

# Aberdeen Western Peripheral Route / Balmedie - Tipperty

Design, Build, Finance and Operation -  
Schedules

709/ACP/600

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**SCHEDULE 1**  
**CONDITIONS PRECEDENT**

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Part 1: Contracting Authority's Conditions Precedent

Part 2: Company's Conditions Precedent

**PART 1**  
**CONTRACTING AUTHORITY'S CONDITIONS PRECEDENT**

1. A certified copy of the letter from the Contracting Authority addressed to Connect Roads informing it that the Contracting Authority has decided to award it preferred bidder status in relation to the Project.
2. A certified copy of the letter from the Contracting Authority addressed to each losing consortium informing it that the Contracting Authority has decided to award the Project to the Shareholders' consortium (but with confidential information redacted).
3. Letter from Director-General of Enterprise, Environment & Digital Directorate, for and on behalf of the Scottish Ministers, addressed to the Company, confirming the status of the Transport Scotland Framework Document and the consent of the Scottish Ministers and Scottish Government Finance Directorate to the Project.
4. Certified copy of the Report to Aberdeen City Council dated 25 June 2014.
5. Meeting of Aberdeen City Council on 25 June 2014. One certified copy of each of:
  - 5.1 minute of meeting;
  - 5.2 council decision sheet; and
  - 5.3 Aberdeen City Council standing orders referred to in the report in paragraph 4 of this Schedule 1 Part 1 and minute of meeting in paragraph 5.1 of this Schedule 1 Part 1.
6. Letter dated 10 December 2014 from the Chief Executive of Transport Scotland addressed to the Company:
  - 6.1 confirming that all of the land made available to the Company is in the ownership of the Scottish Ministers or the Scottish Ministers have the necessary legal rights to provide access to the Company in terms of the Project Documents;
  - 6.2 confirming that prior to execution of this Agreement, the Chief Executive has received no notice of claim against the Scottish Ministers or Aberdeen City Council for breach of any public procurement duty or law or tender document in respect of the tender process for the Project;
  - 6.3 attaching an original Minute of the IDM Board (i) approving the Scottish Ministers' entry into the documents connected with the Project to which they are a party (ii) approving the execution by the Contracting Authority of the Project Documents (iii) ratifying the execution by Ainslie McLaughlin of the Agency Agreement and the consolidated Memorandum of Understanding and (iv) confirming the authorised signatories (and specimen signatures of each authorised signatory) for the Scottish Ministers and the Contracting Authority for all documents in relation to the Project.

7. Certified copy of a letter from Transport Scotland to the Contracting Authority authorising the Contracting Authority to enter into the Project Agreement, the Direct Agreement, and all relevant Project Documents in each case as agent for the Scottish Ministers.
8. Evidence that as at the Date of this Agreement the Scottish Ministers have subscribed and paid for one B Share in the Company at a price of £1.
9. The B Director letter of appointment evidencing that as at the Date of this Agreement the B Director has been appointed as a director of the Company.
10. Evidence that the Contracting Authority has consented to the appointment of Alan Gibson as the Company's Representative pursuant to Clause 16 (Company's Representative) of this Agreement.
11. Certified copies of duly executed Pipeline Agreements.
12. A copy of each of the Memorandum of Understanding and the Agency Agreement in each case certified by the Contracting Authority as a true and current copy and with confirmation from the Contracting Authority that the same have not been amended and remain in full force and effect.
13. Evidence of authority for the Contracting Authority in respect of the Memorandum of Understanding and the Agency Agreement.
14. Certified copy of a letter dated 10 December 2014 from the Contracting Authority confirming that prior to execution of this Agreement, the Contracting Authority has received no notice of claim against the Scottish Ministers or Aberdeen City Council for breach of any public procurement duty or law or tender document in respect of the tender process for the Project.
15. Certified copies of duly executed Rail Overbridge Agreement and evidence of authority for Network Rail in respect thereof.

**PART 2**  
**COMPANY'S CONDITIONS PRECEDENT**

Unless an original document is specifically requested, a copy (certified by an officer of the Company as being a true copy) of each of the following documents is to be delivered by the Company to the Contracting Authority on or prior to execution of this Agreement:

1. The Shareholders Agreements and certification from the Company that the Shareholders Agreements have become (or will become, simultaneously with delivery of the other documents referred to in this Schedule 1 Part 2 (Conditions Precedent)) unconditional in accordance with their terms, accompanied by evidence of the same.
2. The Initial Financing Agreements and certification from the Company that (1) the Initial Financing Agreements have become unconditional (other than any condition relating to the conditionality of this Agreement) and (2) that all conditions to the availability of funds to the Company under the Initial Financing Agreements have been satisfied or waived, accompanied by evidence of the same.
3. The New Works Agreement, the O&M Works Agreement, the Design Agreement, the Design Checker's Agreement, the Road Safety Auditor's Agreement and the Performance Guarantees, executed by the parties to such agreements.
4. An original of the Direct Agreement, each of the Contracting Authority Direct Agreements and the Insurance Broker's Letter, executed by the parties to such agreements (other than the Contracting Authority).
5. Extracts from the minutes of the meeting of the board of directors (certified as true and accurate by the Secretary of the relevant company) of each of the Company, each Shareholder, Issuer, HoldCo and each of the other parties to the documents listed in Schedule 1 Part 2 (Conditions Precedent), at which resolutions were passed approving the execution, delivery and performance of each relevant document to which such person is expressed to be a party and in each case authorising a named person or persons to execute and deliver each such document and any other documents to be delivered by it pursuant to it. For the avoidance of doubt, this requirement shall not extend to the Senior Lenders.
6. A certificate of the Secretary of each of the companies referred to in paragraph 5 above setting out the names and specimen signatures of the person or persons named in the relevant certified extract.
7. Evidence of the share subscriptions required under the Shareholders Agreements and other shareholder funding commitments having been made by the Shareholders in the Company, Issuer and HoldCo.

8. The Company's, Issuer's and HoldCo's Certificate of Incorporation and of any Certificate of Incorporation on Change of Name.
9. The Articles of Association of the Company, Issuer and HoldCo.
10. The Insurance Broker's Letter, evidence of the insurances required in accordance with Clause 52 (Insurances) having been taken out by the Company and that the policies comply with the requirements of this Agreement, and an estimate by the insurance broker of the premiums for the Service Period Insurances for the first year of the Service Period.
11. Two computer disk copies of the Financial Model audited by Operis Business Engineering Limited.
12. Evidence that an election has been made for the Company to act as "client" for the Project for the purposes of the CDM Regulations.
13. Evidence that the Joint Insurance Account has been opened.
14. An original duly executed copy of this Agreement.