

This is Document “Schedule 1” referred to in this Contract

CONDITIONS OF CONTRACT

SCHEDULE 1

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PART 1 – CONTRACT SCOPE

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Abnormal Load Routeing Manager” means the person referred to in paragraph 1.1.4 of Part 1 of Schedule 8.

“Access System” shall have the meaning given to it in paragraphs 8.1.1 to 8.1.11 inclusive of Part 7 of Schedule 7 and the DMRB and shall include but not be limited to any permanent or temporary

- (i) bridge access gantries
- (ii) access platforms
- (iii) runway beams
- (iv) temporary bridge access platforms and
- (v) associated equipment.

“Adjudicator” means the person referred to in Annex 1 to this Schedule 1 to this Contract.

“Agreement” means the executed and legally binding document that witnesses the agreement in writing of the parties to enter this Contract for the 3RD Generation Term Contract for Management and Maintenance of the Scottish Trunk Road network South West Unit

“All-Routes” means the term used within a Bid to define the application of a Scheme to the total Trunk Road network within a Unit.

“Annual Period” means a period from 1 April in a calendar year to the earlier of the following

- (i) 31 March in the following calendar year or
- (ii) the Contract Termination Date.

Accordingly for each period

- (i) “First Annual Period” means the period from 1 April in the calendar year in which the Mobilisation Period expires to the earlier of the following
 - (a) 31 March in the following calendar year or
 - (b) the Contract Termination Date.
- (ii) “Second Annual Period” means the period from 1 April in the calendar year in which the First Annual Period expires to the earlier of the following
 - (a) 31 March in the following calendar year or
 - (b) the Contract Termination Date.

- (iii) “Third Annual Period”, “Fourth Annual Period”, “Fifth Annual Period”, “Sixth Annual Period” and “Seventh Annual Period” mean the periods from 1 April in the calendar year in which the Second Annual Period, Third Annual Period, Fourth Annual Period, Fifth Annual Period and Sixth Annual Period respectively expire to the earlier of the following
 - (a) 31 March in the following calendar year and
 - (b) the Contract Termination Date.
- (iv) “Final Annual Period” means the Annual Period ending on the Contract Termination Date.

“Annual Cycle” shall have the meaning given to it in Parts 1 and 2 of Schedule 4.

“Approval in Principle” shall have the meaning given to it in the DMRB but with the term “Highway Structure” replaced by “Structure” and further as added to and amended by Part 1 of Schedule 6 and Part 7 of Schedule 7.

“Base Index Figure” shall have the meaning given to it in Clause 10.6.2.

“Base Lending Rate” means the base lending rate published by the Royal Bank of Scotland as varied from time to time.

“Bid” means the price estimated by the Operating Company for the Operations it proposes to execute and submit to the Scottish Ministers under Clause 7.1.1 to permit the Scottish Ministers to decide whether or not to subsequently issue an Order for those proposed Operations.

“Bid Estimate of Costs” means the estimate of costs for a Scheme submitted with the Bid as referred to in paragraphs 2.2.1.1 and 2.2.1.2 of Part 2 of Schedule 4.

“Bond and Undertaking” means the bond and undertaking that shall be provided by the Operating Company to the Scottish Ministers referred to in

- (i) Clause 4.2.1 and
- (ii) Annex 2 to this Schedule 1.

“Bridges Manager” shall mean the person referred to in paragraph 2.1.1 of Part 7 of Schedule 7.

“Budgetary Expenditure and Control Manager” means the named person nominated by the Operating Company from within its organisation with delegated authority for overall day to day responsibility for all matters related to budgetary expenditure and control and to be the Operating Company’s point of contact for all day to day issues related to budgetary expenditure and control as referred to by paragraph 3.1.1 of Part 2 of Schedule 4.

“CDM Regulations” means the Construction (Design and Management) Regulations 1994 and the Construction (Design and Management) (Amendment) Regulations 2000.

“Central Office” means the Operating Company’s central office to be established in terms of Clauses 2.5.4 and 6.1.3 and at the location all as referred to Part 4 of Schedule 5.

“Certificate” means any document that formally attests the fulfilment of requirements of this Contract including but not limited to

- (i) “Approval In Principle Form” which shall have the meaning given to it in Part 1 of Schedule 6
- (ii) “Works Completion Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers that it has supervised the construction and completion of the Works as defined in the Works Contract to which the Certificate relates and that it has exercised reasonable professional skill and care with a view to securing that such Works have been constructed and completed in accordance with the requirements of the Design as referred to in such Works Contract
- (iii) “Operations Completion Certificate” means a Certificate in which the Operating Company certifies in accordance with the requirements of this Contract to the Scottish Ministers that it has supervised the construction and completion of the Operations to which the Certificate relates and that it has exercised reasonable professional skill and care with a view to securing that such Operations have been constructed and completed in accordance with the requirements of this Contract
- (iv) “Combined Design and Design Check Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers in respect of a Design and Design check of a part of the Design or Design Element that reasonable professional skill and care has been taken by the Operating Company with a view to securing that the part of the Design or Design Element
 - (a) complies with the Scottish Ministers’ Requirements
 - (b) has been accurately translated into the construction drawings and other Design documents
 - (c) is not detrimental to the whole Design or Design Element
 - (d) where applicable to earthworks, has been the subject of an interpretative geotechnical report and that the conclusions of that report have been taken into account in the Design or Design Element and
 - (e) where applicable to road restraint systems, that all aspects of the Design or Design Element of the road restraint systems on this Contract have been developed by the use of a risk assessment approach
- (v) “Construction Certificate” means a Certificate in which the Operating Company certifies that reasonable professional skill and care has been taken in supervising the construction and completion of a Design or Design Element with a view to securing that the part of the Design or Design Element
 - (a) complies with the Scottish Ministers’ Requirements and
 - (b) has been constructed in accordance with the Design or Design Element

- (vi) “Consultation Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers in respect of part of a Design or Design Element consulted with a consultee in accordance with the provisions of this Contract and have ascertained that the consultee has no objections to the part of the Design or Design Element as described on the construction drawings listed in the Certificate and in which the Operating Company shall have obtained a declaration by the consultee confirming that
 - (a) consultations referred to have been completed as indicated on the Certificate
 - (b) the consultee has no objections to the Design or Design Element as described on the drawings and documents listed in the Certificate and
 - (c) the drawings and documents listed in the Certificate meet all known requirements of the consultee
- (vii) “Defects Correction Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers in respect of Non-Conformances and Defects to a part of a Design or Design Element that reasonable professional skill and care has been taken by the Operating Company in supervising the correction of the Non-Conformances and Defects to that part of the Design or Design Element with a view to securing that the Non-Conformances and Defects have been corrected and that that part of the Design or Design Element now complies with the Scottish Ministers Requirements and has now been constructed in accordance with the Design or Design Element
- (viii) “Design Certificate” means a Certificate in which the Designer and the Operating Company certifies to the Scottish Ministers in respect of the design of a part of the Design or Design Element that reasonable professional skill and care has been taken with a view to securing that part of the Design or Design Element
 - (a) complies with the Scottish Ministers’ Requirements
 - (b) has been accurately translated into the construction drawings and documents and
 - (c) is not detrimental to the whole Design or Design Element
 - (d) in respect of a Design Certificate relating to earthworks that the Design or Design Element has been the subject of an interpretative geotechnical report and that the conclusions of that report have been taken into account in the Design or Design Element and
 - (e) in respect of a Design Certificate relating to road restraint systems that all aspects of the Design or Design Element of the road restraint systems on this Contract have been developed by the use of a risk assessment approach
- (ix) “Design Check Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers in respect of the check of a part of the Design or Design Element that reasonable professional skill and care has been taken in carrying out the independent check of that part of the Design or Design Element with a view to securing that the part of the Design or Design Element

- (a) complies with the Scottish Ministers' Requirements
 - (b) has been accurately translated into the construction drawings and bar bending schedules
 - (c) is not detrimental to the whole Design or Design Element
 - (d) in respect of a Design Check Certificate relating to earthworks that the Design or Design Element has been the subject of an interpretative geotechnical report and that the conclusions of that report have been taken into account in the Design or Design Element and
 - (e) in respect of a Design Check Certificate relating to road restraint systems that all aspects of the Design or Design Element of the road restraint systems on this Contract have been developed by the use of a risk assessment approach
- (x) "Design Check Interim Certificate" means a Certificate in which the Operating Company certifies to the Scottish Ministers that in respect of the check of a further divided part for a Design or Design Element reasonable professional skill and care has been taken by the Operating Company in carrying out the independent check of the part of the Design or Design Element with a view to securing that the further divided part of the Design or Design Element
- (a) complies with the Scottish Ministers' Requirements
 - (b) has been accurately translated into the construction drawings and documents
 - (c) is not detrimental to the whole Design or Design Element and will not affect the completion of the Design Check Certificates and
 - (d) in respect of a Design Check Interim Certificate relating to earthworks that reasonable professional skill and care has been taken by the Operating Company in carrying out the independent check of the Design or Design Element (including the interpretative geotechnical report referred to below) with a view to securing that the further divided part of the Design or Design Element has been the subject of an interpretative geotechnical report and that the conclusions of that report have been taken into account in the Design or Design Element
- and in respect of a Design Check Interim Certificate relating to road restraint systems that all aspects of the Design or Design Element of the road restraint systems on this Contract have been developed by the use of a risk assessment approach
- (xi) "Design Interim Certificate" means a Certificate in which the Operating Company certifies to the Scottish Ministers that in respect of the design of a further divided part of a Design or Design Element that reasonable professional skill and care has been taken by the Operating Company with a view to securing that the further divided part of the Design or Design Element
- (a) complies with the Scottish Ministers' Requirements
 - (b) has been accurately translated into the construction drawings and documents

- (c) is not detrimental to the whole Design or Design Element and will not affect the completion of the Design Certificate(s)

and in respect of a Design Interim Certificate relating to earthworks that the further divided part of the Design or Design Element has been the subject of an interpretative geotechnical report and that the conclusions of that report have been taken into account in the Design or Design Element

and in respect of a Design Interim Certificate relating to road restraint systems that all aspects of the further divided part of the Design or Design Element of the road restraint systems on this Contract have been developed by the use of a risk assessment approach

- (xii) “Draft Tender Documents Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers
 - (a) the model contract the method of measurement and the alterations/additions proposed compared with the latest standard versions issued and required by the Scottish Ministers
 - (b) the fully detailed working drawings and
 - (c) that the quantities entered in the bill of quantities and milestone schedules and otherwise shall be a true measure of the various items of work represented by the drawings and
- (xiii) “Maintenance Certificate” means a Certificate in which the Operating Company certifies to the Scottish Ministers that the Operating Company have supervised the Works as defined in a Works Contract during the Period of Maintenance for such Works Contract to which the Certificate relates and that the Operating Company have exercised reasonable professional skill and care with a view to securing that such Works have been completed in accordance with such Works Contract and that in the opinion of the Operating Company the Works Contractor completed his obligations to construct complete and maintain the Works under the Works Contract to which the Certificate relates on the date stated in the Maintenance Certificate.

“Checker” means the

- (i) firm(s)
- (ii) organisation(s) or
- (iii) person(s)

of appropriate skill employed by the Operating Company and consented to by the Scottish Ministers in terms of Clause 2.5.3.3 who shall undertake the independent Design check of a Design or Design Element and named in the Operating Company’s Submission.

“Chartered Landscape Architect” means a suitably qualified and experienced individual responsible for the provision and development of the Landscape Action Plan and delivery of landscaping Operations as referred to in Part 1 and 5 of Schedule 7.

“Conditions of Contract” means this Schedule 1 to this Contract.

“Confirmation of Oral Order” means a retrospective Order raised on the Contract Control and Management System in response to a oral Order raised by the Director.

“Consolidated Operations Instruction” means the Operations Instruction raised where the Operating Company wishes to undertake a number of Operations related to different Scheme Identifiers at the same location.

“Constructional Plant” means all appliances or things of whatsoever nature including but not limited to vehicles required in or about the carrying out of the Operations but does not include materials or other things intended to form or forming part of the Unit.

“Contract” shall have the meaning given in Clause 1.1.1 of the Agreement.

“Contract Commencement Date” means 22 December 2005 notwithstanding the date or dates of execution of this Contract.

“Contract Control and Management System” means the electronic Contract Control and Management System undertaking financial and contract management tasks and activities for the Operating Company, the Director and the Performance Audit Group via the communications links referred to in Part 2 of Schedule 4 all in accordance with the other provisions of this Contract.

“Contract Control and Management Systems Manager” means the named person authorised to act as the database administrator and to manage and maintain the operation of the Contract Control and Management System as referred to in paragraph 3.1.2 of Part 2 of Schedule 4.

“Contract Expiry Date” means the later of

- (i) the Initial Contract Expiry Date and
- (ii) in the event that the Scottish Ministers opt to extend this Contract pursuant to Clause 6.2.2 the date specified in the last Notice of Extension issued by the Scottish Ministers thereunder.

“Contract Period” means the period between the Contract Commencement Date and the expiry of the Defects Liability Period.

“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.

“Contract Quality Management System Manager” shall have the meaning given to it in Part 5 of this Schedule 1 including but not limited to Clauses 13.1.2.3 and 13.1.12.3.

“Contract Termination Date” means the earlier of

- (i) the Contract Expiry Date and

- (ii) the date on which this Contract shall be terminated under Clauses 16.1.1 to 16.1.9 inclusive.

“Core Management Team” means the Operating Company’s core management team that shall be appointed by the Operating Company in terms of Clauses 2.5.3.1 to 2.5.3.3 inclusive.

“Current Index Figure” shall have the meaning given to it in Clause 10.6.2.

“Cyclic Maintenance” means Operations which shall be short term or cyclic in nature as required in Part 1 of Schedule 7.

“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 as referred to in paragraph 1.1.4 of Part 3 of Schedule 4.

“Default” means

- (i) 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)
- (ii) any failure to perform or the negligent performance of any obligation under this Contract
- (iii) any breach of any Legislation or
- (iv) any negligence or negligent or fraudulent mis-statement or any other default in all cases by either party its employees, agents, sub-contractors or representatives.

“Defect” means any defect or fault in the Unit.

Accordingly

- (i) “Category 1 Defect” means a Defect that
 - (a) requires prompt attention because it presents an immediate hazard or potential hazard to users
 - (b) presents a risk of rapid structural deterioration to the Trunk Road or
 - (c) shall be listed in Annex 7.1/B of Part 1 of Schedule 7.
- (ii) “Category 2 Defect” means a Defect which shall not be a Category 1 Defect or shall be dealt with as a Category 1 Defect in accordance with paragraph 2.1.1 of Part 1 of Schedule 7.
- (iii) other Defects shall have the categorisation given to them under the provisions of this Contract including but not limited to Part 7 of Schedule 7.

“Defects Correction Period” means the period commencing on the date of completion of the relevant Scheme forming part of an Order and expiring on the earlier of

- (i) the date falling 52 weeks after the date of completion of the relevant Scheme forming part of an Order and
- (ii) the Contract Termination Date

during which the Operating Company shall correct any Non-Conformances and Defects in accordance with this Contract.

“Defects Liability Period” means the period commencing on the Contract Termination Date and expiring on the date falling 52 weeks after the Contract Termination Date during which the Operating Company shall correct any Non-Conformances and Defects in accordance with this Contract.

“Design” means any Operations so described in and instructed to be undertaken by the Operating Company under an Order that shall include

- (i) all work necessary for the preparation and completion of the drawings and
- (ii) specifications and all other information from
 - (a) which the Operations or Works shall be executed
 - (b) which allows the Site Operations or Works to be executed and
 - (c) which shall include carrying out all procedures and checks required that shall be required to be produced by the Operating Company under the Contract

including but not limited to the Design input necessary for all maintenance activities.

“Design Element” means a part of a Design identified in the relevant Order.

“Designer” means the

- (i) firm(s)
- (ii) organisation(s) or
- (iii) person(s)

of appropriate professional skill consented to in writing by the Scottish Ministers employed by the Operating Company to undertake a Design or a Design Element(s) where such Design or Design Element(s) or Operations shall be instructed under an Order.

“Detailed Inspection” shall have the meaning given to it in Part 1 of Schedule 7.

“Determined Rate or Price” means the rate or price determined by the Director for an Operation where there shall be no existing rate or price included in the Schedule of Rates and Prices held within the Contract Control and Management System pending insertion by the Director of a final rate or price as a result of the Dispute Resolution Procedure.

“Director” means the Director of Trunk Road Network Management Division within the Scottish Executive or any other person named by the Scottish Ministers from time to time to act on behalf of the Scottish Ministers.

“Dispute” means a difference or dispute of whatsoever nature between the Scottish Ministers and the Operating Company arising out of or concerning this Contract.

“Disputes Resolution Procedure” means the procedure set out in Clauses 18.1.1 to 18.1.11 inclusive and Annex 1 to this Schedule 1.

“DMRB” means the Design Manual for Roads and Bridges published by the Stationery Office and current at the date of issue of each particular Order which shall be used for Design (if applicable) for any such Order.

“Drawings” means the drawings and information that shall be

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

“Effective Value” shall have the meaning given to it in Clause 10.6.2.

“Electronic Copy” means a copy of any document provided or received by

- (i) e-mail or
- (ii) internet or
- (iii) on a CD ROM.

