 3 Office and Other Infrastructure and the separate lease agreement(s) (if applicable)

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entered into between the Scottish Ministers and the Operating Company with the signing of the Agreement or before the Termination Date.

- 7.4.2 No later than thirty (30) Working Days prior to the agreed entry date the Operating Company shall procure an independent chartered surveyor to produce a schedule of condition in respect of the Premises.
- 7.4.3 The Operating Company shall submit the schedule of condition to the Scottish Ministers no later than fourteen (14) Working Days prior to the agreed entry date of the Premises.
- 7.4.4 The Scottish Ministers shall consider the draft schedule of condition and, if satisfied that the schedule of conditions presents a true and complete representation of the Premises, the Scottish Ministers will approve the said schedule of condition and the said schedule of condition shall be the "Schedule of Condition" as that term is defined in the draft Lease and will be added to lease agreement. The Scottish Ministers shall send the Leases to the Operating Company for execution. The Operating Company shall sign and return the Lease Agreement to the Scottish Ministers no later than seven (7) Working Days prior to the agreed entry date.
- 7.4.5 In the event that the Operating Company and Scottish Ministers are not able to agree the Schedule of Condition prior to the Operating Company occupying the Premises, then in the absence of such agreement, either party is entitled to refer the matter to the President of the Royal Institute of Chartered Surveyors in Scotland who will then review the schedule of condition and make a decision that both the Operating Company and Scottish Ministers shall be bound by.
- 7.4.6 Notwithstanding the dates of execution of the Leases, the parties shall be bound by their terms as if they had been duly executed and delivered with effect from the Operations Commencement Date.

7.5 Fossils and antiquities

- 7.5.1 All fossils, coins, articles of value or antiquities, and structures or other remains or things of geological or archaeological interest discovered in the Unit by the Operating Company are deemed to be the absolute property of the Scottish Ministers.

The Operating Company shall take precautions to prevent its work, people or any other persons from removing or damaging any such article or thing. Immediately upon

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discovery thereof and before removal, the Operating Company shall notify the Scottish Ministers in writing of such discovery and shall execute the treatment or disposal of same subject to an Order.

7.6 Intellectual property, ownership & Scottish Ministers access to information

7.6.1 The “Foreground Intellectual Property Rights” means all Intellectual Property Rights, data, Designs, Drawings, inventions, ideas, photographs, reports, software, specifications, websites, (including domain names, databases and all data pertaining to the operation of such websites), domain names and databases and other materials or work, Operations or activities, of whatsoever nature, in any way relating to this Contract or arising in the course of or from the execution of the Operations, including (without limitation) any Intellectual Property Rights:

- (a) Conceived, developed, made, or otherwise produced, by the Operating Company (or its contractors, agents, representatives, suppliers and sub-contractors of any tier);
- (b) Assigned/transferred to the Operating Company (or its contractors, agents, representatives, suppliers and sub-contractors of any tier); or
- (c) Brought to the attention of the Operating Company (or its contractors, agents, representatives, suppliers and sub-contractors of any tier);

in all cases (whether in electronic form, on paper or in any other form).

The Foreground Intellectual Property Rights are hereby assigned to (by way of present and future assignment) and vest in and are the property of the Scottish Ministers.

Without prejudice to the foregoing provisions of Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.1 the Operating Company hereby grants (or shall procure the grant of) to the Scottish Ministers and any transferee or sub-licensee of the Scottish Ministers, a non-exclusive, royalty free, perpetual, and irrevocable licence, on a worldwide and unrestricted use basis, to use all Intellectual Property Rights to the Operating Company's own Intellectual Property Rights:

- (d) As are required for the Scottish Ministers to use the Foreground Intellectual Property Rights at any time, including following the expiry or termination of this Contract; and
- (e) Forming part of the Foreground Intellectual Property Rights which the Scottish Ministers agree are demonstrably incapable of transfer to the Scottish Ministers in

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accordance with the foregoing provisions of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.1. The Operating Company shall provide advance written notice of any such Foreground Intellectual Property Rights which are incapable of transfer to the Scottish Ministers.

7.6.2 By entering into this Contract, the Operating Company shall (and shall procure that all of its, agents, representatives, contractors sub-contractors and or suppliers of any tier) either assign, make over and transfer all right, title, and interest, present and future, to the Foreground Intellectual Property Rights to the Scottish Ministers or grant a licence in respect of any Foreground Intellectual Property incapable of transfer to the Scottish Ministers in accordance with the provisions of Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.1.

The Operating Company shall execute or procure the execution of any deed or document and do all other things necessary to ensure that all such rights, in and to the Foreground Intellectual Property Rights are granted in the Scottish Ministers.

7.6.3 The Operating Company shall assist the Scottish Ministers in connection with any application to record or register any Intellectual Property Rights in respect of this Contract and shall do all such acts and things as the Scottish Ministers shall require in writing in connection with any such assistance.

7.6.4 The Operating Company irrevocably appoints the Scottish Ministers to be its agent and in its name and on its behalf to do all such acts and things and to sign all such deeds and documents as may be necessary in order to provide to the Scottish Ministers the full benefit of the provisions of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information.

7.6.5 The Operating Company hereby confirms that it shall procure and ensure that any third parties it may appoint as agents, representatives, contractors, sub-contractors and or suppliers of any tier, shall both:

- (a) Adhere to the provisions of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.5 and
- (b) Irrevocably appoint the Scottish Ministers to act as agent on behalf of such third parties in accordance with the provisions of this Schedule 1 Conditions of Contract,

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Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information.

For the purposes of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.5, a Certificate signed by the Director shall be conclusive evidence that:

- (c) Any act or thing done by the Scottish Ministers, or
- (d) Any deed or document executed by the Scottish Ministers,

falls within the authority of the Scottish Ministers to act as agent in accordance with the provisions of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information.