The Operating Company shall provide Electronic Copies of documents in

- (i) a standard software format
- (ii) a specified software format

in accordance with the provisions of this Contract or otherwise in a format acceptable in writing to the Director.

“Emergency” means an incident on or off the Unit (or part of the Unit)

- (i) that shall render the Unit (or part of the Unit) unsafe or unusable by users and that requires the Operating Company to execute actions in accordance with Part 3 of Schedule 7 or
- (ii) That shall render any other Trunk Road or road or area outside the Unit unsafe or unusable to users and that requires the Operating Company to execute actions in accordance with Part 3 of Schedule 7 or
- (iii) that shall cause the Police to direct the Operating Company to take specific actions other than the clearance of ice and snow to provide access for emergency services to any location within the Unit that the Police have closed owing to ice or snow.

The formation of ice or accumulation of snow on any part of the Unit shall not be deemed to constitute an Emergency.

For the purposes of this Contract an Emergency shall be deemed to commence on the occurrence of such an incident and shall be deemed to have ceased immediately the Operating Company shall have taken such actions as restore safety and usability notwithstanding that

- (i) temporary traffic management arrangements or any other safety measures remain in place on the Unit and

- (ii) it may be necessary for further actions (including but not limited to other temporary traffic management arrangements) to be the required as part of an Order as a consequence of the Emergency and to be executed by the Operating Company after the end of the Emergency.

Such further actions including but not limited to temporary and permanent repairs shall be deemed not to be Emergency Response Operations unless expressly so described in an Order.

“Emergency Liaison Officer” means the person who shall answer Emergency telephone calls at all times when the customer contact telephone service shall not be manned and to carry out liaison functions as referred to in Part 7 of Schedule 3 and Part 3 of Schedule 7.

“Emergency Response Operations” means Operations required for planning preparation response and execution of Operations required to deal with Emergencies.

“Emergency Response Plan” shall have the meaning given to it in Part 3 of Schedule 7.

“Emergency Response Resources” means the resources detailed in Table 2.1 of Appendix 32/1 to Clause 3201 of the Specification in Part 1 of Schedule 9.

“Engineer” shall have the meaning given to it in Clause 4.7.2.

“Exceptions” shall have the meaning given to it in Clause 12.2.2.

“Excepted Risks” shall have the meaning given to it in Clause 12.1.2.

“Final Index Figure” shall have the meaning given to it in Clause 10.6.2.

“Financial Year” means the Scottish Executive’s financial year from 1 April in one year to 31 March the following year.

“Further Detailed Direction” means the response raised within the Contact Control and Management System by the Director to a Further Detailed Enquiry raised by the Operating Company in respect of Orders previously issued.

“Further Detailed Enquiry” means an enquiry raised within the Contract Control and Management System by the Operating Company to the Director in respect of Orders previously issued.

“Gantry Manager” means the person who shall supervise the use of gantries and runway beams and carry out the duties referred to for such person in paragraph 2.1.2 of Part 7 of Schedule 7.

“General Inspection” shall have the meaning given to it in Part 7 of Schedule 7.

“Good Industry Practice” means the exercise of an appropriate degree of skill diligence prudence and foresight being that which would reasonably and ordinarily be expected from a person skilled and experienced in the

- (i) management

- (ii) operation and
- (iii) maintenance

of roads similar in type to the roads in the Unit seeking in good faith to comply with the same contractual obligations of the Operating Company under this Contract.

“Hazard Notice” shall have the meaning given to it in paragraph 1.1.2 of Part 1 of Schedule 7.

"Health and Safety Plan" means the plan prepared by virtue of the Construction (Design and Management) Regulations 1994.

“Information” shall have the meaning given to it in Clause 20.11.1.

“Initial Contract Expiry Date” means 31 March 2011.

“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

- (i) copyright
- (ii) design
- (iii) right
- (iv) goodwill
- (v) know-how
- (vi) moral right
- (vii) performing right
- (viii) service mark
- (ix) trade mark
- (x) patents and
- (xi) other similar rights or obligations whether registerable or registered or not in any country (including but not limited to the United Kingdom).

“Item Category” means the category assigned to any particular item in Annex 5 to this Schedule 1 that shall be used when calculating the increase or decrease in respect of contract price fluctuations to amounts otherwise payable to the Operating Company in accordance with this Contract.

“Key Performance Indicator” shall have the meaning given to it in paragraphs 7.1.1 to 7.1.4 of Part 3 of Schedule 5.

"Landscape Areas" means those vegetated areas of the Unit including but not limited to

- (i) verges
- (ii) open areas
- (iii) visibility splays

- (iv) embankments and
- (v) cuttings

as shown on the Landscape Drawings.

"Landscape Development Plan" means the plan to be prepared by the Operating Company as referred to in paragraph 1.3.3 of Part 5 of Schedule 7.

"Landscape Drawings" means those drawings listed in Annex 7.5/A of Part 5 of Schedule 7 showing the Landscape Areas and their classification.

"Lane" means any delineated running lane or any hardshoulder of any road within the Unit and which shall be capable of carrying all classes of vehicles for any such road as permitted by permanent or temporary traffic order.

"Lane Occupation" means the occupation of a Lane by the Operating Company, in connection with the Operating Company's Operations and which shall result in the said Lane becoming unavailable for use by any permitted classes of vehicles.

"Lane Occupation Charge" means a Lane Occupation Charge for a Trunk Road as specified in Annex 3 of this Schedule 1.

"Lane Occupation Period" means a Lane Occupation which shall be a Lane Occupation within the Unit at any time between 00.00 hours and 24:00 hours of the same day.

"Legislation" means any legislation of whatsoever nature that shall apply in the United Kingdom including without prejudice to the generality of the foregoing

- (i) any subordinate legislation
- (ii) any legislation that shall apply in a part of the United Kingdom only and
- (iii) any legislative act of the European Union or the Commission of the European Community which without further enactment has legal effect in the United Kingdom.

"Lump Sum Activity" means any Operations carried out where the payment mechanism shall be by monthly sum.

"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 which shall include a detailed breakdown including but not limited to resources quantities rates and prices or otherwise included in such quotation.

"Ministerial Commitments Officer" shall have the meaning given to it in Annex 3.6/C to Part 6 of Schedule 3.

"Mobilisation Period" means the period commencing on the Contract Commencement Date and ending on the following 31st March.

"NADICS" means the National Driver Information and Control System used by the Scottish Ministers and currently provided by Glasgow City Council.

“Network Liaison Officer” shall mean the suitably qualified individual to manage all liaison and coordination requirements referred to in Part 4 of Schedule 3 and as required in accordance with the other provisions of this Contract.

“NNCC” means the National Network Control Centre currently at 32 Elmbank Street Glasgow where NADICS is hosted.

“Nominated Sub-contractor” means any person or firm nominated in accordance with this Contract to be employed by the Operating Company for the execution of any part of the Operations for which a Prime Cost shall have been included in this Contract.

“Non-Conformance” means any

- (i) Default by the Operating Company or
- (ii) defect in Operations including but not limited to
 - (a) any defect in Design or that shall be the result of defective Design
 - (b) any defect that shall be the result of defective materials or defective workmanship
 - (c) any failure of any part of the Operations to meet or continue to meet the provisions of this Contract and
 - (d) any damage, destruction or other effect consequential on any default.

“Non-Conformance Operations” means any

- (i) works undertaken or to be undertaken by the Operating Company in respect of Non-Conformances in terms of Clauses 5.5.1 to 5.8.4.4 inclusive of this Schedule 1 or
- (ii) any works undertaken or procured by the Scottish Ministers in terms of
 - (a) Clauses 5.6.1 to 5.6.5 inclusive or
 - (b) Clause 5.8.3.

“Non Execution Adjustment” means the sum of money that the Scottish Ministers shall be entitled to receive from the Operating Company the calculation for which shall be as specified in Clause 15.3.2 of this Schedule 1.

“Notice of Non-Conformance” means a notice issued by the Performance Audit Group to the Operating Company in the circumstances referred to in Clause 15.2.2.1 of this Schedule 1 recording an Operating Company Default.

“Notice of Extension” shall have the meaning given to it in Clause 6.2.2 of this Schedule 1.

“Notice of Dispute” shall have the meaning given to it in Clause 18.1.2 of this Schedule 1.

“NRSWA” means the New Roads and Street Works Act 1991.

“Observations Resulting from Inspection” shall have the meaning given to it in Part 1 of Schedule 7.

“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 including the Operating Company’s personal representatives successors and permitted assignees.

All references to the Operating Company shall be deemed to include but not be limited to a reference to its employees, agents, sub-contractors representatives or otherwise 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 Clauses 14.1.1 to 14.1.9 inclusive.

“Operating Company’s Media Officer” shall have the meaning given to it in Annex 3.6/A of Part 6 of Schedule 3.

“Operating Company’s Representative” means the person appointed by the Operating Company pursuant to Clauses 2.5.3.1 to 2.5.3.3 inclusive of this Schedule 1 and Part 4 of Schedule 5.

“Operating Company's Submission” means the Tender and all documents forming part of the Operating Company's offer together with such modifications and additions thereto as may be agreed in writing between the parties prior to the Contract Commencement Date.

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

“Operating Company's Witness Point” means a point incorporated in the Quality Management System at which the Operating Company shall allow sufficient time and provide sufficient facilities for the Operating Company's nominated representative appointed for that purpose to witness the process at that point.

“Operations” means

- (i) the operations activities duties and responsibilities of the Operating Company referred to and inferred or implied in this Contract and
- (ii) such other operations activities duties and responsibilities of the Operating Company

that shall be the subject of Order(s) issued from time to time in accordance with this Contract.

“Operations Instructions” means the Operating Company’s internal instructions to its personnel in respect of each Order and as referred to in Part 2 of Schedule 4.

“Order” means the instructions issued from time to time by the Scottish Ministers to the Operating Company specifying Operations that shall be undertaken under this Contract by the Operating Company.

“Pavement Management System” means the pavement management system used by the Scottish Executive as referred to in Part 3 of Schedule 4.

“Payment Notified Record” means the record produced by the Contract Control and Management System to document those items paid within the payment of a monthly Statement.

“Percentage Adjustment” shall have the meaning given to it in Part 1 of Schedule 2.

“Performance Audit Group” means the person or persons firm or company identified as such in Clause 2.5.6 or any other person or persons, firm or company which the Director may from time to time substitute therefore in terms of that Clause.

“Performance Audit Group Financial Management System” means the financial database maintained by the Performance Audit Group that shall import and store Bid Order and Statement data to assist in inter Unit comparison of financial data across the total Trunk Road network.

“Pollution” means all pollution or contamination of whatsoever nature of any part of the Operations or the Unit or outwith the Unit in connection with the Operations or of water or land or the atmosphere and all losses damage bodily injury however caused arising from or as a consequence of such pollution.

“Planning Application Officer” shall have the meaning given to it in paragraph 1.3.1 of Part 2 of Schedule 8.

"Planning Supervisor" shall have the meaning given to it in the Construction (Design and Management) Regulations 1994.

“Plant” shall have the meaning given to it in Clause 11.1.1.

“Prime Cost Item” means an item in this Contract that contains (wholly or in part) a sum referred to as Prime Cost that shall be used for the execution of the Operations.

"Principal Contractor" shall have the meaning given to it in the Construction (Design and Management) Regulations 1994.

“Professional Services” means charges for Operations where the payment mechanism shall be under series 6200 of Part 1 of Schedule 2.

“Provisional Sum” means a sum included and so designated in this Contract as a specific contingency for the execution of the Operations which may be used in whole or in part or not at all at the sole discretion of the Scottish Ministers.

“Quality Management System” means the system for the management of

- (i) quality
- (ii) environment
- (iii) health and safety

(iv) finance and

(v) risk management

to be established documented implemented and continually improved by the Operating Company all in terms of Clauses 13.1.1 to 13.1.20 inclusive.

“Quality Plan” means the quality plan to be provided by the Operating Company in terms of Clauses 13.1.1 and 13.1.2 of this Schedule 1.

“Reference Date” means the date (subject to the other provisions of this Contract) 42 days prior to the date on which the Tender shall be returned and shall be the date on which British Standards and British Standards Codes of Practice which do not themselves include a date shall be deemed to be incorporated in this Contract.

For the purposes of this definition the DMRB is not defined as a British Standard or British Standards Codes of Practice.

“Remedial Notice” shall have the meaning given to it in Clause 15.2.1.1.

“Remedial Period” means the remedial period referred to in Clause 15.2.1.1.

“Reinforced Soil” means any existing or new part of the Unit comprising a mass of bulky material of fragmented form (including frictional, cohesive frictional and cohesive material) having tensile reinforcing elements embedded in the mass so that the elements interact with the material to stabilise it, and includes any facing which may be provided for such part of the Unit.

“Road Asset Value System” shall have the meaning given to it in Part 2 of Schedule 4.

“Routine Maintenance and Management System” means the routine maintenance and management system used by the Scottish Executive referred to in Part 3 of Schedule 4.

“Road Safety Auditor” means the Audit Team Leader as defined in the DMRB.

“Road Safety Manager” shall have the meaning given to it in the DMRB and in Part 3 of Schedule 6.

“Rock Patrol” shall have the meaning given to it in paragraph 1.1.6 of Part 1 of Schedule 7.

“Route” means a pre-numbered section of Trunk Road within the Unit.

“Safety Inspection” shall have the meaning given to it in paragraph 1.1.5 of Part 1 of Schedule 7.

“Safety Patrol” shall have the meaning given to it in paragraph 1.1.7 of Part 1 of Schedule 7.

“Schedule” means each of the eleven schedules annexed to the Agreement.

“Scheme” means a discrete element of work forming

- (i) part of the Operations
- (ii) the Works or
- (iii) works

issued as part of an Order that shall be covered by a Scheme Identifier.

“Scheme Closure Date” means that date logged onto the Contract Control and Management System on which all costs for a Scheme have been included in a Statement and after which no further costs will be claimed by the Operating Company.

“Scheme Completion Date” means that date logged onto the Contract Control and Management System on which all Operations within each individual Scheme have been completed.

“Scheme Identifier” being the unique Scheme Identifier allocated by the Contract Control and Management System.

“Schedule of Rates and Prices” means the priced schedule of rates and prices forming Part 2 of Schedule 2.

“Scottish Executive Road Information System” means the road information system used by the Scottish Executive referred to in Part 3 of Schedule 4.

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

“Scottish Ministers’ Requirements” means Schedules 3 to 9 inclusive.

“Scottish Ministers’ Witness Point” means a point incorporated in the Quality Management System at which the Operating Company shall give due notice to the Scottish Ministers and allow time and provide facilities for the Scottish Ministers to witness the process at that point.

“Scottish Road Works Register” means the road works register operated by Susiephone to provide the means for the Scottish Ministers and Local Roads Authorities to meet their obligations under Section 112 of the NRSWA and including any successor register notified at any time to the Operating Company by the Scottish Ministers.

“Scour Inspection” shall have the meaning given to it in Part 7 of Schedule 7.

“SEAS” means the Scottish Executive’s accounting system that is the Scottish Executive’s financial ledger.

“Severe Weather” means adverse weather conditions including but not limited to

- (i) snow
- (ii) ice
- (iii) frost
- (iv) heavy rain
- (v) flooding and
- (vi) high winds

which affect driving conditions and traffic movements on the Trunk Road network for a sustained period of time.

“Site” means the land or place where the work activity or part of the work activity of the Operations shall be executed.

“Site Operations Instruction” means that copy of the Operations Instructions issued in hard copy to Operating Company personnel or sub contractors of the Operating Company for the carrying out of Operations.

“Site Traffic Liaison Officer” shall have the meaning given to it in paragraphs 4.4.1 to 4.4.3 inclusive of Part 8 of Schedule 3.

“Special Requirements” means the special requirements referred to in Clause 24.1.1 to 24.1.4 inclusive and Annex 4 to this Schedule 1.

“Specification” means the “Specification for Operations” referred to in Part 1 of Schedule 9.

“Standard Diversion Protocol” means the documented arrangements for implementing a Standard Diversion Route.

“Standard Diversion Route” means a diversion route from the Trunk Road network agreed by the Police and any relevant local authority that uses local roads.

“Standard Reports” means reports generated by the Contract Control and Management System in a fixed or variable format on a routine or ad hoc basis in accordance with the Director’s specification as to period covered, level of detail or otherwise.

“Statement” means the documentation provided by the Operating Company each month to support its request for payment as referred to in Clause 10.3.1 of this Schedule 1.

“Statutory Authority” means any organisation constituted under statute which has duties or responsibilities which may affect or shall 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.

“Structure” means any

- (i) Bridge that shall allow obstacles to be crossed over under or alongside Trunk Roads and shall be structures with spans or diameters greater than 3 metres
- (ii) Footbridge that shall carry pedestrians cyclists or equestrians over or alongside Trunk Roads and shall be structures with spans greater than 3 metres
- (iii) Culvert that shall convey water or pedestrians or livestock under or alongside Trunk Roads and shall be structures with spans or diameters between 0.9 to 3 metres inclusive.
- (iv) Service duct that shall be a structure for database purposes
- (v) Underpass that shall be deemed to be a bridge that shall allow pedestrians cyclists equestrians livestock or farm vehicles to pass under a Trunk Road.
Such underpasses shall be deemed to be culverts if their span shall be between 0.9 to 3 metres inclusive
- (vi) Retaining wall that shall be a structure constructed as a component of a Trunk Road that shall retain heights of infill material or natural ground level greater than 1.5 metres (ground level to ground level)
- (vii) Sign and / or signal gantry that shall be a structure over or adjacent to a Trunk Road or at a specified location adjacent to a local road where it shall be the Scottish Ministers’ responsibility that shall support
 - (a) lighting
 - (b) fixed signing
 - (c) electronic signing
 - (d) electrical or
 - (e) control equipment.All box type gantries shall include all associated cladding and the water-tightness of the box.
- (viii) High mast lighting that shall be a structure that shall support demountable luminaires on columns that shall be in excess of 20 metres in height
- (ix) Masts that shall be a structure to support CCTV equipment or other electronic equipment.

“Superficial Inspection” shall have the meaning given to it in Part 7 of Schedule 7.

“Supervision” means the carrying out of inspections of Works and Operations by the Operating Company sufficient to confirm compliance with the requirements of the Works Contract and this Contract.

“supervision” and “superintendence” have the same meaning as Supervision.

“Supplied Data” means any information documents designs or data supplied to the Operating Company directly or indirectly by or on behalf of the Scottish Ministers whether by their

- (i) consultants
- (ii) agents
- (iii) servants or
- (iv) otherwise.

“Temporary Diversion of Traffic” means

- (i) a temporary carriageway onto which vehicular traffic is diverted from a road
- (ii) a temporary footpath or bridleway onto which pedestrian or equestrian traffic shall be diverted from a road
- (iii) a combination of (i) and (ii) or a temporary carriageway as in (i) with an associated footway or way for use of animals and equestrian traffic or
- (iv) a temporary private means of access onto which traffic shall be diverted from a private means of access

but in all cases shall not include a central reserve crossover and otherwise constructed to permit contraflow traffic on an existing carriageway.

“Tender” means the Operating Company’s tender dated 26 September 2005.

“Threshold Value” shall have the meaning given to it in Clause 7.2.2.

“Time Work Schedule” means charges for Operations where the payment mechanism is under series 6500 as specified in Part 1 of Schedule 2.

“Traffic Counting Liaison Officer” means the individual as referred to in paragraph 1.2.4 of Part 4 of Schedule 8.

“Traffic Officer” shall have the meaning given to it in Part 4 of Schedule 7.

“Trunk Road Bridges Database (TRBDB)” means the database developed by the Director to hold information and programmes for the management of existing and proposed Trunk Road Structures.

“Trunk Road” means for the purposes of this Contract a road as defined in the Roads (Scotland) Act 1984 for which the Scottish Ministers shall be the roads authority and shall include in each case without limitation all

- (i) carriageways, hard shoulders, central reserves, interchanges, slip roads, connecting roads, access and service roads, roundabouts, junctions
- (ii) lay-bys, traffic islands, police observation areas
- (iii) cycle tracks, cycleways, footways, footpaths, pavements
- (iv) bridges (excluding bridges carrying railways and canal aqueducts), viaducts, Structures and
- (v) any other road structures whether over or under such road together with all supporting infrastructure and amenities including but not limited to
 - (a) all road fences (including snow fences) and barriers

- (b) kerbs, gullies, drainage systems including outfalls and balancing ponds
- (c) grassed areas, hedges, trees, planted areas
- (d) traffic signs (as defined in section 64(1) of the Road Traffic Regulation Act 1984) (including, for the avoidance of doubt traffic signal lights and overhead sign and signal gantries)
- (e) road furniture, road lighting, loop detector systems, communications installations
- (f) picnic areas, environmental mitigation measures, embankments and cuttings, rock faces, coastal defences, erosion protection works and
- (g) road restraint systems

together with any other item confirmed in writing from time to time by the Scottish Ministers.

“Undertaker” shall have the same meaning given to ‘undertaker’ as defined in NRSWA Section 107.

“Unit” shall have the meaning given to it as referred to in Part 2 of Schedule 3.

“Value Added Tax” means the current rate of tax attributable to the chargeable supply of goods and services under HM Customs & Excise VAT regulations.

“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.

“Winter Constructional Plant” means the Operating Company's plant and equipment resources which shall be necessary to deliver the Winter Service.

“Winter Service” means the service that shall be provided by the Operating Company in accordance with Part 2 of Schedule 7.

“Winter Service Duty Officer” means the Operating Company’s authorised person on duty at all times responsible for the day to day delivery of the Winter Service.

“Winter Service Manager” means the person appointed by the Operating Company responsible for delivery of the Winter Service.

“Winter Service Patrols” means those patrols that shall 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 each period or part of period from 1 October to 15 May.

“Winter Service Plan” means the plan prepared by the Operating Company in accordance with Part 2 of Schedule 7.

“Winter Service Records” means those records to be maintained by the Operating Company in accordance with Part 2 of Schedule 7.

“Winter Service Report” means the report to be prepared by the Operating Company in accordance with Part 2 of Schedule 7.

“Work Code” means the code derived from Annex 4.2/B of Part 2 of Schedule 4 identified for a Scheme within a Bid submitted to the Director for approval.

“Work Series” means a group of Work Codes identified from Annex 4.2/B of Part 2 of Schedule 4.

“Working Day” means a day (other than a Saturday or Sunday or bank holiday or public holiday as referred to in Clause 1.2.13) on which banks shall be open for business in Scotland or would be open other than for the occurrence of an industrial dispute.

“Works” means the “Temporary Works” and the “Permanent Works” as shall be specified in any Works Contract.

“Works Contract” means a contract between the Scottish Ministers and a Works Contractor under which the Works Contractor executes the Works.

“Works Contractor” means the contractor who executes the Works in any Works Contract.

“9901 Activation” means the activation of a Bid by the Director in a situation where the Operating Company shall require to make a claim for payment which for any reason cannot be made using any other provision of the Contract and the Operating Company shall require to present such claim for payment as a Bid under Work Code 9901.

1.2 Interpretation

1.2.1 Words importing persons shall include companies firms partnerships corporations and any other organisation having a legal personality.

1.2.2 Words importing the singular also include the plural and vice versa where the context so requires.

Words importing the male shall also include the female and vice versa where the context so requires.

1.2.3 Except in Part 1 of Schedule 2 the headings in this Contract shall be for ease of reference only and shall not be deemed to be part of nor taken into consideration in the interpretation or construction of this Contract.

1.2.4 All references in this Contract to “Clauses” in

(i) Schedules 1 to 8 inclusive and Schedules 10 and 11 shall be unless otherwise provided references to Clauses numbered in the Conditions of Contract and

(ii) Part 1 of Schedule 9 shall be unless otherwise provided references to Clauses numbered in Part 1 of Schedule 9.

1.2.5 All references in this Contract to “Schedules” shall be unless otherwise provided references to the appropriate Schedule to this Contract to which these Conditions of Contract shall be part.

- 1.2.6 Any reference to any Act of Parliament or Act of the Scottish Parliament shall be construed as a reference to that Act of Parliament or Act of the Scottish Parliament as from time to time amended extended or re-enacted and shall include a reference to any
- (i) bye-laws
 - (ii) statutory instruments
 - (iii) codes of practice
 - (iv) rules
 - (v) regulations and
 - (vi) orders, notices, directions, consents or permissions
- made or given thereunder from time to time.
- Any reference to any statutory instrument, code of practice, rule, regulation, order, notice, direction, consent or permission shall be construed as a reference to that statutory instrument, code of practice, rule, regulation, order, notice, direction, consent or permission as from time to time amended extended or re-enacted.
- 1.2.7 A reference to any person shall include the successors (statutory or otherwise) and assignees or successors in title of such person irrespective of whether such succession or assignation has occurred before or after the Contract Commencement Date.
- 1.2.8 The word "cost" when used in these Conditions of Contract means all expenditure properly incurred whether on or off the Unit or to be incurred including overhead costs except where the contrary shall be expressly stated.
- 1.2.9 Every reference in documents referred to in this Contract to
- (i) "The Scottish Office"
 - (ii) "The Scottish Executive"
 - (iii) "The Scottish Office Industry Department"
 - (iv) "The Scottish Office Development Department" or
 - (v) "The Scottish Executive Development Department"
- shall be deemed to be a reference to the Scottish Ministers.
- 1.2.10 Every reference to documents referred to in this Contract to the
- (i) "Maintenance Organisation"
 - (ii) "Managing Agent" or
 - (iii) "managing agent"
- shall be deemed to be a reference to the "Operating Company".
- 1.2.11 Subject to Clause 4.7.2 every reference in documents referred to in this Contract to
- (i) the "Engineer" or
 - (ii) the "Contractor"
- shall be deemed to be a reference to the "Operating Company".

- 1.2.12 Every reference in documents referred to in this Contract to
- (i) “British Railways”
 - (ii) “British Railways Board”
 - (iii) “Railtrack”
 - (iv) “Scotrail” or
 - (v) “Railway”
- shall be deemed to be a reference to “Network Rail” or their successors.
- 1.2.13 Every reference to documents referred to in this Contract to
- (i) “public holiday(s)” or
 - (ii) “Public Holiday(s)”
- shall be deemed to be a reference to 25 December, 26 December, 1 January and 2 January in any year.
- 1.2.14 Every reference in this contract to “day” shall be deemed to be a reference to calendar days.
- 1.2.15 Every reference to documents referred to in this Contract to
- (i) “Statutory Undertakers”
 - (ii) “statutory undertakers”
 - (iii) “Utilities”
 - (iv) “utilities” or
 - (v) “undertakers”
- shall be deemed to be a reference to “Undertakers” as defined in this Part 1 of Schedule 1.
- 1.2.16 References within Part 1 of Schedule 9 and the DRMB to
- (i) “defect(s)” shall mean “Defect(s)”
 - (ii) “category (i) defect(s)” shall mean “Category 1 Defect(s)” and
 - (iii) “category (ii) defect(s)” shall mean “Category 2 Defect(s)”
- unless the context otherwise requires or infers.
- 1.2.17 Every reference in Parts 1 and 2 of Schedule 2 to “Plant” or “plant” shall be deemed to be a reference to Constructional Plant.
- 1.2.18 Every reference in Part 1 of Schedule 9 to the
- (i) “Works”
 - (ii) “works” or
 - (iii) “work”
- shall be deemed to be a reference to the “Operations”.
- 1.2.19 Any requirement on the Operating Company under this Contract to “consult” any
- (i) firm
 - (ii) Organisation or

(iii) person

shall be construed as a requirement to also allow a sufficient period for that consultee to comment on the matter in question without limitation to any requirement of this Contract.

1.2.20 Any consent approval and otherwise granted or 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.

1.2.21 Every reference in this Contract to “certificate” shall be deemed to be a reference to “Certificate” as defined in this Part of this Schedule 1.

2 SCOPE OF CONTRACT, OPERATING COMPANY OBLIGATIONS, ARRANGEMENTS FOR ADMINISTRATION OF THIS CONTRACT AND APPLICABLE LAW SCOPE OF THIS CONTRACT

2.1.1 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

- (i) representations
- (ii) understandings
- (iii) agreements and
- (iv) documents

between or by the Operating Company and 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.

2.1.2 Without prejudice to the foregoing generality the Operating Company acknowledges that it shall not have entered into this Contract in reliance on the accuracy or sufficiency of any Supplied Data.

2.1.3 The Operating Company shall be deemed

- (i) to have inspected and examined the Unit and its surroundings and information available in connection therewith
- (ii) to have satisfied itself before submitting its Tender as to the
 - (a) form and nature of the Unit
 - (b) extent and
 - (c) nature of the work materials and
 - (d) all other resources

necessary for the completion of the Operations in accordance with the provisions of this Contract.

- (iii) to have satisfied itself before submitting its Tender as to the means of communication with and access to the Unit
- (iv) to have satisfied itself before submitting its Tender as to the accommodation including but not limited to offices depots and storage areas and otherwise that it may require

- (v) generally to have obtained for itself all necessary information as to
 - (a) risks
 - (b) contingencies and
 - (c) all other circumstanceswhich may influence or affect its Tender
- (vi) to have satisfied itself before submitting its rates and prices with its Tender as to their correctness and sufficiency stated by it in its Schedule of Rates and Prices in Part 2 of Schedule 2 which shall unless otherwise provided in this Contract cover all its risks and obligations under this Contract.

2.1.4 The Scottish Ministers neither warrant nor take responsibility for the accuracy of any information in connection with the matters referred to in Clause 2.1.3 that may have been provided by or on behalf of the Scottish Ministers or any other source or that any condition or circumstance shall prevail at the Unit and its surroundings whether a condition applying generally or to the particular parts or positions.

The Operating Company shall be deemed not to have relied on any such information referred to in Clauses 2.1.2 to 2.1.4 inclusive unless to the extent that it has satisfied itself under Clause 2.1.3 as to the accuracy of such information for the purposes of the Operations.

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

2.1.6 Upon receipt of any Order the Operating Company shall execute all Operations described in any said Order.

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

2.2 Operating Company Obligations

2.2.1 The Operating Company shall be responsible for the

- (i) acts
- (ii) Defaults
- (iii) omissions and
- (iv) negligence

of its contractors, agents, employees and other persons engaged by it any capacity whatsoever as if they were the acts Defaults, omissions or negligence of the Operating Company.

2.3 Operating Company Knowledge

2.3.1 Without limitation to its actual knowledge the Operating Company shall for all purposes of this Contract be deemed to have such knowledge in respect of the Operations including but not limited to such knowledge as shall be held by

- (i) the Designer
- (ii) the Checker

- (iii) the Road Safety Auditor
- (iv) the Contract Quality Management Systems Manager and
- (v) any other persons engaged by it in any capacity whatsoever.

2.4 Amendments to this Contract

2.4.1 Except where otherwise provided this Contract shall not be varied or amended unless such variation or amendment shall have been agreed to in writing by the Director on behalf of the Scottish Ministers and the Operating Company's Representative on behalf of the Operating Company.

Notwithstanding any other provision of this Contract this shall not be a responsibility that the Director can delegate or authorise to any other person.

2.4.2 The Director may from time to time delegate to the Operating Company any additional functions which shall be allowed to be contracted out in accordance with the

- (i) Roads (Scotland) Act 1984 or
- (ii) the Secretary of State's Trunk Road Functions (Contracting Out) (Scotland) Order 1996 (Statutory Instrument 1996 No. 878 [S99]) made under Section 69 of the Deregulation and Contracting Out Act 1994

subject to the Scottish Ministers giving the Operating Company not less than 4 weeks prior written notice.

Any such delegation of an additional function shall be carried out by the Scottish Ministers issuing a notice to the Operating Company to that effect.

Any existing functions of the Scottish Ministers specified in Annex 3.9/A to Part 9 of Schedule 3 and required to be undertaken by the Operating Company in terms of this Contract may also be deleted or varied in this way and in any such case such function specified in any such notice shall automatically be added to deleted or varied from those functions specified in said Annex 3.9/A to Part 9 of Schedule 3 immediately following the issue of such notice under this Clause 2.4.2.

To the extent that such delegation, deletion or variation shall be in respect of any of the functions specified in Annex 3.9/A to Part 9 of Schedule 3 no compensation shall be due or shall be paid to or by either the Scottish Ministers or the Operating Company for such addition deletion or variation.

2.5 Arrangements for the Administration of this Contract

2.5.1 The Director shall be the person responsible for administering this Contract on behalf of the Scottish Ministers and any reference in this Contract to the Director shall be deemed to be a reference to the Scottish Ministers.

2.5.2 The Director may from time to time in writing authorise any person to carry out without limitation any duty or duties of the Director under this Contract on behalf of the Director.

Prior notice in writing of any such authorisation shall be given by the Director to the Operating Company. Such authorisation shall continue in force until such time as the Director shall notify both the Operating Company and the authorised individual in writing that the same shall be determined.

2.5.3 Operating Company's Representative and Core Management Team

- 2.5.3.1 The Operating Company shall appoint and provide an Operating Company's Representative who shall be the principal point of contact for representatives of the Scottish Ministers and the Core Management Team throughout the Contract Period including but not limited to the issue of Orders from the Scottish Ministers to the Operating Company.

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

The Operating Company's Representative shall be as named in Part 4 of Schedule 5.

- 2.5.3.2 The Operating Company shall appoint a full-time Core Management Team who shall assist the Operating Company's Representative in the carrying out of his duties under this Contract. The names and curricula vitae of the Core Management Team members shall be as specified in Part 4 of Schedule 5.

- 2.5.3.3 Neither the Operating Company's Representative nor any member of the Core Management Team shall be changed without the prior written consent of the Scottish Ministers which consent shall not be unreasonably withheld.

If any change to

- (i) the Core Management Team or any member thereof
- (ii) the Operating Company's Representative
- (iii) the Checker
- (iv) the Designer or
- (v) the Road Safety Auditor

shall be requested by the Operating Company then the Operating Company shall submit in writing the names and professional details of any proposed substitute and shall allow the Scottish Ministers to interview them to determine their suitability as a replacement provided always that any such nominated substitute shall be of equal standing and experience to the person the Operating Company proposes to replace.

The Scottish Ministers shall consider such request and within fourteen days of any such written request from the Operating Company either

- (i) consent to or object to the same in writing or
- (ii) request in writing an interview with the proposed substitute.