The Operating Company warrants and undertakes (and shall procure and ensure that all of its, agents, representatives, contractors, sub-contractors and or suppliers of any tier warrant and undertake) that it shall:

- (e) Both be free to assign all right, title and interest, present and future in and to the Foreground Intellectual Property Rights to the Scottish Ministers and to grant (including procure the grant of) the licences to the Scottish Ministers, in both cases in accordance with this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information without any third party claims, liens, charges or encumbrances of any kind, and
- (f) Be free of any duties or obligations to third parties that may conflict with the terms of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information.

7.6.6 The Operating Company hereby warrants that the Foreground Intellectual Property Rights (whether created by the Operating Company, its agents, representatives, contractors, sub-contractors and or suppliers of any tier) do not and shall not infringe any Intellectual Property Rights of which a third party is the proprietor.

7.6.7 Notwithstanding any other provision of this Contract, and without prejudice to the application of the Official Secrets Acts 1911 to 1989, the Operating Company shall keep (and shall ensure that its Contract Personnel, agents, representatives, contractors, sub-contractors and suppliers of any tier keep) the information in respect of this Contract secret and confidential and shall:

- (a) Not at any time for any reason whatsoever disclose information in respect of this Contract to any third party,

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- (b) Use information in respect of this Contract, or
- (c) Permit information in respect of this Contract to be so disclosed or used, except as shall be permitted by the other provisions of this Contract to enable the proper provision of the Operations by the Operating Company.

7.6.8 The Operating Company shall indemnify and keep indemnified the Scottish Ministers and any employee or representative of the Scottish Ministers against all actions, charges, claims, costs, demands, expenses, losses, and suits incurred by or brought against the Scottish Ministers, arising from or in connection with, or incurred by reason of:

- (a) Any breach of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information by the Operating Company; and
- (b) Any infringement or alleged infringement of any third party's Intellectual Property Rights by reason of the use or possession of the Foreground Intellectual Property Rights and or Intellectual Property Rights licenced to the Scottish Ministers, or any part thereof, by the Scottish Ministers, or any employee or representative of the Scottish Ministers, and (without prejudice to the generality of the foregoing) the indemnity shall cover in all cases the following:
 - (i) Any legal expenses incurred by the Scottish Ministers,
 - (ii) Any sums paid to any third party by way of damages or in settlement of any claim by a third party in respect of any such infringement or alleged infringement, and
 - (iii) The actual cost of any such substitute or replacement for any item that the Scottish Ministers are unable to use in consequence of any such infringement or alleged infringement.

7.6.9 The Scottish Ministers shall permit the Operating Company to use the Foreground Intellectual Property Rights owned by the Scottish Ministers in respect of this Contract but only for the purposes of and to the extent necessary for the provision of the Operations in accordance with this Contract and for no other purpose whatsoever, unless the Scottish Ministers have given prior consent in writing to the Operating Company that permits the use of such for another purpose. This is always subject to Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.9.

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The Scottish Ministers do not accept any liability whatsoever in respect of any infringement or alleged infringement of any third parties' Intellectual Property Rights by reason of the use or possession of the Intellectual Property Rights in respect of this Contract, or any part thereof, by the Operating Company or its agents, representatives, contractors, sub-contractors or suppliers of any tier and the Operating Company hereby waives (and procures the waiver of) all claims in respect of the same.

- 7.6.10 With the exception of the rights under Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information, 7.6.9, which by their nature shall expire at the earlier of the end of the Contract Period or termination of this Contract, the rights and obligations of the Parties under this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information shall survive the expiry or the termination of this Contract howsoever arising.
- 7.6.11 To the extent that Foreground Intellectual Property Rights are stored and or being processed by the Operating Company and or a third party, the Operating Company shall provide copies (at no additional cost to the Scottish Ministers) of any Foreground Intellectual Property Rights in any format specified in this Contract, to the Scottish Ministers, no later than five (5) Working Days after receiving a request in writing from the Scottish Ministers.
- 7.6.12 In any contract entered into by the Operating Company, the Operating Company shall include the requirements and provisions of this Schedule 1 Conditions of Contract, Clause 7 Title, 7.6 Intellectual Property, Ownership & Scottish Ministers Access to Information into all contracts between the Operating Company and a third party.
- 7.6.13 The Operating Company shall be responsible for preserving the integrity of Foreground Intellectual Property Rights and preventing the corruption and or loss of any Foreground Intellectual Property Rights. If the Operating Company contracts with any third party to store any Foreground Intellectual Property Rights including remotely from the Central Office, E.G. in a cloud computing facility, the Operating Company shall ensure the third party service provider shall store and provide copies of Foreground Intellectual Property Rights in accordance with the Contract.
- 7.6.14 In the event the Operating Company and or a third party service provider becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 (As amended) any costs incurred by the Scottish Ministers in obtaining any Foreground Intellectual Property Rights and or copies of Foreground

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Intellectual Property Rights not already in the possession of the Scottish Ministers, the Scottish Ministers are entitled at their option:

- (a) Recover from the Operating Company the costs incurred by the Scottish Ministers either on demand from the Operating Company as a debt due to the Scottish Ministers, or
- (b) Deduct the amount of these costs from the next payment or any subsequent payment due to the Operating Company under this Contract.

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8 Liabilities and insurance

8.1 Care of unit and the operations

8.1.1 For the purposes of Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance and Schedule 1 Conditions of Contract, Appendix 12 Insurance Requirements only, "Operating Company" shall mean "the person or persons, firm or firms or company or companies with whom the Scottish Ministers have completed and signed the Agreement" and such definition shall include the Operating Company's personal representatives, successors and permitted assignees.