Where the Scottish Ministers interview the proposed substitute they shall consent to or object to the same in writing within 14 days of the interview.

In the event that the Scottish Ministers so object to the person nominated by the Operating Company in terms of this Clause 2.5.3.3 the Operating Company shall be bound to select and appoint another person who shall be acceptable to the Scottish Ministers in terms of this Clause 2.5.3.3.

2.5.4 Central Office

- 2.5.4.1 Following the establishment of the Central Office pursuant to Clause 6.1.3 the Operations shall be

- (i) co-ordinated

- (ii) planned and
- (iii) managed and maintained

by the Operating Company from the Central Office for the remainder of the Contract Period.

2.5.4.2 Notwithstanding the other provisions of this Contract including but not limited to the provisions of Clause 6.1.3 the Operating Company shall from time to time throughout the Contract Period establish and thereafter maintain within the Unit such additional

- (i) subordinate offices
- (ii) depots and
- (iii) otherwise

that shall be required to enable the Operating Company to execute the Operations.

2.5.4.3 Notwithstanding any other provisions of this Contract the Operating Company's Representative and the Core Management Team shall be located at the Central Office.

2.5.4.4 The Operating Company shall not make any material changes to the Central Office whether in respect of its

- (i) location or
- (ii) otherwise

in respect of any other aspect of the provision of such Central Office without the prior written consent of the Scottish Ministers which consent shall (subject to the following provisions) not be unreasonably withheld.

If any such material change to the Central Office shall be requested by the Operating Company then the Operating Company shall submit the details of the proposed change to the Scottish Ministers.

The Scottish Ministers shall within fourteen days of any such written request from the Operating Company consider such request and consent to or otherwise reject the same in writing.

2.5.5 Notwithstanding any other provisions of this Contract 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.

2.5.6 This Contract provides for the performance of the Operating Company under this Contract to be audited by a Performance Audit Group and for the Performance Audit Group to undertake various duties and obligations in that regard under this Contract.

The Scottish Ministers have authorised Halcrow Group Limited of 16 Abercromby Place Edinburgh EH3 6LB or its successors or assignees to act as the Performance Audit Group under this Contract.

The Performance Audit Group shall be the organisation responsible for administering specified parts of this Contract on behalf of the Scottish Ministers and any reference in this Contract to the Performance Audit Group shall be deemed to be a reference to the Scottish Ministers.

The Scottish Ministers may from time to time change the duties of the Performance Audit Group.

Any such changed duties shall be notified in writing to the Operating Company at least 3 days before such changes shall be effected.

The Director may from time to time substitute the existing Performance Audit Group under this Clause 2.5.6 with a

- (i) new person
- (ii) persons
- (iii) firm or
- (iv) company

provided always that on each such occasion the Director shall in writing notify the Operating Company of the identity of the substitute person or persons firm or company appointed and in that case the name or identity of such shall automatically be substituted to be the Performance Audit Group under this Clause 2.5.6.

The Director shall notify the Operating Company in writing of any change he may make from time to time in the scope of the authority/responsibility accorded by him to the Performance Audit Group in respect of this Contract.

- 2.5.7 Where the Operating Company shall be dissatisfied by reason of any Order given by any person duly appointed under Clause 2.5.2 it shall be entitled to refer the matter in writing to the Director who shall thereupon confirm reverse or vary such Order in writing.

2.6 Assignment and Sub-Contracting

- 2.6.1 This Contract shall be personal to the Operating Company.

The Operating Company shall not

- (i) assign
- (ii) novate or
- (iii) otherwise transfer

by any means whatsoever any right or 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 entitle the Scottish Ministers to terminate this Contract in accordance with the provisions of Clauses 16.1.1 to 16.1.9 inclusive.

- 2.6.2 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.

- 2.6.3 The provision of labour on a labour-only basis shall not require the written consent of the Scottish Ministers under the provisions of Clause 2.6.2.

- 2.6.4 No

- (i) assignation
- (ii) subcontracting or

- (iii) 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

- (i) duty
- (ii) function
- (iii) liability
- (iv) obligation or
- (v) responsibility

(or any part thereof) owed to the Scottish Ministers in terms of this Contract notwithstanding that the Scottish Ministers have consented to such assignment subcontracting or other transfer and the Operating Company shall at all times be bound to fully implement this Contract.

2.6.5 The Operating Company shall provide to the Scottish Ministers a copy of the deed or other document that records any permitted

- (i) assignation
- (ii) subcontracting or
- (iii) other transfer arrangements

with a third party of any of the Operations under or in terms of this Contract where so requested to do so by the Scottish Ministers.

2.7 Giving of Notices and Payment of Fees

2.7.1 The Operating Company shall

- (i) give all notices
- (ii) take all actions and
- (iii) pay all fees

required to be given done 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 shall or may be affected in any way by the Operations.

2.8 Legislation

2.8.1 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 may be applicable to the Operations and with such rules and regulations of Statutory Authorities companies and Undertakers as aforesaid.

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 legislation.

Provided always that

- (i) except in the case of a Design the Operating Company shall not be 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
- (ii) where an Order shall at any time be found not to comply with any such Legislation rules or regulations the Scottish Ministers shall issue such further Order as may be necessary to ensure compliance and
- (iii) the Operating Company shall be responsible for obtaining any planning permission, consents or any other permissions of whatsoever nature which may be necessary in respect of the Operations or any completed Operations undertaken under any Order.

Such obligations shall include but shall not be limited to obtaining any such permissions consents and otherwise that may be necessary in respect of any Design and any Works Contract forming part of an Order.

2.8.2 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.

2.9 Scots Law to Apply

This Contract shall be governed by and interpreted in accordance with Scots Law.

The parties hereto hereby submit to the jurisdiction of the Scottish Courts.

2.10 Language

2.10.1 all documents of whatsoever nature to be produced for or to be provided to the Scottish Ministers in accordance with this Contract shall be in English.

2.10.2 All

- (i) operating and maintenance instructions and otherwise identification labels appearing on Constructional Plant and all other written and printed matter that shall be required for the Operations and
- (ii) notices to the public and third parties given by the Operating Company in the course of executing the Operations

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

2.11 Notices

2.11.1 Other than where otherwise provided in this Contract any

- (i) document
- (ii) notice or
- (iii) other communication

required or permitted to be given or served in terms of this Contract may be given or served personally or by sending the same by first class recorded delivery post at or to in the case of the Scottish Ministers

- (i) The Director of Roads Trunk Roads Network Management and Maintenance Division

The Scottish Executive, Enterprise Transport and Lifelong Learning
Department
Victoria Quay
Edinburgh
EH6 6QQ

- (ii) or in the case of the Operating Company
at or to its registered office or Central Office
- (iii) or in the case of the Performance Audit Group

Halcrow Group Limited
16 Abercromby Place
Edinburgh
EH3 6LB

- (iv) or in all three cases at or to such other address as shall have been last notified in writing.

Notwithstanding the other provisions of this Clause 2.11.1 and subject to the other provisions of this Contract the issue of an Order shall generally be transmitted through the Contract Control and Management System and shall be deemed to have been received when the Order has so been transmitted by the Scottish Ministers to the Operating Company.

- 2.11.2 Any document notice or other communication (other than an Order) given or served by first class recorded delivery post in accordance with the provisions of Clause 2.11.1 shall be deemed to be given or served on the second Working Day after the letter containing same was posted.

In order to prove that any document notice or other communication was so given or served it shall be necessary only to prove that the same was properly addressed and posted as aforesaid.

3 CONTRACT DOCUMENTS

3.1 Contract Documents

3.1.1 Interpretation

- 3.1.1.1 In the case of conflict between the Conditions of Contract and any other of the documents forming or contained in this Contract the Conditions of Contract shall prevail

- 3.1.1.2 Where there is any conflict within or between any of the documents forming the Scottish Ministers' Requirements the Scottish Ministers shall provide an interpretation which shall (in their opinion) ensure that the safest and most conservative result shall prevail and the Scottish Ministers shall be bound to notify the Operating Company of that interpretation.

The Operating Company shall be bound to notify and shall ensure and procure that all others for whom it is responsible (without prejudice to the generality of the

foregoing including but not limited to the Designer the Checker and the Road Safety Auditor) shall notify any such conflicts to the Scottish Ministers.

The Scottish Ministers shall confirm to the Operating Company in writing their decision as to any such interpretation.

3.1.1.3 In the case of any conflict between the provisions of this Contract including but not limited to Part 1 of Schedule 5 and the provisions of

- (i) BS EN ISO 9001
- (ii) BS EN ISO 14001 and
- (iii) OHSAS 18001

the other provisions of this Contract shall prevail.

3.1.1.4 In the case of any conflict within or between the DMRB and any other document forming part of the Scottish Ministers' Requirements the Scottish Ministers shall resolve such conflict so notified to them under the provisions of Clause 3.1.1.2.

3.1.2 In the case of any conflict within or between any documents supplied by the Operating Company for the purposes of this Contract the Scottish Ministers shall resolve such conflict so notified to them under the provisions of Clause 3.1.1.2 after consultation with the Operating Company.

Any consequential alteration to the Operations shall be subject to the written consent of the Scottish Ministers.

3.1.3 The Operating Company shall be deemed to have made due allowance in its Tender and Operating Company's Submission for complying with the foregoing requirements of Clauses 3.1.1 to 3.1.2 inclusive and no financial adjustment in favour of the Operating Company shall be made in respect of the application of or compliance with such requirements.

3.2 Provision of Documents

3.2.1 Following the execution of this Contract the Scottish Ministers shall provide to the Operating Company one copy of this Contract.

3.2.2 Notwithstanding any other provisions of this Contract the Operating Company shall submit to the Scottish Ministers and or the Performance Audit Group in the manner and at the times as shall be detailed in the Scottish Ministers' Requirements all documentation and other information including but not limited to

- (i) files
- (ii) reports
- (iii) drawings
- (iv) calculations
- (v) data and
- (vi) 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 all in accordance with the other provisions of this Contract.

- 3.2.3 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 and portable document format (pdf) on a CD ROM platform.

3.3 Further Drawings and Information

- 3.3.1 The Operating Company shall provide to the Scottish Ministers as soon as practicable following any request or requirement to do so under this Contract such information and drawings concerning the Operating Company's proposals in respect of any Order as shall in the Scottish Ministers' opinion be necessary for the proper execution of the Operations in accordance with this Contract.

The Operating Company shall provide such information and Drawings at such time as shall be

- (i) required by an Order
- (ii) deemed to be required by an Order or
- (iii) otherwise required by the provisions of this Contract.

and shall be bound by them.

- 3.3.2 The Operating Company shall at all times keep in its Central Office at least one copy of all information and drawings referred to in the Scottish Ministers' Requirements and Clause 3.3.1.

Such drawings and information subject to the other provisions of this Contract shall at all times be available for

- (i) inspection
- (ii) use and
- (iii) by any person authorised under this Contract.

4 CONTRACT OBLIGATIONS

4.1 General

4.1.1 General Obligations

- 4.1.1.1 Subject to the other provisions of this Contract the Operating Company shall undertake and complete all Operations in respect of the Unit and in accordance with the terms of this Contract.

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

Subject to the other provisions of this Contract such resources shall include without limitation

- (i) the provision of all personnel of appropriate level of skill competence and where necessary holding the appropriate formal qualifications
- (ii) the provision of all Constructional Plant
- (iii) the provision of all materials
- (iv) the provision of all offices depots stores and otherwise and

- (v) the provision and maintenance of all temporary traffic management schemes.

4.1.2 Operating Company Staff

4.1.2.1 Every reference in this Contract to “professional services” and “Professional Services” shall be deemed to be a reference to Operations carried out by the Operating Company using staff referred to in

- (i) Clause 1.2.23 of this Part 1 of this Schedule 1
- (ii) Clause 6201AR of Part 1 of Schedule 9
- (iii) Series 6200 of Parts 1 and 2 of Schedule 2.

4.1.2.2 All references in this Contract to “professional services” and Professional Services” shall be deemed to be a reference to Operations carried out by the Operating Company using personnel of an appropriate minimum level of

- (i) skill
 - (ii) competence
 - (iii) experience and
 - (iv) where necessary holding the appropriate formal qualifications
- as referred to in Clause 6201AR of Part 1 of Schedule 9.

4.1.2.3 Notwithstanding the provisions of Clauses 4.1.2.2 and 4.1.2.4 of this Part 1 of this Schedule 1 the Operating Company shall seek written consent from the Scottish Ministers to provide personnel on a register for staff who shall be available to carry out such Operations and who have equivalent minimum level of such

- (i) skill
- (ii) competence and
- (iii) where necessary holding the appropriate formal qualifications.

The final decision on acceptability or otherwise of such equivalence shall be with the Scottish Ministers.

4.1.2.4 Prior to the commencement of the First Annual Period the Operating Company shall prepare a register listing each and every member of the Operating Company’s Professional Services staff as described in Clauses 4.1.2.2 and 4.1.2.3 of this Part 1 of this Schedule 1.

Each member of staff shall be allocated a title as referred to in Appendix 62/1 of Part 1 of Schedule 9.

The register of Professional Services staff shall be submitted in writing to the Director for written consent.

Prior to the commencement of the First Annual Period the Operating Company shall prepare a register listing each and every member of the Operating Company’s staff who may be utilised and paid under Time Work Schedule Series 6500 of Parts 1 and 2 of Schedule 2.

Each member of staff shall be allocated a title as referred to in table 1 in paragraph 2 of Series 6500 of Part 1 of Schedule 2.

4.1.2.5 The Operating Company shall maintain and update both registers referred to in Clause 4.1.2.4 of this Part 1 of this Schedule 1 for the duration of the Contract Period.

The registers shall show the start and end dates for the period each member of staff was allocated each title as referred to in Clause 4.1.2.4 of this Part 1 of this Schedule 1.

The Operating Company shall submit in writing any amendments to the register for Professional Services staff to the Director for written consent within 5 Working Days of the said amendment being made.

4.1.3 Operating Company Responsibilities

4.1.3.1 The Operating Company shall exercise reasonable professional skill care and diligence in undertaking the Operations and shall secure that the Operations shall meet the requirements of this Contract.

4.1.3.2 Notwithstanding the other provisions of this Contract the Operating Company shall be responsible for the adequacy and safety of all

- (i) Design
- (ii) Site Operations
- (iii) Non-Conformances Operations and
- (iv) otherwise

forming part of the Operations.

4.1.3.3 No claim by the Operating Company whatsoever shall be admissible on the ground that the Operating Company or any agent, representative or contractor of the Operating Company relied upon any

- (i) audit
- (ii) inspection or
- (iii) supervision

conducted or any consent or approval issued by or on behalf of the Scottish Ministers when signing any Certificate required to be provided under this Contract or when discharging any of its other obligations in accordance with this Contract.

The Operating Company shall not be entitled to rely on any audit

- (i) inspection
- (ii) supervision
- (iii) consent or
- (iv) approval

conducted or any consent or approval issued by or on behalf of the Scottish Ministers when signing any Certificate required to be provided under this Contract or when discharging any of its other obligations in accordance with this Contract

in signing any such Certificate or when discharging any of its other obligations in respect of this Contract or as a justification for failure to sign any such Certificate or discharge any of its other obligations in accordance with this Contract.

4.1.4 Design, Design Checks and Certification

4.1.4.1 Where a Design or a part of a Design shall be included in an

- (i) an Order or
- (ii) part of an Order

the Operating Company shall undertake a Design and such Design subject to the other provisions of this Contract shall be carried out in accordance with the Scottish Ministers' Requirements.

4.1.4.2 The Operating Company shall bear responsibility for a Design as if for such purpose it had carried out the whole of the Design itself whether or not it has carried out the whole or any part of the Design itself.

If the Designer and Checker shall fail to agree on any matter relating to the Design or this Contract the Operating Company shall providing that it shall have obtained the prior written consent of the Scottish Ministers appoint and employ a person of appropriate professional skill to ensure that the matter shall be resolved expeditiously.

The Operating Company shall appoint such a person only after having obtained the written consent from the Scottish Ministers to that person.

The Director shall consent to or otherwise object to such person of appropriate professional skill within 14 days of being requested to do so in writing by the Operating Company.

In the event that the Director so object to the person nominated by the Operating Company in terms of this Clause 4.1.4.2 the Operating Company shall be bound to select and appoint another individual who shall be so acceptable to the Scottish Ministers in terms of this Clause.

4.1.4.3 Subject to the other provisions of this Contract the Operating Company shall

- (i) complete
- (ii) register and
- (iii) retain

within the Central Office all Certificates (including associated data) and information (including drawings calculations and all other documents whatsoever) required by this Contract in respect of the Operations for which the Operating Company has produced a Design.

No part of any Site Operations in respect of such a Design shall be commenced unless such completion and registration of Certificates has been effected.

Notwithstanding and without prejudice to any other provisions of this Contract the Director may require the Operating Company from time to time to provide to him and the Performance Audit Group copies of such registers or evidence of

- (i) registration
- (ii) Certificates (including associated data) and
- (iii) information (including drawings, calculations and all other documents whatsoever).

4.1.5 Subject to the other provisions of this Contract where during the carrying out of any Operations for which the Operating Company has undertaken a Design the Operating Company shall encounter anything which invalidates any of

- (i) its Design assumptions or
- (ii) requires amendments to its method of Site Operations

in respect of such Design it shall immediately notify the same in writing to the Director.

As soon as practicable thereafter the Operating Company shall submit in writing to the Director details of any such amendments proposed to be made to such

- (i) Design or
- (ii) Site Operations

and shall obtain the prior written consent of the Director prior to making the proposed amendment.

The Operating Company shall provide any further information required or requested by the Scottish Ministers prior to or as a condition of any such grant of written consent before such written consent can be granted.

All risks including but not limited to

- (i) all costs
- (ii) time and
- (iii) Non-Conformance Operations

whatsoever in connection with and resulting from any such amendment to

- (i) a Design including but not limited to a Design for a Works Contract
- (ii) Site Operations and
- (iii) Non-Conformance Operations

pursuant to this Clause 4.1.5 shall be borne by the Operating Company.

4.1.6 Notwithstanding any other provisions of this Contract and to the extent that any Construction Certificate requires the Operating Company and the Designer to certify that Operations for which the Operating Company has undertaken 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

- (i) both the Operating Company and the Designer supervise such Site Operations including but not limited to sampling and testing required by this Contract, in such a manner and to such extent as may be considered reasonable by the Scottish Ministers
- (ii) the Designer notifies the Operating Company in writing (providing a copy simultaneously to both the Scottish Ministers and the Performance Audit Group) of any change in the Operating Company's arrangements which shall be necessary in the opinion of the Designer for the proper discharge of the Operating Company's Design obligations in respect of this Contract and
- (iii) the Designer notifies the Operating Company in writing (providing a copy simultaneously to both the Director and the Performance Audit Group) of

any sample and test which the Designer considers necessary in connection with this Contract and the Operating Company shall thereafter as soon as reasonably practicable after such notification execute any such sample and test and record and preserve in the Central Office all results thereof.

The Operating Company shall at any time make available unrestricted access to the Director and the Performance Audit Group in the Central Office for inspection or audit and at any time on the written request of the Director and or the Performance Audit Group provide a copy of any such records to either or both parties within 7 days of such written request.

- 4.1.7 Where additional work of Design arises as the unavoidable result of any Order the Operating Company shall be bound to undertake and shall be responsible for such additional work of Design in accordance with Clauses 4.1.1 to 4.1.10 inclusive.

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

- 4.1.8 The Operating Company shall provide to the Director all reasonable

- (i) access
- (ii) facilities and
- (iii) resources

that shall permit the Director to undertake such audits/inspections of

- (i) the Operating Company's financial accounts and
- (ii) other financial or cost records

relating to this Contract as the Director may consider necessary from time to time.

- 4.1.9 Without prejudice to the other provisions of this Contract if at any time the Scottish Ministers shall consider that any arrangements of the Operating Company shall be insufficient for the proper discharge of its obligations under this Contract they shall in writing notify the Operating Company explaining why such a view is held.

The Operating Company shall thereupon take such remedial actions as shall be necessary and the Scottish Ministers may at their option consent to in writing for rectifying such insufficiency.

- 4.1.10 Notwithstanding and without prejudice to any other provisions of this Contract the Operating Company shall respond immediately taking such action as shall be necessary where action shall be required for the

- (i) saving of life
- (ii) protection of property
- (iii) safety of the Operations
- (iv) safety of users of the Unit or
- (v) the safety or protection of the Unit itself.

4.2 Sureties

4.2.1 The Operating Company shall provide at its own expense not later than 13 weeks after the Contract Commencement Date a Bond and Undertaking by an insurance company or bank who shall be jointly and severally bound with the Operating Company in the sum of £1,500,000 sterling (one million five hundred thousand pounds sterling) for the due performance of this Contract under the terms of such Bond and Undertaking.

The said 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 Annex 2 to this Schedule 1.

The Bond and Undertaking shall be in place until the end of the Contract Period or the settlement of the final account pursuant to Clauses 10.3.4.1 to 10.3.4.3 inclusive whichever shall be the later.

The obtaining of such Bond and Undertaking and any and all costs incurred thereby shall be the responsibility of the Operating Company.

4.3 Inspection of Unit

4.3.1 Notwithstanding any other provisions of this Contract the Operating Company shall make and keep itself generally familiar with the Unit.

4.4 Operations to Satisfaction of Scottish Ministers

4.4.1 Everything to be provided by the Operating Company in respect of this Contract including but not limited to

- (i) the provisions of Clauses 4.1.1 to 4.1.10 inclusive and
- (ii) the mode manner and speed of executing the Operations

shall be of a kind and conducted in such a manner that shall be to the satisfaction of the Scottish Ministers.

4.5 Setting Out

4.5.1 The Operating Company shall be responsible for

- (i) the proper setting-out of work executed in carrying out the Operations
- (ii) the correctness of the

- (a) position
- (b) levels
- (c) dimensions and
- (d) alignment

of all parts of such work and

- (iii) the provision of all necessary resources in connection therewith.

Subject to the other provisions of this Contract if at any time during the Contract Period any error shall appear or arise in the

- (i) position
- (ii) levels

- (iii) dimensions or
- (iv) 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 subject always to the provisions of Clause 5.8.4 whereby the Scottish Ministers shall during the Defects Liability Period

- (i) rectify such error as though it is a Non-Conformance and
- (ii) shall recover from the Operating Company the costs of such rectification all in terms of Clause 5.8.4.4.

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

4.6 Safety and Security

4.6.1 The Operating Company shall throughout the progress of the Operations ensure the safety of all persons entitled to be upon the Unit (so far as such safety shall be under its control) including but not limited to persons, companies firms and other organisations whatsoever entitled to be on the Unit. Accordingly the Operating Company shall keep the Unit (so far as the Unit shall be under its control) and the Operations (so far as such Operations shall not be completed or occupied by the Scottish Ministers and/or the public who shall be entitled to be on the Unit) in an orderly and tidy state appropriate to the avoidance of danger to such persons in connection with the Operations provide and maintain at its own cost but shall not be limited to all

- (i) lights
- (ii) guards
- (iii) fencing
- (iv) warning signs and
- (v) watching

whatsoever when and where deemed necessary by

- (i) the Scottish Ministers
- (ii) Undertakers
- (iii) any Statutory Authorities or
- (iv) any other authority

for the protection of the Operations or for the safety and convenience of the public and all other persons companies firms and other organisations whatsoever entitled to be on the Unit.

4.6.2 Where the Scottish Ministers shall themselves execute work or shall employ other contractors and otherwise to execute work on the Unit they shall in respect of such work

- (i) ensure and procure that any such contractors and otherwise shall ensure the safety of all persons entitled to be upon the Unit

- (ii) ensure and procure that any such contractors and otherwise shall liaise with the Operating Company in respect of their activities on the Unit and
- (iii) keep and procure that any such contractors and otherwise shall keep the Unit in an orderly and tidy state appropriate to the avoidance of danger to such persons.

4.7 Operating Company's Superintendence

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

Such superintendence shall be undertaken by a sufficient number of persons and all of whom shall have sufficient knowledge of the Operations to be executed (including but not limited to the methods and techniques required the hazards likely to be encountered and methods of preventing accidents) as may be required for the satisfactory execution of the Operations.

4.7.2 The Operating Company shall in writing nominate to the Scottish Ministers for written consent the names of competent and available persons of appropriate professional skill to act as the Engineer in each and any Works Contract.

The duties of the Engineer in respect of any such Works Contract shall include but not be limited to the

- (i) supervision of the Works and
- (ii) certification to the Scottish Ministers monthly in arrears of the monies that shall be due to be paid to the Works Contractors.

4.8 Clearance During and on Completion of Operations

4.8.1 Subject to the other provisions of this Contract the Operating Company shall in the course of undertaking Operations take all necessary measures to keep the Unit free from all

- (i) Constructional Plant or vehicles not required for the Operations
- (ii) surplus materials
- (iii) rubbish and
- (iv) any obstruction to the free flow of pedestrian and vehicular traffic.

On the completion of such Operations the Operating Company shall clear away and remove from the Unit all

- (i) Constructional Plant
- (ii) surplus material
- (iii) rubbish
- (iv) temporary works of every kind and
- (v) traffic management materials and otherwise and

leave the whole of the Unit clean and in a workmanlike condition to the satisfaction of the Scottish Ministers.

4.9 Discrimination

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

4.9.2 The Operating Company shall take all reasonable steps to secure the observance of the provisions of Clause 4.9.1 by all its contractors, agents, employees and other persons engaged by it in any capacity whatsoever in the execution of this Contract.

4.10 Passes and Keys

4.10.1 Motorways shall be recognised as being very dangerous environments and as such generally Operations which shall be undertaken on them shall be undertaken within the protection of traffic management.

However, there may be situations where Operations off the carriageway can be undertaken safely without the use of traffic management.

In such situations the persons undertaking such work shall be granted special authority by the Scottish Ministers. Such authority shall be given by the issue of a green covered motorway pass.

Although the pass shall be issued to the individual the Operating Company shall take responsibility for the actions of the individual and shall bear the responsibility for the training of the individual and the planning and management of any activity on the motorway.

All requests from the Operating Company to the Director for passes shall therefore be made on a standard proforma provided by the Director which shall specifically identify

- (i) the activity to be undertaken
- (ii) why this activity shall be being proposed without traffic management
- (iii) how the individual shall operate when on the motorway and
- (iv) that specific training on the health and safety risks that has been given to that individual.

Only Operations that are requested and authorised as detailed in Clause 4.10.1(i) to Clause 4.10.1(iv) inclusive shall be permitted to be carried out in accordance with the provisions of this Clause 4.10.1.

These passes shall not give the holder carte blanche to stop and work on motorways.

All Operations accessed using a motorway pass shall be planned and logged.

The local Police control room shall be informed prior to any such activities being undertaken.

4.10.2 Where the Operating Company requires access to unattended locked premises on the Unit on written request by the Operating Company to the Scottish Ministers keys shall be made available by the Scottish Ministers to the Operating Company who thereafter shall be responsible for their safe keeping.

Such keys shall be surrendered immediately upon written request from the Scottish Ministers and in any event at the Contract Termination Date.

Loss of a key shall be reported immediately to the Scottish Ministers to enable security precautions to be implemented.

4.11 Photographs

4.11.1 The Operating Company shall take only those photographs of any part of the Unit and of the Operations as shall require to be provided by the Operating Company as a requirement of this Contract.

The Operating Company shall ensure that no other photographs shall be taken and that no photograph of any part of the Unit or of the Operations shall be published or circulated by any of its contractors, agents, employees and other persons engaged by it in any capacity whatsoever in the execution of this Contract without the prior written consent of the Scottish Ministers.

5 ACCESS, INSPECTION PROCESS, COMPLETION OF ORDERS AND DEFECTS CORRECTION

5.1 Access and Provision of Facilities

5.1.1 The Scottish Ministers the Performance Audit Group and any other person authorised by the Scottish Ministers (including other contractors or other third parties) shall at all times have unrestricted access to the Operations and to the Unit and to 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.

Such access shall at all times include but not be limited to access to

- (i) the Central Office
- (ii) subordinate offices
- (iii) depots
- (iv) workshops or
- (v) otherwise

belonging to or under the control of the Operating Company and all such places where work shall be being prepared materials being manufactured or articles and machinery are being obtained for or in connection with the Operations.

The Operating Company shall afford every facility for and every assistance in (or in obtaining the right to) such access.

The other contractors and or other third parties as referred to in this Clause 5.1.1 may be employed

- (i) in the execution on or near the Unit of any work not in this Contract or
- (ii) on any contract that the Scottish Ministers may enter into in connection with or ancillary to the Operations.

5.2 Rate of Progress

5.2.1 Subject to the other provisions of this Contract 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 shall be at any time in the opinion of the Scottish Ministers too slow to ensure completion by the time prescribed in any Order or extended

time for completion referred to in Clauses 8.1.1 to 8.1.3 inclusive the Scottish Ministers shall so notify the Operating Company in writing.

The Operating Company shall thereupon take such measures as shall be necessary and to which the Scottish Ministers consent to expedite progress to allow completion of such part of the Operations by such prescribed time or extended time.

The Operating Company shall not be entitled to any additional payment for taking any such measures required under this Clause 5.2.1.

If as a result of any notice given by the Scottish Ministers under this Clause 5.2.1 the Operating Company shall seek the Scottish Ministers' permission to do any Operations at a time other than the relevant time prescribed in the Order such permission shall not be unreasonably refused by the Scottish Ministers.

5.3 Operating Company to Notify Completion of Schemes

5.3.1 Subject to the other provisions of this Contract including but not limited to paragraph 2.3.4 of Part 2 of Schedule 4 when the Operating Company shall consider that the whole of the Operations required for a Scheme shall

- (i) have been completed and
- (ii) have passed any final test that may be required by this Contract

it shall within 7 Days of such completion and final test log confirmation of such within the Contract Control and Management System.

5.4 Examination of Work before Covering Up

5.4.1 Where required in writing by the Scottish Ministers pursuant to Clauses 13.1.1 to 13.1.20 inclusive the Operating Company shall exercise reasonable professional skill care and diligence in order to secure that no part of the Operations shall be covered up or put out of view unless it shall have obtained the prior written consent of the Scottish Ministers to cover up or put out of view any such part of the Operations.

The Operating Company shall afford every opportunity to the Scottish Ministers to

- (i) examine or measure any work which shall be about to be covered up or put out of view in terms of this Clause 5.4.1 and
- (ii) examine foundations and otherwise before permanent work shall be placed thereon.

The Operating Company shall provide written notice to the Scottish Ministers whenever any such work or foundations or otherwise shall be ready or shall be about to be ready for such examination.

On receipt of such notice the Scottish Ministers shall without unreasonable delay unless they consider it unnecessary and in writing notify the Operating Company accordingly attend for the purpose of examining and measuring such work or of examining such foundations.

5.4.2 The Operating Company shall when required by the Scottish Ministers under any Order

- (i) uncover any part or parts of the Operations and

- (ii) and/or make openings in or through the same or
- (iii) carry out searches inspections investigations tests or trials and

shall reinstate and make good such part or parts to the satisfaction of the Scottish Ministers.

If any such part or parts shall have been covered up or put out of view pursuant to Clause 5.4.1 and shall be found to have been executed in accordance with this Contract the cost of uncovering making openings in or through carrying out searches inspections investigations tests or trials reinstating and making good the same shall be borne by the Scottish Ministers but in all other cases all such costs shall be borne by the Operating Company.

5.5 Operating Company to Determine Cause of Defects

5.5.1 The Operating Company shall where required by the Scottish Ministers under any Order during the Mobilisation Period and Annual Periods execute such

- (i) searches
- (ii) inspections
- (iii) investigations
- (iv) tests and
- (v) trials

as shall be necessary to determine the cause of any Defect.

Unless such Defect shall be found to be a Non-Conformance for which the Operating Company shall be liable under this Contract the cost of the work executed by the Operating Company under this Clause 5.5.1 shall be borne by the Scottish Ministers.

Where such Defect shall be found to be a Non-Conformance the cost of any Non-Conformance Operations shall be borne by the Operating Company and it shall in such case carry out any such Non-Conformance Operations at its own expense in accordance with Clauses 5.8.1 to 5.8.4 inclusive.

5.6 Urgent Repairs

5.6.1 Where at any time (whether occurring by reason of the Default of the Operating Company or otherwise) any Non-Conformance Operations or other action or work or repair shall in the opinion of the Scottish Ministers require to be urgently executed in connection with or arising out of the Operations (including without prejudice to the generality of the foregoing where the Scottish Ministers deem there to be any immediate threat to public safety) then the Scottish Ministers shall subject to the provisions of Clause 5.6.4 be entitled to themselves execute or employ other persons to execute such Non-Conformance Operations or other action or work or repair.

5.6.2 The Scottish Ministers shall as soon as reasonably practicable following their decision to exercise their entitlement under Clause 5.6.1 notify the Operating Company in writing of such decision and provide details within any such notice of the Non-Conformance Operations or other action or work or repair to be executed or which has already been executed by them or on their behalf in terms of that Clause 5.6.1.

Any notice issued by the Scottish Ministers to the Operating Company under this Clause 5.6.2 shall not be deemed to be a Remedial Notice whether or not the requirement for such Non-Conformance Operations or other action or work or repair under this Clause 5.6.2 occurs by reason of the Default of the Operating Company.

5.6.3 Where the Scottish Ministers exercise their entitlement/option under Clause 5.6.1 and Clause 5.6.5(iv) and any Non-Conformances Operations or other action or work or repair executed by them under those Clauses shall be such that (in the opinion of the Scottish Ministers) the Operating Company was liable to execute at its own expense under this Contract then all and any costs and expenses properly incurred by the Scottish Ministers in so executing or arranging for the execution of such Non-Conformance Operations or other action or work or repair together with (where the requirement for any such work under Clause 5.6.1 arose by reason of the Default of the Operating Company) any additional such costs and expenses properly incurred by them or on their behalf as a consequence of such Default shall at the option of the Scottish Ministers either

- (i) be paid by the Operating Company to the Scottish Ministers on demand or
- (ii) be deducted by the Scottish Ministers from any monies due or which may become due to the Operating Company under this Contract

provided always that the Scottish Ministers shall notify the Operating Company in writing of the costs and expenses so incurred by the Scottish Ministers and due by the Operating Company under this Clause 5.6.3 prior to any such demand or deduction by them if requested to do so by the Operating Company.