8.1.2 The excepted risks, for which the Operating Company shall not be liable under this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.1 Care of Unit and the Operations, are any loss or damage to the extent that the same is due to:

- (a) Riot, war, invasion, act of foreign enemies, or hostilities (whether war be declared or not),
- (b) Civil war, rebellion, revolution, insurrection, or military or usurped power,
- (c) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
- (d) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (e) The use or occupation of any part of the Unit by the Scottish Ministers, and or any contractor other than the Operating Company (not being employed by the Operating Company and or for whom the Operating Company is not responsible), and or third parties including the public (but in each case excluding Damage to Crown Property the repair of which is valued at not more than fifty thousand Great British Pounds and Zero Pence (£50,000), and Incident Response Operations valued at not more than fifty thousand Great British Pounds and Zero Pence (£50,000), and subject to the other provisions of this Contract, and
- (f) Any Defect in the Design, construction or maintenance of the Unit but excluding loss or damage resulting from a Non-Conformance by the Operating Company.

8.1.3 In the event of any loss or damage from any cause whatsoever (except loss or damage due to any of the excepted risks set out in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.1 Care of Unit and the Operations) to Operational Items while

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the Operating Company is responsible for the care of any Operational Items or during the execution of the Operations and during the Non-Conformance Liability Period, the Operating Company shall at its own cost replace, repair, rectify, or indemnify and keep indemnified the Scottish Ministers against such loss or damage so that, at completion of relevant Orders and in any case at the Service End Date, the Unit is in good order and condition and complies with the other provisions of this Contract, and so that the Scottish Ministers have no liability in relation to the loss or damage referred to in this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.1 Care of Unit and the Operations, 8.1.3.

8.1.4 In the event of loss or damage arising from any of the excepted risks set out in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.1 Care of the Unit and the Operations, 8.1.2, the Operating Company shall, subject to an Order, repair and make good the same as aforesaid in accordance with the provisions of this Contract.

8.1.5 Notwithstanding any other provisions of this Contract, the Operating Company shall indemnify the Scottish Ministers against any costs, losses and damages arising as a consequence of any Default by the Operating Company that results in the occurrence of an Incident.

8.1.6 The Operating Company shall be liable for any loss or damage occasioned by it arising out of or as a consequence of the Operations and or to the Unit.

8.2 Damage to persons and property

8.2.1 Notwithstanding any other term of this Contract and without prejudice and in addition to any other right or remedy that the Scottish Ministers may have, the Operating Company shall, except if and insofar as this Contract expressly provides otherwise, and subject to the exceptions set out in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.2 indemnify and keep indemnified the Scottish Ministers against all losses, actions, proceedings, claims, costs, damages, demands and expenses (including but not limited to all legal costs and disbursements), incurred by or made against the Scottish Ministers in respect of any injury to or death of any person, and or loss of use of or damage to any property (other than the Operational Items) including without limitation surface or other damage to land adjacent to the Unit suffered by any persons who own or occupy such land, that may arise out of, in connection with or in consequence (whether directly or indirectly) of the execution of the Operations and or omission of the Operating Company and any subcontractor.

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8.2.2 The exceptions referred to in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.1 that are the responsibility of the Scottish Ministers are:

- (a) Death of, or injury to, persons and loss of, or damage to, property that results from any negligent act of, or omission or breach of any statutory duty by, the Scottish Ministers or any contractor, sub-contractor, or supplier of any tier, (where such party is not the Operating Company, employees, agents, and/or not a contractor, sub-contractor, or supplier of any tier of the Operating Company) unless the negligent act of, or omission or breach of any statutory duty by the Scottish Ministers or others aforesaid has been caused or contributed to by the Operating Company, employees, agents, and/or not a contractor, sub-contractor, or supplier of any tier of the Operating Company,
- (b) Any claims, demands, proceedings, damages, costs, charges and expenses in respect of or in relation to Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.2 (a) above,
- (c) Damage to crops adjacent to the Unit (but only insofar as possession or access has not been given to the Operating Company),
- (d) The use or occupation of land by the Operating Company provided by the Scottish Ministers for the purposes of the correct execution of the Operations (including consequent losses of crops) or interference, whether temporary or permanent, with any right of way, light, air or water or any other form of servitude or wayleave that are the unavoidable result of the execution of the Operations in accordance with this Contract,
- (e) The right of the Scottish Ministers to execute any part of the Operations on, over, under, in or through any land, and
- (f) Damage that is the unavoidable result of the correct execution of the Operations (except where the Operating Company executes a Design as part of an Order and where subsequently the Operations and Defects Correction Operations for such Design are executed either by the Operating Company or under a Works Contract).

8.2.3 The Scottish Ministers shall, subject to the provisions of Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.5 and 8.2.6, indemnify the Operating Company from and against all claims, demands, proceedings, damages, costs, charges and expenses for the exceptions referred to in

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Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, Clause 8.2 Damage to Persons and Property, 8.2.2

- 8.2.4 The Operating Company's liability to indemnify the Scottish Ministers pursuant to Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.1 shall be reduced in proportion to the extent that the negligent act or omission of the Scottish Ministers, or any contractor other than the Operating Company (not being employed by the Operating Company), may have contributed to the said death, injury, loss or damage.
- 8.2.5 The Scottish Ministers' liability to indemnify the Operating Company pursuant to Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.3 shall be reduced in proportion to the extent that the omission of default of the Operating Company may have contributed to the said death, injury, loss or damage.
- 8.2.6 The Scottish Ministers shall not be liable for any damages or compensation payable at law in respect of, or in consequence of, any accident or injury to any work, person or Contract Personnel, or any contractor, sub-contractor, or supplier of any tier, except to the extent that such accident or injury results from, or has been contributed to, by the negligent act, omission or Default of the Scottish Ministers.

The Operating Company shall indemnify and keep indemnified the Scottish Ministers against all such: damages and compensation (except as aforesaid), claims; demands, proceedings, costs, charges, and expenses whatsoever for same.

- 8.2.7 For the purposes of Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.2 Damage to Persons and Property, 8.2.1, 8.2.2 and 8.2.4 shall exclude any injury or damage to persons or property arising out of any incident involving a vehicle supplied by the Operating Company to the Director or any person authorised by him, and occurring when such vehicle is being driven by the Director or is in the charge of the Director or any person authorised by him.