5.6.4 The Scottish Ministers shall only be entitled to execute or employ other persons to execute any Non-Conformance Operations or other action or work or repair required under Clause 5.6.1 if in their opinion (acting reasonably in all the circumstances) the Operating Company shall be unable or unwilling to execute the same within the timescales which the Scottish Ministers deem to be necessary in the particular circumstances.

5.6.5 If in the event of circumstances arising to which the provisions of Clause 5.6.1 apply the Scottish Ministers either do not opt to or pursuant to Clause 5.6.4 shall not be entitled to exercise their option in terms of Clause 5.6.1 to execute or employ other persons to execute

- (i) any Non-Conformance Operations or
- (ii) other action or work or repair required

then they shall issue an Order to the Operating Company requiring the Operating Company to

- (i) execute and complete the Non-Conformance Operations or
- (ii) other action or work or repair required provided always that in respect of any Order issued by the Scottish Ministers pursuant to this Clause 5.6.5 the Operating Company shall not be entitled to any extension of time under Clause 8.1.1 and if the Operating Company does not execute and complete the Non-Conformance Operations or other action or work or repair required in terms of such Order then the Scottish Ministers shall be entitled without further notice to the Operating Company to themselves execute or employ other persons to execute such

- (a) Non-Conformance Operations
- (b) other action
- (c) work or
- (d) repair

and to demand of or deduct from the Operating Company the whole costs and expenses incurred by the Scottish Ministers all in terms of Clause 5.6.3.

5.7 Removal of Improper Work and Materials

5.7.1 The Scottish Ministers may during the progress of the Operations issue an Order requiring

- (i) the removal from the Unit within such time or times as may be specified in such Order as referred to in this Clause 5.7.1 of any materials that in the opinion of the Scottish Ministers shall not be in accordance with this Contract and the substitution of proper and suitable materials for such non compliant materials or
- (ii) the removal and proper 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 shall not be in accordance with this Contract and

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

5.7.2 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.

5.8 Correction of Non-Conformances

5.8.1 In order that the Operations and each part thereof executed under an Order shall at or as soon as practicable after the expiration of the relevant Defects Correction Period be delivered up to the Scottish Ministers

- (i) in the condition required by this Contract (fair wear and tear excepted) and
- (ii) to the satisfaction of the Scottish Ministers.

The Operating Company shall during the Contract Period but subject always to the provisions of Clause 5.8.4

- (i)
 - (a) search for
 - (b) undertake inspections and investigations and
 - (c) record

in accordance with the Scottish Ministers' Requirements all Non-Conformances as may occur during the relevant Defects Correction Period and execute and record all Non-Conformance Operations in accordance with the other provisions of this Contract

- (ii) execute and record in accordance with the Scottish Ministers' Requirements any Non-Conformance Operations as may within 14 days after expiration of the relevant Defects Correction Period be required of the Operating

Company and notified to the Operating Company in writing by the Scottish Ministers as a result of an inspection made by or on behalf of the Scottish Ministers prior to such expiration

- (iii) maintain records and registers of all the activities as referred to in this Clause 5.8.1 in accordance with the Scottish Ministers' Requirements and

notwithstanding and without prejudice to any other provisions of this Contract provide from time to time to the Scottish Ministers and the Performance Audit Group copies of such records and registers as shall be referred to in this Clause 5.8.1 and as shall be required by the Scottish Ministers.

5.8.2 Notwithstanding any other provision of this Contract all Non-Conformance Operations shall be carried out by or on behalf of the Operating Company at its own expense where the necessity thereof shall in the opinion of the Scottish Ministers be due to

- (i) the use of materials or workmanship not in accordance with this Contract or
- (ii) the Design not being in accordance with this Contract or
- (iii) any other Default of the Operating Company.

Where in the opinion of the Scottish Ministers such necessity shall be due to any other cause the value of such Non-Conformance Operations shall be ascertained and paid for by the Scottish Ministers as if it were additional work forming the requirements of an Order.

5.8.3 Where the Operating Company shall fail to execute any necessary Non-Conformance Operations required by this Contract or the Scottish Ministers the Scottish Ministers shall be entitled

- (i) to execute such Non-Conformance Operation themselves or
- (ii) to arrange for the execution of the Non-Conformance Operation by other contractors.

Where such work undertaken by the Scottish Ministers under this Clause 5.8.3 shall be Non-Conformance Operations which the Operating Company was liable to execute at its own expense under this Contract then the Scottish Ministers shall be entitled at their option either

- (i) to recover from the Operating Company the costs incurred by the Scottish Ministers thereof in terms of this Clause 5.8.3 or
- (ii) to deduct the same from any monies due or that become due to the Operating Company from the Scottish Ministers.

5.8.4 Defects Liability Period

5.8.4.1 During the Defects Liability Period the Scottish Ministers may employ their own workmen or other contractors to execute

- (i) searches
- (ii) inspections or
- (iii) investigations

for all Non-Conformances on the part of the Operating Company provided always that the execution of such

- (i) searches
- (ii) inspections or
- (iii) investigations

shall be audited by the Performance Audit Group or such other person or body as may be authorised from time to time by the Scottish Ministers and execute any necessary Non-Conformance Operations that shall be required all in terms of Clause 5.8.3.

5.8.4.2 The Scottish Ministers shall give at least 14 days notice in writing to the Operating Company stating the

- (i) intended dates
- (ii) times and
- (iii) locations

of any such

- (i) searches
- (ii) inspections or
- (iii) investigations

executed under Clause 5.8.4.1 and that the Operating Company shall have the right to witness.

5.8.4.3 Within a reasonable period after the date of completion of each such

- (i) search
- (ii) inspection or
- (iii) investigation

executed under Clause 5.8.4.1 a list of necessary Non-Conformance Operations discovered in the search shall be delivered to the Operating Company by the Scottish Ministers.

5.8.4.4 The value of the work undertaken in

- (i) searching
- (ii) inspecting or
- (iii) investigating

for Non-Conformances and undertaking any Non-Conformance Operations under this Clause 5.8.4 shall be ascertained by the Scottish Ministers as if for such purpose such work of making good had been the requirements of an Order issued under Clause 5.5.1 and measured and valued in accordance with this Contract.

The Scottish Ministers shall notify the Operating Company in writing within 7 days of completion of any such Non-Conformance Operations undertaken by the Scottish Ministers as to the particulars and amount of each such valuation and each of the said amounts shall be a sum of money recoverable by the Scottish Ministers from the Operating Company under this Contract.

5.9 Defects Correction Certificate

5.9.1 Subject to the other provisions of this Contract and

- (i) upon the expiration of the Defects Correction Period and
- (ii) when all Non-Conformance Operations referred to under Clause 5.5.1 and Clauses 5.8.1 to 5.8.3 inclusive shall have been completed.

the Operating Company shall issue to the Scottish Ministers a Defects Correction Certificate stating the date on which the Operating Company shall in its opinion have completed its obligations to execute Non-Conformance Operations in the Operations covered by the relevant Order in accordance with this Contract.

5.9.2 The issue of the Defects Correction Certificate shall not relieve either

- (i) the Operating Company or
- (ii) the Scottish Ministers from any liability arising out of or in any way connected with the performance of their respective obligations under this Contract.

5.10 Removal of Operating Company's Employees

5.10.1 The Operating Company shall employ or cause to be employed only such persons as shall be careful and skilled and experienced in their several trades and callings

The Scottish Ministers shall be 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 shall

- (i) misconduct or have misconducted himself
- (ii) be or has been incompetent
- (iii) be or has been negligent in the performance of his duties
- (iv) fail or have failed to conform with any particular provisions with regard to safety which may be set out in this Contract or
- (v) persist or has persisted in any conduct that is prejudicial to safety or health.

5.10.2 The Operating Company

- (i) shall immediately comply with any such requirement (or where appropriate ensure and procure that any sub-contractor of or supplier to the Operating Company shall comply with such requirement) and
- (ii) shall ensure and procure that such person shall not be again engaged by the Operating Company (or any sub-contractor of or supplier to Operating Company) in any capacity upon the Unit or in respect of the Operations without the prior written permission of the Scottish Ministers.

5.10.3 The Operating Company shall not be entitled to

- (i) delay
- (ii) suspend
- (iii) terminate or
- (iv) withhold

the performance of any of its obligations under this Contract and shall remain bound to implement its obligations in full notwithstanding that the Scottish Ministers have required the Operating Company to

- (i) remove any person from involvement in the execution of the Operations or
- (ii) remove any person from the Unit

in accordance with Clause 5.10.1 and the Operating Company shall have complied (or has ensured and procured that any sub-contractor of or supplier to the Operating Company has complied) with any such requirement.

5.10.4 The Scottish Ministers shall have no liability to the Operating Company in respect of any costs or expenses whatsoever nature incurred by the Operating Company as a result of any requirements of the Scottish Ministers pursuant to Clauses 5.10.1 to 5.10.3 inclusive.

PART 2 – PERIODS, BIDS AND PROGRAMMES

6 PERIODS AND PROGRAMMES

6.1 Mobilisation Period

6.1.1 During the Mobilisation Period the Operating Company shall

- (i) ensure that it acquires the capacity to execute the Operations in accordance with the provisions of this Contract and without prejudice to the generality of the foregoing in accordance with any Orders
- (ii) carry out the Mobilisation Period requirements of this Contract including but not limited to
 - (a) Clause 13 and Part 1 of Schedule 5 for the Quality Management System including the Quality Plan
 - (b) paragraph 4 of Part 2 of Schedule 4 for the Contract Control and Management System
 - (c) paragraph 3 of Part 2 of Schedule 5 for the historical records and
 - (d) Part 7 of Schedule 3 for the customer contact service

6.1.2 The Scottish Ministers shall be entitled to issue Orders to the Operating Company during the Mobilisation Period all in terms of Clauses 7.1.1 to 7.2.4 inclusive.

Any Orders issued prior to the availability of the Contract Control and Management System shall be

- (i) issued in writing independently of the Contract Control and Management System and
- (ii) subsequently be transmitted to the Operating Company by the Director via the Contract Control and Management System after it becomes operational.

6.1.3 Notwithstanding the provisions of Clause 6.1.1 and subject always to the other provisions of this Contract the Operating Company shall not later than 60 days prior to the commencement of the First Annual Period establish within the geographical area covered by the Unit at the locations shown in Part 4 of Schedule 5 and required by this Contract

- (i) the Central Office
 - (ii) all additional subordinate offices necessary to allow the Operating Company to fulfil its obligations under this Contract
 - (iii) all additional
 - (a) offices
 - (b) depots or
 - (c) otherwise
 - (d) necessary to allow the Operating Company to execute Operations under this Contract
 - (iv) a Core Management Team
- all in terms of this Contract.

6.2 Execution of Operations

6.2.1 The Operating Company shall execute and perform the Operations all in accordance with the provisions of this Contract.

Unless this Contract shall be earlier terminated and subject to Clause 6.2.2 the Operating Company shall execute the Operations on the Unit from the Contract Commencement Date until the Initial Contract Expiry Date.

Notwithstanding the generality of the foregoing the Operating Company shall from twelve o'clock midnight on 31 March of the Mobilisation Period until twelve o'clock midnight on the Initial Contract Expiry Date take full responsibility for

- (i) the care of the Unit
- (ii) the care of the Operations and
- (iii) the safety of all persons entitled to be upon the Unit (so far as such safety shall be within the control of the Operating Company).

6.2.2 Notwithstanding any other provision of this Contract the Scottish Ministers may at their sole discretion extend the period of this Contract beyond the Initial Contract Expiry Date by such period or periods as they consider appropriate and in any case not exceeding two years in total by giving written notice to the Operating Company.

The issue of such a notice by the Scottish Ministers to extend this Contract beyond the Initial Contract Expiry Date shall be termed a "Notice of Extension".

Where the Scottish Ministers wish to exercise their discretion to extend the period of this Contract the Scottish Ministers shall issue a Notice of Extension in writing to the Operating Company

- (i) no later than 12 weeks before the Initial Contract Expiry Date or
- (ii) if the period of this Contract has already been extended by the giving of a Notice of Extension in accordance with Clause 6.2.2 no later than 12 weeks prior to the date on which this Contract shall terminate as specified in the earlier Notice of Extension

specifying within such Notice of Extension the period by which this Contract shall be extended.

If any such Notice of Extension shall have been given then notwithstanding the provisions of Clause 6.2.1 this Contract shall not terminate on the Initial Contract Expiry Date (or on the date specified in any later Notice of Extension given under Clause 6.2.2) but shall continue in full force and effect until and shall terminate on the date specified in the last Notice of Extension given under Clause 6.2.2.

The Scottish Ministers may give as many written Notices of Extension to the Operating Company extending the period of this Contract in accordance with the foregoing provisions as they see fit and each such Notice of Extension may extend such period for such term as the Scottish Ministers require to be provided always that it shall not extend beyond 31 March of the Seventh Annual Period.

The provisions of this Contract shall continue to apply during such period or periods as the period of this Contract may have been extended in accordance with the provisions of this Clause 6.2.2.

- 6.2.3 Notwithstanding the provisions of Clause 6.2.2 for notifying the Operating Company no later than 12 weeks before the Initial Contract Expiry Date or any subsequent date following on the issue of any further Notice of Extension the Operating Company shall be entitled at its option to waive such minimum 12 weeks notice.

In such an event if the Scottish Ministers so wish they may still proceed to serve a Notice of Extension pursuant to Clause 6.2.2.

- 6.2.4 Where the Scottish Ministers shall serve a Notice of Extension pursuant to Clause 6.2.2 the Operating Company shall execute the Operations under this Contract during any such period by which this Contract shall be extended.

6.3 Preparation of Programmes

- 6.3.1 Except where otherwise provided in this Contract the Operating Company shall prepare programmes for the Operations and submit them to the Scottish Ministers in accordance with Parts 1 and 2 of Schedule 4

6.4 Revision of Programmes

- 6.4.1 At any time where the Scottish Ministers consider that the actual progress of any part of the Operations does not comply with any

- (i) programmes
- (ii) times or
- (iii) dates

forming part of any Order the Scottish Ministers shall issue another Order to the Operating Company requiring the Operating Company 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 programmes or times.

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

6.5 Methods

- 6.5.1 Notwithstanding any other provision of this Contract 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 the execution of the Operations.

Such submission shall be sufficiently detailed as to enable the Scottish Ministers to decide whether if these methods shall be achieved the Operations can be executed in accordance with this Contract.

6.6 Scottish Ministers' Consent

- 6.6.1 The Scottish Ministers shall notify the Operating Company in writing within a reasonable period after receipt of the information submitted in accordance with Clause 6.5.1 as to whether or not the Operating Company's proposed methods for the execution of the Operations shall have been consented to by the Scottish Ministers.

- 6.6.2 In the event that the Scottish Ministers shall not have consented to any of the said proposed methods of the Operating Company the Scottish Ministers shall
- (i) at the same time that they notify the Operating Company of their decision under Clause 6.6.1 notify the Operating Company as to in what respects (in the opinion of the Scottish Ministers) it fails to meet the requirements of this Contract and
 - (ii) subsequently issue an Order to the Operating Company to make such changes in the said methods as may be necessary to meet the Scottish Ministers' Requirements and to obtain their consent under Clause 6.6.1. The costs for executing any such Order shall be borne by the Operating Company.

PART 3 – ORDERS, EXTENSIONS OF TIME, MEASUREMENT AND PAYMENT PROVISIONS

7 BIDS SCHEMES ORDERS THRESHOLD VALUES OR OTHERWISE

7.1 General

7.1.1 Subject to the other provisions of this Contract including but not limited to Clauses 7.1.1 to 7.3.4 inclusive Bids shall comply with Parts 1 and 2 of Schedule 4.

7.1.2 Subject to the other provisions of this Contract the Operating Company shall not carry out Operations until such time as an Order shall have been issued by the Scottish Ministers.

7.2 Orders, Schemes, Threshold Values, Bids

7.2.1 The Scottish Ministers may from time to time during the Contract Period issue Order(s) to the Operating Company under this Contract.

Such Order(s) may include without prejudice to the generality of the following

- (i) executing Operations
- (ii) making
 - (a) additions
 - (b) omissions
 - (c) substitutions
 - (d) alterations
 - (e) changes in quality form character timing or kindrelative to those referred to in the Scottish Ministers' Requirements
- (iii) making
 - (a) additions
 - (b) omissions
 - (c) substitutions
 - (d) alterations and or
 - (e) changesto the extent of the Unit including but not limited to
 - (a) the geographical area of the Unit
 - (b) Routes included in the Unit and
 - (c) Routes lengths included in the Unit
- (iv) making changes to the Scottish Ministers' Requirements pursuant to Clauses 14.1.1 to 14.1.9 inclusive
- (v) executing Non-conformance Operations
- (vi) entering into a contract with a

- (a) sub-contractor (nominated or otherwise)
- (b) third party or
- (c) supplier (nominated or otherwise)

for the execution of work or of supply and

- (vii) executing such other Operations activities duties and responsibilities by the Operating Company as the Scottish Ministers may require to place on the Operating Company.

7.2.2 Any values referred to in

- (i) Clause 7.2.3
- (ii) Clause 7.2.4 and
- (iii) Clause 7.2.7

shall hereinafter each be referred to as the relevant “Threshold Value”.