8.3 Insurance generally

- 8.3.1 Within four weeks of the Operations Commencement Date and prior to the Operating Company commencing any Operations, and without limitation to its liability under any other provisions of this Contract or at law, the Operating Company shall take out and maintain the insurances specified in Schedule 1 Conditions of Contract, Appendix 12 Insurance Requirements and any other insurances required by Legislation and or in the opinion of the Operating Company is appropriate for the Operations performed under the Contract.

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- 8.3.2 The Operating Company shall not take any action or fail to take any action (including failure to disclose any fact) or permit anything to be done or not to be done that would entitle any insurer to:
- (a) Refuse to pay any sum, or
 - (b) Delay payment of any claim under any of the insurance, or
 - (c) Render any sum paid out under any of the insurance repayable in whole or in part.
- 8.3.3 All insurances will be subject to Scots Law and the exclusive jurisdiction of the Scottish Courts.
- 8.4 Underwriting information, placing documents and insurance policies**
- 8.4.1 The Operating Company shall, if requested by the Scottish Ministers, provide within seven (7) days of such request copies of all information given to insurers at any time during the placement, alteration or currency of any insurance policy.
- 8.4.2 The Operating Company shall provide to the Scottish Ministers all insurance policies, endorsements, attachments, brokers' placing slips, market reform contracts, electronic placing documents, market reform contract endorsements, electronic endorsements and any other documents necessary, or requested by the Scottish Ministers, to evidence that the required insurances are in place.
- Each document shall be stamped, initialled and dated by all underwriters. Copies of original documents shall be certified in a manner acceptable to the Scottish Ministers.
- 8.4.3 The insurance documents specified in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.4 Underwriting Information, Placing Documents and Insurance Policies shall be provided:
- (a) Prior to the Operations Commencement Date,
 - (b) Prior to the expiry of an existing insurance, and
 - (c) Within seven days of receiving a written request.
- 8.4.4 The requirements in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.4 Underwriting Information, Placing Documents and Insurance Policies for the provision of documents do not apply to professional indemnity insurance, for which a cover note issued by the insurance broker to the Operating Company detailing the period of insurance, limit of indemnity, participating insurers and their shares of the insurance, that the specific requirements of Table 4.1.1/A contained in Schedule 1 Conditions of

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Contract, Appendix 12 Insurance Requirements are catered for and any unusual terms and conditions is sufficient evidence of the existence of the insurance.

- 8.4.5 The Operating Company shall provide notice to the Scottish Ministers of any amendments and replacements of any of the insurance documents referred to in this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.4 Underwriting Information, Placing Documents and Insurance Policies and of other relevant documents previously given to the Scottish Ministers. The amended or replacement documents shall be provided within seven (7) days of issue, whether or not requested by the Scottish Ministers.
- 8.4.6 The Operating Company shall provide to the Scottish Ministers evidence from the insurers that the premiums payable have been paid to the insurers and that the insurances are in full force and effect.
- 8.4.7 The Operating Company shall provide, and take all steps and give all instructions to ensure the provision of:
- (a) The said policies and the other documents referred to in this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.4 Underwriting Information, Placing Documents and Insurance Policies, and
 - (b) Such additional evidence of compliance with this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance as may be required by the Scottish Ministers.
- 8.4.8 The Operating Company shall procure, and take all steps to ensure, that any information given and received in relation to any insurance policy required under this Contract (and any information held by third parties acting on behalf of the Operating Company) is retained for a period of not less than five (5) years after the end of the Contract Period.
- 8.5 Subrogation, non-vitiation, changes to policy, disclosure & notice**
- 8.5.1 Except for the professional indemnity insurance requirement, the employers' liability insurance requirement and the motor insurance requirement, all of the insurance required under the provisions of this Contract shall be subject to:
- (a) The waiver of all duties of disclosure, and
 - (b) The waiver of any rights of subrogation, insofar as the Scottish Ministers are concerned.

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- 8.5.2 Except for the contractors' all risks insurance requirement, professional indemnity insurance requirement, the employers' liability insurance requirement, the motor insurance and the property damage insurance requirement, all of the insurance required under the provisions of this Contract shall allow that actions between the insured parties are treated as though a separate insurance had been issued to each of them.
- 8.5.3 Except for the professional indemnity insurance requirement, the employers' liability insurance requirement and the motor insurance requirement, all of the insurance required under the provisions of this Contract shall be subject to a non-vitiation provision, in order that the actions of the Operating Company or any other insured shall not prejudice the insurance, insofar as the Scottish Ministers are concerned.
- 8.5.4 All of the insurance required under paragraph 2 of Schedule 1 Conditions of Contract, Appendix 12 Insurance Requirements, shall be subject to undertakings from the insurers and the Operating Company:
- (a) To notify the Scottish Ministers in writing of any intention or request to amend the terms and conditions of the said insurance,
 - (b) To obtain confirmation of the acceptance of these amendments from the Scottish Ministers, such acceptance not to be unreasonably withheld,
 - (c) To provide to the Scottish Ministers in writing not less than thirty (30) days' prior notice of cancellation or non-renewal of the said insurance, and
 - (d) In the case of non-renewal by the Operating Company, to allow the Scottish Ministers the opportunity to renew the insurances in accordance with Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.6 Failure to Provide Suitable Evidence of Insurance.

8.6 Failure to provide suitable evidence of insurance

- 8.6.1 If, pursuant to Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.4 Underwriting Information, Placing Documents and Insurance Policies the Operating Company fails to produce, when required, evidence to the satisfaction of the Scottish Ministers that there is in force any of the insurance required under this Contract and in the separate lease agreements between the Scottish Ministers and the Operating Company, the Scottish Ministers may:
- (a) Effect and keep in force any such insurance,
 - (b) Secure the renewal of such insurance,

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(c) Pay any such premium as may be necessary for such purpose, and deduct any amount so paid together with all recovery costs and expenses whatsoever incurred by the Scottish Ministers from the next payment or any subsequent payment due to the Operating Company pursuant to the provisions of this Contract or, at the option of the Scottish Ministers, recover such from the Operating Company on demand as a debt due to the Scottish Ministers.

8.6.2 Where the Operating Company fails to comply with any condition imposed by any insurance policy taken out pursuant to this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, or Schedule 1 Conditions of Contract, Appendix 12 Insurance Requirements, or any other provisions of this Contract, the Operating Company shall indemnify the Scottish Ministers against all liability, costs, loss, expense and claims arising from such failure.

8.6.3 Notwithstanding any other provisions of this Contract, the Scottish Ministers will take action in accordance with Schedule 1 Conditions of Contract, Clause 4 Quality Management if the Operating Company fails to provide the Scottish Ministers with evidence of insurance satisfying the requirements stated in this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, or Schedule 1, Conditions of Contract, Appendix 12 Insurance Requirements, or in any other provisions of this Contract.

8.7 Data Protection

8.7.1 The Scottish Ministers shall indemnify the Operating Company in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Operating Company acting in accordance with the Scottish Ministers' specific written instructions. This indemnity provision shall not apply if the Operating Company:

- (a) Acts on the Scottish Ministers' specific written instructions but fails to notify the Scottish Ministers in accordance with Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection, 8.7.13(c);
- (b) Fails to comply with any other obligation under the Contract."

8.7.2 The Operating Company acknowledges that Personal Data described in the scope of Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection, 8.7.18 below may be Processed in connection with the Operations under this Contract. For the purposes of any such Processing, Parties agree that the Operating

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Company acts as the Data Processor and the Scottish Ministers acts as the Data Controller.

- 8.7.3 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection are without prejudice to any obligations and duties imposed directly on the Operating Company under Data Protection Laws and the Operating Company hereby agrees to comply with those obligations and duties.
- 8.7.4 The Operating Company will, in conjunction with the Scottish Ministers and in its own right and in respect of the Operations, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 8.7.5 The Operating Company will provide the Scottish Ministers with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 8.7.6 The Operating Company must:
- (a) Process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Scottish Ministers (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or regulatory body to which the Operating Company is subject; in which case the Operating Company must, unless prohibited by that law, inform the Scottish Ministers of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Operating Company's obligations under this Contract or as is required by the law;
 - (b) Subject to Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7.6 (a) only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Scottish Ministers prior written consent;
 - (c) Take all reasonable steps to ensure the reliability and integrity of any Contract Personnel and Operating Company's Representative who have access to the Personal Data and ensure that the Contract Personnel and Operating Company's Representative:

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- (i) Are aware of and comply with the Operating Company's duties under this clause;
 - (ii) Are subject to appropriate confidentiality undertakings with the Operating Company or the relevant Sub-contractor;
 - (iii) Are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Scottish Ministers or as otherwise permitted by this Contract; and
 - (iv) Have undergone adequate training in the use, care, protection and handling of Personal Data.
- (d) Implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

8.7.7 The Operating Company shall not engage a sub-contractor to carry out Processing in connection with the Operations without prior specific or general written authorisation from the Scottish Ministers. In the case of general written authorisation, the Operating Company must inform the Scottish Ministers of any intended changes concerning the addition or replacement of any other sub-contractor and give the Scottish Ministers an opportunity to object to such changes.

8.7.8 If the Operating Company engages a sub-contractor for carrying out Processing activities on behalf of the Scottish Ministers, the Operating Company must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Operating Company shall remain fully liable to the Scottish Ministers for the performance of the sub-contractor's performance of the obligations.

8.7.9 The Operating Company must provide to the Scottish Ministers reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.

8.7.10 The Operating Company must notify the Scottish Ministers if it:

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- (a) Receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) Receives a request to rectify, block or erase any Personal Data;
- (c) Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (d) Receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
- (e) Receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within three (3) business days of receipt of the request or any other period as agreed in writing with the Scottish Ministers from time to time.

8.7.11 Taking into account the nature of the Processing and the information available, the Operating Company must assist the Scottish Ministers in complying with the Scottish Ministers' obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- (a) Ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
- (b) Notifying a Personal Data breach to the Scottish Ministers without undue delay and in any event no later than twenty-four (24) hours after becoming aware of a Personal Data breach;
- (c) Assisting the Scottish Ministers with communication of a Personal Data Breach to a Data Subject;
- (d) Supporting the Scottish Ministers with preparation of a data protection impact assessment;
- (e) Supporting the Scottish Ministers with regard to prior consultation of the Supervisory Authority.

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- 8.7.12 At the end of the provision of Operations relating to processing the Operating Company must, on written instruction of the Scottish Ministers, delete or return to the Scottish Ministers all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.
- 8.7.13 The Operating Company must:
- (a) Provide such information as is necessary to enable the Scottish Ministers to satisfy itself of the Operating Company's compliance with Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection;
 - (b) Allow the Scottish Ministers its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection, and contribute as is reasonable to those audits and inspections;
 - (c) Inform the Scottish Ministers, if in its opinion, an instruction from the Scottish Ministers infringes any obligation under Data Protection Laws.
- 8.7.14 The Operating Company must maintain written records including in electronic form, of all Processing activities carried out in performance of the Operations or otherwise on behalf of the Scottish Ministers containing the information set out in Article 30(2) of the GDPR.
- 8.7.15 If requested, the Operating Company must make such records referred to in Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection, 8.7.14 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 8.7.16 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7 Data Protection, 8.7.13 (b) with minimum disruption to the Operating Company's day to day business.
- 8.7.17 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publishes an annual statement of all payments over twenty-five thousand Great British Pounds and Zero Pence (£25,000). In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over twenty-five thousand Great British Pounds and Zero Pence (£25,000). The Operating Company should note that where a payment is made in excess of twenty-five thousand Great British Pounds and Zero Pence (£25,000) there will be disclosure (in

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the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

8.7.18 Data Processing provision as required by Article 28(3) GDPR.

This Paragraph includes certain details of the Processing of Personal Data in connection with the Operations: Subject matter and duration of the Processing of Personal Data. The subject matter and duration of the Processing of Personal Data are set out in the Contract.