7.2.3 Subject to the other provisions of this Contract for any Scheme with the Bid Estimate of Costs of not more than £250,000 the Scottish Ministers may from time to time issue Order(s) to the Operating Company to execute Operations and the Operating Company shall be entitled to execute such Operations for any such Scheme.

Subject to the other provisions of this Contract Operations for any such Scheme may include but shall not be limited to any or all of the following

- (i) feasibility studies
- (ii) technical investigations including but not limited to further investigations as defined in the DMRB
- (iii) Structures assessments
- (iv) Design
- (v) Site Operations
- (vi) supervision of Site Operations and
- (vii) all other operations activities duties and responsibilities referred to in any said Order for any such Scheme or that shall be reasonably implied to be executed under any said Order for the execution and the completion of any such Scheme and
- (viii) such other operations activities duties and responsibilities as the Scottish Ministers may at their sole discretion require to place on the Operating Company.

7.2.4 Subject to the other provisions of this Contract for any Scheme with an estimated Bid Estimate of Costs of more than £250,000 but less than £5,000,000 the Scottish Ministers shall at their sole discretion be entitled at any time to issue Order(s) to the Operating Company to execute Operations.

Any Scheme with a Bid Estimate of Costs greater than £5,000,000 shall not form part of this Contract and no Order for any such work shall be issued.

Subject to the other provisions of this Contract Operations for any such Scheme may include but shall not be limited to any or all of the following Operations

- (i) feasibility studies
- (ii) technical investigations
- (iii) Structures assessments
- (iv) Design
- (v) where relevant the preparation of all prequalification documentation and otherwise and the execution of all operations activities duties and responsibilities required to permit the Operating Company to make a competent written recommendation to the Scottish Ministers for the preferred list of tenderers for the procurement of a Works Contract for any such Scheme
- (vi) the preparation of all invitation to tender documentation and otherwise and the execution of all operations activities duties and responsibilities required to permit the Operating Company to make a competent written recommendation to the Scottish Ministers for the preferred Works Contractor for the execution of a Works Contract for any such Scheme
- (vii) the execution of the role of Engineer and Planning Supervisor for a Works Contract for any such Scheme and
- (viii) such other operations activities duties and responsibilities as the Scottish Ministers may at their sole discretion require to place on the Operating Company.

7.2.5 Subject to the other provisions of this Contract including in particular but not limited to the provisions of

- (i) Clauses 7.2.3 and 7.2.4
- (ii) Clauses 7.2.6 to 7.2.13 inclusive and
- (iii) Clauses 15.1.1 to 16.1.9 inclusive

the Scottish Ministers shall issues Orders to the Operating Company to execute the following Operations during all the Annual Periods for operations activities duties and responsibilities covered by the following items referred to in Schedule 2 namely

- (i) Series 6100 – Management Inspection and Cyclic Maintenance excluding items
 - (a) 6100/05/19 to 6100/05/32 inclusive
 - (b) 6100/05/052
 - (c) 6100/05/061 to 6100/05/62 inclusive and
 - (d) 6100/07/001 to 6100/07/67 inclusive.

7.2.6 Notwithstanding any other provisions of this Contract including in particular but not limited to

- (i) Clauses 7.2.3 and 7.2.4 and
- (ii) Clauses 7.2.7 to 7.2.13 inclusive

the Scottish Ministers shall at their sole discretion be entitled to issue Order(s) that shall combine

- (i) more than one individual Scheme or
- (ii) one or more potential individual Schemes

each of which Schemes or potential Schemes shall be estimated at a value of equal to or less than each of the Threshold Values referred to in such

- (i) Clauses 7.2.3 and 7.2.4 and
- (ii) Clauses 7.2.7 to 7.2.12 inclusive

and which by virtue of such

- (i) Clause 7.2.5 and
- (ii) Clauses 7.2.7 to 7.2.12 inclusive

may have been Operations that may have been executed by the Operating Company under the provisions of Clause 7.2.3.

For the purposes of this Clause 7.2.6 such combined

- (i) individual Schemes or
- (ii) potential individual Schemes

shall be combined into or shall be deemed to be combined into a single Scheme.

In such circumstances the Scottish Ministers shall be entitled to issue any such Order for any such combined

- (i) individual Schemes or
- (ii) potential individual Schemes

for the Operating Company

- (i) where relevant to prepare all prequalification documentation and otherwise and to execute all operations activities duties and responsibilities required to permit the Operating Company to make a competent written recommendation to the Scottish Ministers for the preferred list of tenderers for the procurement of a Works Contract for any such combined

- (a) individual Schemes or
 - (b) potential individual Schemes

- (ii) to prepare all invitation to tender documents and otherwise and to execute all operations activities duties and responsibilities required to allow the Operating Company to make a competent written recommendation to the Scottish Ministers for the preferred Works Contractor for the execution of a Works Contract for any such combined

- (a) individual Schemes or
 - (b) potential individual Schemes and

- (iii) to execute the role of Engineer for any such Works Contract for any such combined individual Schemes.

7.2.7 Notwithstanding the other provisions of this Contract including but not limited to the provisions of Clause 7.2.4 the Scottish Ministers may at their sole discretion be entitled for any Scheme with an estimated Total Order Value of Scheme of more than £250,000 but less than £5,000,000 to procure from a third party outside

the provisions of this Contract any or all of the following operations activities duties and responsibilities

- (i) feasibility studies
- (ii) technical investigations
- (iii) Structures assessments
- (iv) Design
- (v) where relevant the preparation of all prequalification documentation and otherwise and the execution of all operations activities duties and responsibilities required to permit such third party to make a competent written recommendation to the Scottish Ministers for the preferred list of tenderers for the procurement of the equivalent of a Works Contract for any such Scheme
- (vi) the preparation of all invitation to tender documentation and otherwise and the execution of all operations activities duties and responsibilities required to permit such third party to make a competent written recommendation to the Scottish Ministers for the equivalent of the preferred Works Contractor for the execution of the equivalent of a Works Contract for any such Scheme
- (vii) the execution of the equivalent of the Works for any such Scheme and
- (viii) the execution of the role of Engineer for the equivalent of a Works Contract for any such Scheme.

7.2.8 Notwithstanding any other provisions of this Contract including in particular but not limited to the definition of Unit in Clause 1.1.1 and the provisions of Clause 7.2.1 the Scottish Ministers may at their sole discretion be entitled from time to time to issue Order(s) for the Operating Company to execute operations activities duties and responsibilities in any other part of the Scottish Trunk Road network outside the boundary of the Unit.

Such operations activities duties and responsibilities where required by the Scottish Ministers to be executed by the Operating Company shall be likely to be required to be executed by the Operating Company at little or no notice and may require at the direction of the Scottish Ministers

- (i) additional resources that shall be provided immediately by the Operating Company or
- (ii) immediate diversion of part of the Operating Company's existing resources to such other part of the Scottish Trunk Road network

to execute or procure the execution of such operations activities duties and responsibilities.

For the purposes of this Clause 7.2.8 all such operations activities and responsibilities the subject of any such Order shall be deemed to be

- (i) Operations and
- (ii) Operations carried out on the Unit

notwithstanding any other provisions of this Contract.

7.2.9 Subject to the other provisions of this Contract including in particular but not limited to Schedule 4 Part 2

- (i) where the Scottish Ministers shall be considering issuing an Order to carry out any Operations for which a Bid has not been submitted and that may in their opinion exceed the relevant Threshold Value when measured and valued under this Contract or Works Contract or other type of contract as appropriate the Director shall issue an Order to require the Operating Company to provide within such period as shall be notified to the Operating Company within any such Order a Bid for the Operations under consideration
- (ii) within the period specified in any Order referred to in Clause 7.1.9 (i) the Operating Company shall provide to the Scottish Ministers either
 - (a) a Bid supported by such details as the Scottish Ministers may require or
 - (b) a Bid in the form of a Lump Sum Quotation supported by such details as the Scottish Ministers may requirewhich such Bid (as the case may be) shall remain open for acceptance for a period of 60 days from the date of receipt of such by the Scottish Ministers of such Bid
- (iii) where any Bid as referred to in Clauses 7.2.9 (i) and (ii) does not exceed the relevant Threshold Value the Scottish Ministers may issue an Order to the Operating Company to execute the relevant Operations and or
- (iv) where any Bid as referred to in Clause 7.2.9 (i) to (ii) inclusive exceeds the relevant Threshold Value the Scottish Ministers shall within 60 days of the date of receipt by them of such Bid notify the Operating Company in writing that the Scottish Ministers do not intend to issue an Order for the relevant Operations.

7.2.10 Where the Scottish Ministers shall have decided not to issue an Order for the Operations under the other provisions of this Contract including in particular but not limited to the provisions of

- (i) Clauses 7.2.3 and 7.2.4 and
- (ii) Clauses 7.2.6 and 7.2.7

either because

- (i) the value of any such Order exceeds the relevant Threshold Value or
- (ii) because the Scottish Ministers require the work to be executed by a separate competitive tender either
 - (a) as a Works Contract as part of this Contract or
 - (b) as the equivalent of a Works Contract procured by a third party outside the provisions of this Contract.

the Operating Company shall be permitted to apply to the Scottish Ministers for inclusion on the relevant tender list and shall be treated equally with all the other applicants in respect of such relevant tender list.

Further in any such event the Scottish Ministers reserve an entitlement at their sole discretion to issue Order(s) pursuant to the other provisions of this Contract for the Operating Company to execute any or all of the following

- (i) feasibility studies

- (ii) technical investigations including but not limited to further investigations as defined in the DMRB
- (iii) Structures assessments and
- (iv) Design

for any such operations activities duties and responsibilities that shall be the subject of a separate competitive tender as referred to earlier in this Clause 7.2.10.

7.2.11 Where the Scottish Ministers in consideration of the issue of any potential Order for any Scheme or any potential Scheme in accordance with the provisions of Clause 7.2.3 decide that because any such potential Order shall contain but not be limited to

- (i) a rate or
- (ii) rates

referred to in Part 2 of Schedule 2 which shall be one of the rates referred to in paragraph 27 (i) of Part 1 of Schedule 2 and consideration of any such rate or rates in the sole opinion of the Scottish Ministers make the issue of such Order not value for money to the Scottish Ministers the Scottish Ministers reserve the entitlement at their sole discretion to issue the operations activities duties and responsibilities associated with such Order to be executed in accordance with the provisions of

- (i) Clause 7.2.4 or
- (ii) Clauses 7.2.6 and 7.2.7

irrespective of the value of any such potential Order for any such

- (i) Scheme or
- (ii) potential Scheme

7.2.12 Where the Scottish Ministers in consideration of the issue of any potential Order for any Scheme in accordance with the provisions of Clause 7.2.3 decide that because any such potential Order shall contain but not be limited to

- (i) any rate or
- (ii) any rates

referred to in Part 2 of Schedule 2 which shall be one of the rates referred to in paragraph 27 (ii) of Part 1 of Schedule 2 the Scottish Ministers reserve the entitlement at their sole discretion subject to the other provisions of this Contract to issue any Order for any such Scheme that shall include any such rate or rates on the basis that any such rate or rates shall be deemed for the purposes of this Contract to be sufficient to carry out the full scope of any obligations of the Operating Company specified in or reasonably to be inferred from this Contract in connection with any such rate or rates.

7.2.13 Subject to the other provisions of this Contract any Order may be issued

- (i) via the Contract Control and Management System
- (ii) in writing or
- (iii) in exceptional circumstances orally subject to the requirements of paragraph 2.3.5 of Part 2 of Schedule 4.

7.3 Commencement and Completion of Schemes and Times of Working

7.3.1 Within any Order the Scottish Ministers may specify for any Scheme

- (i) the date for commencement of all or any part of the Operations or
- (ii) the time or date for completion of all or any part of the Operations
- (iii) 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

7.3.2 Subject to the other provisions of this Contract the Operating Company on receipt of any Order shall proceed with the Operations with due expedition and without delay in accordance with this Contract.

7.3.3 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 Clauses 8.1.1 to 8.1.3 inclusive) in respect of such part of the Operations.

7.3.4 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.

8 EXTENSION OF TIME PROVISIONS

8.1 Extension of Time for Completion of Operations for any Scheme within an Order

8.1.1 Where for any Operations including but not limited to any Scheme or part of a Scheme identified within an Order (other than an Order issued pursuant to Clause 5.6.5) there shall occur

- (i) any cause of delay referred to in this Contract or
- (ii) exceptional adverse weather conditions or
- (iii) other special circumstances of any kind whatsoever

the Operating Company shall be entitled to an extension of time for any of such events.

Where any of such events occur such as shall 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 or a Scheme or part of any such Scheme identified within an Order the Operating Company shall within 7 days after the cause of the delay shall have arisen or as soon thereafter as shall be reasonable in all the circumstances 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 at the time under Clause 8.1.2.

8.1.2 Pursuant to Clause 8.1.1 the Scottish Ministers shall as soon as practicable in the circumstances 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 or any such Scheme or part of any such Scheme within the Order concerned.

Where the Scottish Ministers shall not consider that any extension of time shall be 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 shall as soon as practicable in the circumstances notify the Operating Company of such.

8.1.3 Any extension of time granted under Clause 8.1.2 shall

- (i) have no effect on the Contract Termination Date and
- (ii) not entitle the Operating Company to any additional payment under this Contract and as such there shall be no affect on the value of the said Scheme within the Order and the Order concerned.

9 MEASUREMENT PROVISIONS

9.1 Measurement

9.1.1 Any error in description in Schedule 2 or omission therefrom shall not vitiate this Contract nor release the Operating Company from the execution of

- (i) the whole or any part of the Operations according to the relevant Order and the Scottish Ministers' Requirements or
- (ii) any of its other obligations or liabilities under this Contract.

Subject to the other provisions of this Contact the Scottish Ministers shall correct any such error or omission and the value of the work actually executed shall be ascertained in accordance with Clauses 10.1.1 to 10.1.7 inclusive.

However there shall be no rectification of any

- (i) errors
- (ii) omissions or
- (iii) wrong estimates

in the descriptions rates and prices inserted by the Operating Company in the Schedule of Rates and Prices in Part 2 of Schedule 2.

9.1.2 Except where

- (i) any statement or
- (ii) general or detailed description of the work for the Operations contained in
 - (i) Schedule 1 and or
 - (ii) Schedule 2 including but not limited to the Preambles to the Schedules of Rates and Prices and the item coverages both referred to in Part 1 of Schedule 2

expressly show to the contrary quantities shall be deemed to be measurable and measurements shall be made according to the procedure set forth in Part 1 of Schedule 2 notwithstanding any general or local custom.

9.2 Measurement of Operations Executed

9.2.1 Subject to the other provisions of this Contract the Operating Company shall measure and value in accordance with this Contract the Operations executed.

9.2.2 If the Scottish Ministers shall require any part of the Operations to be measured by themselves they shall give not less than 5 days notice to the Operating Company who shall attend to assist the Scottish Ministers in making such measurement and shall provide all particulars required by either of them.

Where the Operating Company does not for any reason attend then the measurement made by or on behalf of the Scottish Ministers shall be taken to be the correct measurement of such Operations.

9.2.3 The Operating Company shall be deemed to have made allowance in its rates and prices in the Schedule of Rates and Prices in Part 2 of Schedule 2 for all costs incurred or likely to be incurred in complying with Clauses 9.2.1 and 9.2.2.

10 VALUATION AND PAYMENT PROVISIONS

10.1 Valuation of Orders

10.1.1 The value of the Operating Company's Operations for each Order shall be determined by the following five principles in descending order of consideration for determination namely

- (i) no value

- (ii) subject to the other provisions of this Contract in accordance with the applicable rates and prices in Series
 - (a) 100 to 700 inclusive
 - (b) 1100 to 1400 inclusive
 - (c) 1700
 - (d) 2000
 - (e) 2300 to 2400 inclusive
 - (f) 2600
 - (g) 3000
 - (h) 3200 to 3300 inclusive
 - (i) 5000
 - (j) 6100 to 6700 inclusiveof Schedule 2 adjusted in accordance with the provisions of Clauses 10.6.1 to 10.6.6 inclusive
- (iii) where in the opinion of the Scottish Ministers the rates and prices in Series
 - (a) 100 to 700 inclusive
 - (b) 1100 to 1400 inclusive
 - (c) 1700
 - (d) 2000
 - (e) 2300 to 2400 inclusive
 - (f) 2600
 - (g) 3000
 - (h) 3200 to 3300 inclusive
 - (i) 5000
 - (j) 6100 to 6700 inclusiveof Schedule 2 shall not apply then by rates or prices deduced from the applicable rates or prices in Series
 - (a) 100 to 700 inclusive
 - (b) 1100 to 1400 inclusive
 - (c) 1700
 - (d) 2000
 - (e) 2300 to 2400 inclusive
 - (f) 2600
 - (g) 3000
 - (h) 3200 to 3300 inclusive
 - (i) 6100 to 6700 inclusive

of Schedule 2 so far as shall be reasonable to do so adjusted in accordance with the provisions of Clauses 10.6.1 to 10.6.6 inclusive

- (iv) where in the opinion of the Scottish Ministers none of the principles in Clauses 10.1.1 (i) to (iii) inclusive shall apply then by rates and prices by measurement and valuation in accordance with fair rates and prices or
- (v) where the Scottish Ministers shall require the Operating Company to pay for supplementary services 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 supplementary services or payment of accounts shall be valued in accordance with the applicable rates and prices in Series 6500 and Series 6600 of Schedule 2.