(a) The nature and purpose of the Processing of Personal Data:

- (i) Personal Data is Processed by the Operating Company on behalf of the Scottish Ministers as follows:-
- (ii) In relation to third party claims where the claim details are provided by the Operating Company. This information is provided by the Operating Company in accordance with the Contract to the Scottish Ministers to determine how they will proceed.
- (iii) Information relating to Damage to Crown Property where the Scottish Ministers will be responsible for determining whether to pursue a claim or not.
- (iv) In relation to general correspondence with stakeholders (including the public) where the Operating Company will process this information for the purposes of producing or contributing to relevant responses in accordance with the Contract.
- (v) In order to allow the Operating Company to respond to and remedy any faults or issues which relate to its area of responsibility under the Contract which have been reported to TS via its Traffic Customer Care Line service.
- (vi) Performance of the Operating Company's obligations under the Agreement.

(b) The types of Personal Data to be Processed:

- (i) This includes the following: Names, organisation details, addresses, e-mail addresses, telephone numbers, car registration/licence plate numbers and details of insurers (where these include personal data), grade.

(c) The categories of Data Subject to whom Personal Data relates:

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- (i) This includes the following: Members of the public, local councillors, Scottish Ministers and any other stakeholders who choose to contact the Scottish Ministers or the Operating Company directly in relation to the Trunk Road network within the Operating Company's responsibility under the Contract, individuals whose details are held in the AMPS.
- (d) The obligations and rights of the Scottish Ministers:
 - (i) The obligations and rights of the Scottish Ministers as the Data Controller are set out in this Schedule 1 Conditions of Contract, Clause 8 Liabilities and Insurance, 8.7.

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9 Termination

9.1 Termination of this contract

9.1.1 The Scottish Ministers may at any time, by notice in writing to the Operating Company, terminate this Contract with immediate effect in the event that any one or more of the following occurs:

- (a) There has been a change of control, including but not limited to a cumulative change of ownership as defined in Section 719 of the Corporation Tax Act 2010 (as amended by the Finance (No 2) Act 2017), in the Operating Company or any company that is the ultimate Holding Company of the Operating Company, or
- (b) If a Relevant Entity suffers an Insolvency Event, or
- (c) The Operating Company commits a breach of Schedule 1 Conditions of Contract, Clause 1 General, 1.15 Non Corrupt Practices, or
- (d) The Operating Company commits a breach of Schedule 1 Conditions of Contract, Clause 2 Operating Company's Main Responsibilities, 2.11 Sureties Including Bond and Undertaking & Parent Company Guarantee, 2.11.2

9.1.2 Without prejudice to any other right or remedy that the Scottish Ministers may have, the Scottish Ministers may at any time by notice in writing terminate this Contract with immediate effect in the event that:

- (a) The Operating Company has failed to remedy a Default within the Remedial Period specified in any relevant Remedial Notice issued by the Scottish Ministers, or
- (b) The Operating Company commits a Default that is not capable of remedy.

9.1.3 No later than sixty (60) days before the Commencement of Service Date and prior to any Operations commencing on Site, if the Operating Company fails to submit to the Scottish Ministers the Operating Company's Management System in acceptably documented form, the Scottish Ministers shall be entitled to terminate this Contract at any time thereafter by written notice to the Operating Company.

For the purposes of this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.3 only, an acceptable Operating Company's Management System is one that is immediately available for use in the manner and detail stated elsewhere in this Contract.

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9.1.4 In addition to any other right or power to terminate this Contract stated elsewhere in the Contract, the Scottish Ministers may at their discretion terminate this Contract by issuing a written notice of termination to the Operating Company.

The effective date of termination shall be stated on the notice of termination and shall not be earlier than eighty-five (85) days after the date of receipt of the notice of termination by the Operating Company. The Scottish Ministers may procure others to undertake the work to complete the Operations that may have been carried out had the Contract not been terminated.

9.1.5 Nothing in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.1 to 9.1.4 shall affect or prejudice in any way any right to terminate this Contract that the Scottish Ministers may have by virtue of any other term of this Contract, statute, or remedy at law.

9.1.6 Where this Contract is terminated pursuant to any of Schedule 1 Conditions of Contract Clause 9 Termination, 9.1 Termination of this Contract, 9.1.1 or 9.1.2 or 9.1.3 or 9.1.5, the Scottish Ministers may make other arrangements for work to be carried out by others to complete the Operations. The Scottish Ministers shall be entitled to recover from the Operating Company, and the Operating Company shall pay, the cost of:

- (a) Making such arrangements (including but not limited to the full costs of the preparation of tendering documents and the running of the tendering procedure and award process),
- (b) Any additional expenditure incurred by the Scottish Ministers in the execution of the work to complete the Operations over and above that which would have been expected to be incurred under this Contract in obtaining the execution of the Operations during the unexpired portion of this Contract had this Contract not been terminated,
- (c) Damages for delay in completion (if any),
- (d) Lane Occupation Charges (if any), and
- (e) All liability, costs, loss, expense and claims incurred by or on behalf of the Scottish Ministers.

In the event that the Scottish Ministers have extended the Service Delivery Period beyond the Initial Service End Date or the Service End Date and thereby the Contract Period as provided for elsewhere in this Contract, the Operating Company shall pay to

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the Scottish Ministers such costs and additional expenditure in respect of such extended Contract Period.

9.1.7 Following the issue of a notice of termination pursuant to any of Schedule 1 Conditions of Contract Clause 9 Termination, 9.1 Termination of this Contract, Clauses 9.1.1 or 9.1.2 or 9.1.3 or 9.1.5 the Scottish Ministers shall not be liable to pay to the Operating Company any sums due in accordance with this Contract until the later of the Termination Date and the date when the Scottish Ministers have established and calculated to their satisfaction:

- (a) The sums that may be due from the Operating Company to the Scottish Ministers in accordance with the provisions of this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, including the costs of completion of the Operations,
- (b) Damages for delay in completion (if any),
- (c) Lane Occupation Charges (if any), and
- (d) All liability, costs, loss, expense and claims incurred by or on behalf of the Scottish Ministers.

Thereafter, the Operating Company shall be entitled to receive any sums that would otherwise have been due to the Operating Company less any amounts payable to the Scottish Ministers under this Contract.

Any such sums due under this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.7 shall become payable on the later of the Termination Date and the date on which the sum due was established in accordance with this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.7. The final date for payment shall be the date falling twenty-eight (28) days following the date that has been so ascertained.

If such amount exceeds the sum that would otherwise have been payable upon demand, the Operating Company shall pay to the Scottish Ministers the amount of such excess. The sum shall be deemed to be a debt due by the Operating Company to the Scottish Ministers, and such sum shall be recovered accordingly in terms of this Schedule 1 Conditions of Contract, Clause 9 Termination, Clause 9.1 Termination of this Contract, 9.1.7

9.1.8 The Unit, all depots, Premises, buildings and areas made available to the Operating Company by the Scottish Ministers shall be vacated on any termination and or abandonment of this Contract (including without limitation termination pursuant to any of

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the terms of Schedule 1 Conditions of Contract Clause 9 Termination, Clause 9.1 or Clause 9.2 or Clause 9.3) and returned to the Scottish Ministers within fourteen (14) days after such termination or abandonment in the condition specified in this Contract and (subject to Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant, 7.1.10) the Operating Company shall remove all Constructional Plant, materials, rubbish, temporary work of every kind, traffic management equipment, goods and materials within such fourteen (14) day period.

Subject to Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.9, if the Operating Company fails to return the Unit, all depots, buildings and areas made available in the condition specified in this Contract and or to remove any such Constructional Plant, materials, rubbish, temporary work of every kind, traffic management equipment, goods and materials, within such fourteen (14) day period, then the Scottish Ministers may at their option:

- (a) Make good the condition of the Unit, and all depots, buildings and areas made available,
- (b) Clear any remaining items which ought to have been removed,
- (c) Sell or otherwise dispose of any such items which are the property of the Operating Company, and
- (d) Return any such items that are not the property of the Operating Company to the owner thereof at the Operating Company's expense,

provided always that the Scottish Ministers will, after deducting from any proceeds of any sale the costs, charges and expenses in connection with such making good, clearance, sale or return as aforesaid, pay the balance (if any) to the Operating Company, except that the Scottish Ministers shall have no obligation to account to the Operating Company in respect of any sums where and to the extent that the Scottish Ministers are entitled to free use of the Operating Company's Plant as provided in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.9.

To the extent that the proceeds of any such sale are insufficient to meet all such costs, charges and expenses of the Scottish Ministers, the excess shall be a debt due from the Operating Company to the Scottish Ministers. Such excess shall be deducted from the next payment or any subsequent payment due to the Operating Company pursuant to the provisions of this Contract or, at the option of the Scottish Ministers, shall be recoverable on demand from the Operating Company as a debt due to the Scottish Ministers.

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- 9.1.9 Following termination of this Contract pursuant to any of Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.1 or 9.1.2 or 9.1.3 or 9.1.5 then notwithstanding the provisions of Schedule 1 Conditions of Contract, Clause 9 Termination, 9.4 Removal of Constructional Plant, Scottish Ministers shall have free use of the Operating Company's Plant in accordance with Schedule 1 Conditions of Contract, Clause 7 Title, 7.1 Property in Materials and Plant, 7.1.10.
- 9.1.10 The Operating Company shall only be entitled to terminate this Contract if:
- (a) The Operating Company does not receive any undisputed amount due within thirty (30) days after giving the Scottish Ministers the written notice set out in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1.11, such notice to state that the time stated in Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments Under This Contract clause, 5.4.7 within which payment is to be made has expired; or
 - (b) The Scottish Ministers are in material breach of this Contract, meaning a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Operating Company would otherwise derive from a substantial portion of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 9.1.11 In any of the events or circumstances set out in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.10, and provided such event or circumstance has not been remedied within thirty (30) days of receipt by the Scottish Ministers of a written notice from the Operating Company specifying the default or defaults, the Operating Company may, upon giving fourteen (14) further days' written notice to the Employer, terminate the Contract. The Operating Company's election to terminate the Contract shall not prejudice any other rights of the Operating Company, under the Contract or otherwise.
- 9.1.12 The provisions of any Clause of this Contract necessary for its interpretation or enforcement shall survive the expiry or termination of this Contract.

9.2 Frustration

- 9.2.1 Where this Contract is frustrated by any supervening event other than war;
- (a) That occurs independently of the will of the Parties;
 - (b) That is beyond the Parties' reasonable control;

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- (c) That could not reasonably have been foreseen at the time of conclusion of the Contract; and
- (d) The effects of which could not reasonably have been avoided or overcome by the affected Party;

the Operating Company may abandon this Contract if execution of the Operations is not possible for one hundred and twenty (120) days from the start of the supervening event. In such an event the sum payable by the Scottish Ministers to the Operating Company for Operations executed shall be the same as that which would have been payable under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination in the event of abandonment pursuant to Schedule 1 Conditions of Contract, Clause 9 Termination, 9.3 War.

9.3 War

9.3.1 Where during the currency of this Contract there is an outbreak of war (whether war is declared or not) in which the United Kingdom is engaged on a scale involving general mobilisation of the armed forces of the Crown:

- (a) The Operating Company shall continue so far as reasonably possible to execute the Operations in accordance with this Contract; and
- (b) If the Operating Company is thereby prevented from executing the Operations in accordance with the Contract for a continuous period of twenty-eight (28) days, the Operating Company and the Scottish Ministers shall discuss whether the Operations, or part of them, can be executed on a modified basis, with any such agreement to be recorded in writing as an Order pursuant to Schedule 1 Conditions of Contract, Clause 6 Change Control, 6.2.1(c) Orders, Schemes and Bids or whether the Operations shall thereupon be deemed to be abandoned and this Contract shall terminate; and
- (c) To the extent that there is deemed abandonment then the sum payable by the Scottish Ministers to the Operating Company for Operations executed shall be determined under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination, unless the Operating Company and the Scottish Ministers otherwise agree in writing.

9.4 Removal of constructional plant

9.4.1 The Unit, and all depots, buildings and areas made available, to the Operating Company by the Scottish Ministers shall be vacated and cleared of Constructional plant, equipment

and materials on abandonment of the Operations under Schedule 1 Conditions of Contract, Clause 9 Termination, 9.2 Frustration and/or 9.3 War, in accordance with and subject to the provisions of Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.8

9.5 Payment on abandonment of operations or voluntary termination

9.5.1 Upon abandonment of the Operations pursuant to Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1 Termination of this Contract, 9.1.4 or 9.2 Frustration or 9.3 War, or termination by the Operating Company pursuant to Schedule 1 Conditions of Contract, Clause 9 Termination, 9.1.11, the Scottish Ministers shall pay to the Operating Company (except where such amounts have not already been the subject of earlier payments made to the Operating Company):

- (a) The Contract value of all parts of the Operations carried out before the date of abandonment,
- (b) The sums payable for any mobilisation or setting up costs for any Operations, so far as such part of the Operations have been executed,
- (c) The cost of materials and goods ordered by the Operating Company for the Operations in accordance, and in compliance, with the terms of Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials not on Unit that have been delivered to the Operating Company and to which the Scottish Ministers have acquired title and ownership in accordance with Schedule 1 Conditions of Contract, Clause 7 Title, 7.2 Vesting of Goods and Materials not on Unit, 7.2.2 save that the Scottish Ministers will be under no obligation to use these for completion of the Operations,
- (d) An amount of any expenditure properly incurred by the Operating Company in the expectation of executing the whole of any Ordered Operations, where such expenditure has not already been recovered by any other payments referred to in this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination,
- (e) An amount of any expenditure properly incurred by the Operating Company in the expectation of executing the whole of the Core Operations, where such expenditure has not already been recovered by any other payments referred to in this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination, and

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- (f) All proper costs of removal referred to in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.4 Removal of Constructional Plant.

provided that the Operating Company shall take all reasonable steps to mitigate its costs and losses arising from any abandonment or termination including but not limited to terminating subcontracts and supply contracts, reusing resources elsewhere and redeploying staff and contractors.

To this end and without prejudice to the provisions of this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination, the provisions of Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract, shall apply to this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination as if the date of such abandonment was the date of expiry of the Non-Conformance Liability Period.

- 9.5.2 Where, at any time before the end of the twenty-eight (28) day period referred to in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.3 War, any part of the Operations has been executed so far as to be usable, all provisions of this Contract in relation to such part of the Operations shall continue to have full force and effect notwithstanding any abandonment or termination of the Contract except that the Operating Company, in lieu of fulfilling its obligations under Schedule 1 Conditions of Contract, Clause 4 Quality Management, 4.2 Operating Company to Determine Cause of Defects and 4.5 Correction of Defects, shall be entitled at its option to allow against the sum due to it under the provisions of this Contract the cost (calculated at the prices ruling at the beginning of the said period of twenty-eight (28) days) as notified in writing to the Operating Company by the Scottish Ministers that the Operating Company would have been liable for under the said clauses had they continued to be applicable.

- 9.5.3 The Scottish Ministers shall not be entitled, pursuant to this Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations, to withhold payment under Schedule 1 Conditions of Contract, Clause 5 Payments, 5.4 Payments under this Contract of the retention money or any part thereof.

Except as stated in Schedule 1 Conditions of Contract, Clause 9 Termination, 9.5 Payment on Abandonment of Operations or Voluntary Termination, 9.5.2, this Contract shall continue to have full force and effect in relation to that part of the Operations completed prior to such abandonment or termination.

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9.6 Financial remedy on Termination

9.6.1 Any payment and/or compensation (if any) payable by the Scottish Ministers in accordance with this Schedule 1 Conditions of Contract, Clause 9 Termination, shall, be in full satisfaction of any claim or entitlement of the Operating Company in respect of any termination or abandonment (as applicable) of this Contract and shall, subject as aforesaid, be the sole remedy of the Operating Company against the Scottish Ministers on or in respect of any termination or abandonment (as applicable) of the Contract.

9.7 Assignment of Agreements

9.7.1 To the extent required by the Scottish Ministers by notice not later than ten (10) Working Days after the date of any termination or abandonment, the Operating Company shall forthwith assign to the Scottish Ministers, or procure the assignment by any of its sub-contractors and/or Associated Company of any interests of the Operating Company or any of its sub-contractors and/or Associated Company in any of the following agreements:

- (a) Any agreement for the supply of any goods and/or materials and/or for the execution of any work or provision of any services in connection with performance of the Operations or any part thereof which the Operating Company may have entered into insofar as such agreement is capable of assignment; or
- (b) Any warranties or guarantees in respect of any Operations carried out by the Operating Company.

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Appendix 1 – Register of Reference Documents

Appendix 2 – Form of Key Supplier / Key Sub-Contractor Guarantee

Appendix 3 – Form of model bond & undertaking and Parent Company Guarantee

Appendix 4 – TUPE Information

Appendix 5 – Relevant Organisations

Appendix 6 – Lane Occupation Charges

Appendix 7 – Flow Charts

Appendix 8 – Invoice Requirements

Appendix 9 – Contract Price Fluctuations

Appendix 10 – Claim notification form

Appendix 11 – Adjudication Procedure

Appendix 12 – Insurance Requirements

Appendix 13 – Letter of Authority

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