Where any Order requires the Operating Company to rectify or remedy any

- (i) Operating Company Default or
- (ii) consequence of any Operating Company Default

the Order shall be valued as having no value in accordance with this Clause 10.1.1 (i).

10.1.2 Notwithstanding any other provision of this Contract for Operations that shall be valued pursuant to Clause 10.1.1 (i) to (iv) inclusive the Operating Company shall provide to the Scottish Ministers if so required in writing by the Scottish Ministers such information including but not limited to

- (i) labour
- (ii) staff
- (iii) Constructional Plant and
- (iv) material
- (v) records together with all invoices receipts or other vouchers 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.

10.1.3 For any Operations executed on the basis of Series 6200 and Series 6500 of Schedule 2 the Operating Company shall for such Operations

- (i) produce and retain daily records of the hours worked by each employee.
- (ii) produce maintain and retain a verifiable register of the annual salaries of all employees engaged in such Operations
- (iii) produce and retain daily records showing the hours worked by Constructional Plant and the quantities of materials used in such Operations
- (iv) produce and retain invoices for materials used in such Operations
- (v) executed by supplementary service contractors ensure that such supplementary service contractors produce and retain daily records of the hours worked by each of its employees and shall provide a copy of such at any time to the Operating Company.

All such

- (i) information

- (ii) records
- (iii) registers and
- (iv) otherwise

referred to in this Clause 10.1.3 shall be retained and maintained in the Central Office during the Contract Period for inspection or audit at any time by the Scottish Ministers and or the Performance Audit Group.

10.1.4 Notwithstanding the provisions of Clauses 10.1.1 to 10.1.3 inclusive the Scottish Ministers shall in exceptional circumstances and at their sole discretion be entitled to issue as part of any Order any of the principles contained within the provisions of Clauses 10.1.1 to 10.1.3 inclusive as the principle or principles that shall be employed for the valuation of that Order or part of that Order.

10.1.5 For any part of the Operations executed in accordance with the provisions of Clause 7.2.1 (v) the Operating Company shall subject to the other provisions of this Contract be reimbursed in respect of the price payable by it to the sub-contractor or third party or supplier after the deduction of any

- (i) discount
- (ii) rebate or
- (iii) 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 subject always to the Scottish Ministers being satisfied that the price payable to such sub-contractor or third party or supplier shall be fair and reasonable in all the circumstances.

10.1.6 Notwithstanding any other provisions of this Contract the major value of any Order shall not be determined in accordance with the rates and prices in Series 6500 unless the Scottish Ministers shall have notified the Operating Company of such method of valuation as part of the Order or shall have notified the Operating Company of such method of valuation in writing prior to such Operations being commenced.

10.1.7 Subject to any other provisions of this Contract the value paid to the Operating Company for executing Operations during the Contract Period shall be in accordance with the applicable rates and prices in Clauses 10.1.1 to 10.1.7 inclusive.

10.2 Payments to Nominated Sub-contractors and other Sub-contractors

10.2.1 Before making any payment under Clauses 10.3.1 to 10.3.10 inclusive the Scottish Ministers shall be entitled to demand 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 Nominated Sub-contractor or other sub-contractors of the Operating Company have been paid to such Nominated Sub-contractor or other sub-contractors of the Operating Company or discharged by the Operating Company in Default unless the Operating Company shall

- (i) provide written details to the Scottish Ministers of any reasonable cause it may have for withholding or refusing to make such payment and

- (ii) provide written proof to the Scottish Ministers that it has so notified in writing any such Nominated Sub-contractor.

10.2.2 The Scottish Ministers shall be entitled to pay direct to any Nominated Sub-contractor 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 such Nominated Sub-contractor or other sub-contractors of the Operating Company.

The Scottish Ministers shall be entitled to deduct by way of set-off the amount so paid by the Scottish Ministers from any sums due or which become due from the Scottish Ministers to the Operating Company.

Provided always that where the Scottish Ministers shall have paid direct as aforesaid the Scottish Ministers shall in making further payment to the Operating Company deduct from the amount thereof the amount so paid direct as aforesaid.

However the Scottish Ministers shall not withhold or delay payment themselves in respect of Operations executed by a Nominated Sub-contractor when due to be made under this Contract.

10.3 Payments under this Contract

10.3.1 Subject to the other provisions of this Contract and or unless otherwise agreed in writing by the Scottish Ministers the Operating Company shall submit the first Statement to the Scottish Ministers between the eighth and twelfth day of the first April of the Contract Period and thereafter within 14 days after the end of each calendar month a Statement (in such form as may be prescribed in the Scottish Ministers' Requirements) showing

- (i) the actual value of the Operations executed against each Order up to the end of the calendar month in question
- (ii) for an Order identifying goods or materials the property of which shall be vested in the Scottish Ministers a list of any such goods or materials that have not yet been delivered to the Unit but of which the property has vested in the Scottish Ministers pursuant to Clauses 11.2.1 to 11.2.6 inclusive and their value and
- (iii) the actual amounts to which the Operating Company considers itself entitled in connection with all other matters for which provision is made under this Contract.

The Operating Company shall list separately in such Statements amounts payable to any Nominated Sub-contractor.

10.3.2 Subject to the provisions of Clause 10.3.1 (i) and (ii) the Operating Company shall only be entitled to submit for payments in connection with the provision of

- (i) the Quality Management System and Quality Plan as consented to in writing by the Scottish Ministers and
- (ii) the Contract Control and Management System

all as referred to elsewhere within this Contract on completion of same.

10.3.3 Subject to the provisions of Clause 10.3.1 to 10.3.10 inclusive

- (i) within 28 days of the date of delivery to the Scottish Ministers in accordance with Clause 10.3.1 of the Operating Company's Statement the Scottish

Ministers shall pay to the Operating Company (after deducting any previous payments on account) the amount which in the opinion of the Scottish Ministers on the basis of such Statement shall be due to the Operating Company pursuant to Clause 10.3.1 less a retention as provided in Clause 10.3.5.

- (ii) Where a payment under this Clause 10.3.3 includes amounts paid for Nominated Sub-contractors the Scottish Ministers shall in writing notify the Operating Company of such amounts at time of such payment.
- (iii) The Scottish Ministers shall not be bound to make a payment for a sum less than £50,000 (fifty thousand pounds sterling) in payment against any Statement during any Annual Period.
- (iv) Any payments under this Clause 10.3.3 shall be notified in writing to the Operating Company by the Scottish Ministers and shall become due on the date of such notification by the Scottish Ministers with the final date for payment being 28 days after the date of delivery of the Operating Company's monthly Statement under Clause 10.3.1.

10.3.4 Scheme Completion Date and Scheme Closure Date

10.3.4.1 Subject to the other provisions of this Contract

- (i) for each Scheme forming an Order or part of an Order (where such Scheme shall not be valued on the basis of a Lump Sum Activity) not later than 8 weeks after the Scheme Completion Date the Operating Company shall log the Scheme Closure Date within the Contract Control and Management System.
- (ii) for each Scheme forming an Order or part of an Order (where such Scheme shall be valued on the basis of a Lump Sum Activity) not later than 2 weeks after the end of the Financial Year relating to the Scheme Completion Date the Operating Company shall log the Scheme Closure Date within the Contract Control and Management System.

Subject to the provisions of Clause 10.3.4.1(iii) Scheme Closure Dates for Schemes referred to under item number 05/051 of Series 6100 of Schedule 2 shall include an adjustment by the Operating Company of payments due to the Operating Company in accordance with the procedure for adjustment referred to in Annex 7 to Schedule 1.

- (iii) Subject to the other provisions of this Contract including but not limited to Part 2 of Schedule 4 such Schemes Closure Dates shall be deemed to be a certification by the Operating Company's Representative that
 - (a) the payment claimed for any such Scheme shall be the final and conclusive payment claimed and
 - (b) subject to the provisions of Clause 10.3.6 (delayed payments) no further payment of whatsoever nature shall be claimed in respect of or in connection with any such Scheme and
 - (c) that any such final and conclusive payment claimed for such Scheme shall
 - (i) have been properly claimed
 - (ii) have included full and supporting documentation and

- (iii) have all sub values and quantities and otherwise in respect of such final and conclusive amount correct

all under the other provisions of this Contract including but not limited to the provisions Part 2 of Schedule 4.

10.3.4.2 Subject to the other provisions of this Contract

- (i) if within 12 weeks of a Scheme Closure Date the Director shall not have issued written notification to the Operating Company that the Director has objections to the final and conclusive amount claimed for any such Scheme then such final and conclusive amount shall be deemed to be accepted by the Director.

The Performance Audit Group and the Director shall be able to change a Scheme value subsequent to entry of a Scheme Closure Date.

- (ii) Notwithstanding the deemed acceptance by the Director pursuant to Clause 10.3.4.2 (i) the Director shall be entitled to object to and shall object to any such final and conclusive amount if subsequent to such deemed acceptance it shall be demonstrated that there shall be a Default by the Operating Company in such final and conclusive amount resulting from a

- (a) negligent
- (b) fraudulent
- (c) misrepresented or
- (d) otherwise

action by the Operating Company that had been deemed to have been certified correctly by the Operating Company's Representative as identified in Clause 10.3.4.1 (iii).

- (iii) In the event that the Director shall object to any final and conclusive amount pursuant to the provisions of Clause 10.3.4.2 (i) and (ii) then the Director shall be entitled at any time to recover from the Operating Company as a debt under this Contract any value that has been incorrectly claimed by the Operating Company and subject to the other provisions of this Contract shall be deducted by the Scottish Ministers from any payments due to the Operating Company.

10.3.4.3 Within 12 weeks after expiry of the Defects Liability Period the Scottish Ministers shall issue to the Operating Company a statement of

- (i) the final value in their opinion of the Operations executed under this Contract
- (ii) all amounts previously paid by the Scottish Ministers under this Contract
- (iii) the amount of retention held by the Scottish Ministers pursuant to Clause 10.3.5
- (iv) the value (if any) of any Non-Conformance Operations executed by the Scottish Ministers pursuant to Clauses 5.8.1 to 5.8.4 inclusive
- (v) all sums due to the Scottish Ministers from the Operating Company to which the Scottish Ministers are entitled under this Contract and

- (vi) 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.

The payment shall become due on notification in writing to the Operating Company of the said balance by the Scottish Ministers under this Clause 10.3.4.3.

The final date for payment to or by the Operating Company as the case may be shall be the date falling 28 days following the date of such notification.

- 10.3.5 Subject to the other provisions of this Contract no retention shall be made pursuant to Clause 10.3.3 in respect of all Operations.

Where the Operating Company shall fail to deliver the Bond and Undertaking to the Scottish Ministers by the due date referred to in Clause 4.2.1 or where the Bond and Undertaking shall not be acceptable to the Scottish Ministers the Scottish Ministers shall 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 Scottish Ministers shall be entitled to retain such sum under this Clause 10.3.5 as shall be necessary to accumulate in the hand of the Scottish Ministers a reserve amounting to a total of £1,500,000 sterling (one million five hundred thousand pounds sterling).

Subject to the other provisions of this Contract any such reserves retained pursuant to this Clause 10.3.5 shall not be released

- (i) until the end of the Contract Period or the settlement of the final account pursuant to Clause 10.3.4.3 whichever shall be later or
- (ii) until the Operating Company provides the Bond and Undertaking pursuant to Clause 4.2.1.

Subject to the provisions of Clauses 10.3.5 and 10.3.6 the said retention fund referred to in Clause 10.3.5 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 out in Clause 4.2.1 and that such Bond and Undertaking shall be 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 by the Operating Company under Clause 10.3.5.

Such retention fund held by the Scottish Ministers under Clause 10.3.5 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 each and every circumstance described within the terms of the Bond and Undertaking that would have required the guarantor of the Bond and Undertaking to pay money to the Scottish Ministers.

Within fourteen days

- (i) of the Scottish Ministers having received a proper and acceptable Bond and Undertaking pursuant to Clause 4.2.1 or
- (ii) of the issue to the Operating Company of the final value of the Operations pursuant to Clause 10.3.4.3

the Operating Company shall be paid by the Scottish Ministers any remaining sum of money held by them in the retention fund held pursuant to Clause 10.3.5 subject to the other provisions of this Contract including in particular but not limited to those provisions of Clause 10.3.4.3.

- 10.3.6 If the Scottish Ministers shall fail to make payment to the Operating Company in accordance with Clause 10.3.3 or payment (if any) in accordance with Clause 10.3.4 or if the Operating Company shall fail to make a payment (if any) to the Scottish Ministers in accordance with the said Clause 10.3.4 the party in Default shall pay to the other interest upon any payment overdue thereunder at a rate per annum equivalent to 1 per cent above the Base Lending Rate that shall be current on the date upon which such payment first becomes overdue.

In the event of any variation in the said Base Lending Rate being announced whilst such payment shall remain overdue the interest payable by the party in default of payment to the other for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation.

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 Clause 10.3.6 where such payment has not been made prior to the final date for such payment.

If the Operating Company shall fail to provide the Bond and Undertaking to the Scottish Ministers in terms of Clause 4.2.1 or where the Bond and Undertaking shall not be acceptable to the Scottish Ministers by the due date under that Clause then any payment due to the Operating Company by the Scottish Ministers pursuant to the provisions of Clauses 10.3.1 to 10.3.8 inclusive but which has not been paid to the Operating Company by the Scottish Ministers shall not be construed as being a late payment for the purposes of Clauses 10.3.6 to 10.3.8 inclusive.

- 10.3.7 Without prejudice to the other provisions of this Contract the Scottish Ministers shall be entitled to deduct from any payment due to the Operating Company the value of any part of the Operations rendered in respect of which they may for the time being be dissatisfied and for that purpose (or for any other reason which in their opinion may seem proper) may

- (i) deduct
- (ii) correct or
- (iii) modify

any sum previously paid by them to the Operating Company.

Provided always that

- (i) the Scottish Ministers shall not in any interim payment delete or reduce any sum previously paid for any part of the Operations rendered by a Nominated Sub-contractor where the Operating Company shall have already paid or shall be bound to pay that sum to such Nominated Sub-contractor and

- (ii) where the Scottish Ministers in any final payment due pursuant to Clauses 10.3.3 and 10.3.4 shall deduct or reduce any sum previously paid for any part of the Operations rendered by a Nominated Sub-contractor which sum shall have been already paid by the Operating Company to the Nominated Sub-contractor the Scottish Ministers shall reimburse to the Operating Company the amount of any sum overpaid by the Operating Company to the Nominated Sub-contractor in accordance with the notifications issued under Clause 10.3.3 that the Operating Company despite compliance with the other provisions of this Contract shall be unable to recover from the Nominated Sub-contractor together with interest thereon at the rate stated in Clause 10.3.6 to run from 28 days after the date of the final notification issued under Clause 10.3.3 until the date of such reimbursement.

10.3.8 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.

Further 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.

10.3.9 The Operating Company shall

- (i) from the Contract Commencement Date until the Contract Termination Date (howsoever arising) keep and maintain until 5 years after the Contract Termination Date or if later until 5 years after the final date of the final payment of any sums due to the Operating Company under this Contract shall have been made by the Scottish Ministers

- (a) books of financial accounts and records of all expenditures incurred in executing the Operations

- (b) the Contract Control and Management System

and all to the satisfaction of the Scottish Ministers.

- (ii) on request allow and permit the Scottish Ministers and any auditors of the Scottish Ministers (including but not restricted to any internal auditors the Comptroller the Auditor General the Auditor General for Scotland the National Audit Office and any other organisation or body which may from time to time have cause to audit the Scottish Ministers accounts) and or the Performance Audit Group at any time during the said period to

- (a) inspect all such books of account and records and

- (b) have unrestricted access to the Contract Control and Management System.

- (iii) 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 books of account and records and or

- (b) unrestricted access to the Contract Control and Management System

as the Scottish Ministers and or the Performance Audit Group may require.

10.3.10 Nothing contained in Clauses 10.3.1 to 10.3.10 inclusive shall relieve the Operating Company of any of its obligations under this Contract.

10.4 Prompt Payment

- 10.4.1 Any sub-contract for Site Operations entered into by the Operating Company shall provide for timely payment of the sub-contractor on terms comparable to those detailed in Clause 15 of the Civil Engineering Contractors Association Form of Sub-Contract for Use in Conjunction with the ICE Conditions of Contract 5th Edition ('The Blue Form') dated October 1998 but subject always to the following modifications thereto
- (i) in sub-clause (3)(a) thereof delete the words 'or otherwise as agreed'
 - (ii) sub-clause (3)(b)(iv) is deleted in its entirety and replaced by:- 'Not Used'
 - (iii) in sub-clause (3)(c) line 1 delete :- "(iv)"
 - (iv) in sub-clause (3)(f) line 2 delete the words ; - " or in the event of payment being withheld pursuant to sub-clause 15(3)(b)(iv)"
 - (v) sub-clause (3)(g) is deleted in its entirety.
- 10.4.2 For any other sub-contract for any part of the Operations the Operating Company shall pay its sub-contractors within 30 days of the receipt by the Operating Company of a valid demand for payment.

10.5 Money Recoverable under other Contracts

- 10.5.1 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
- (i) this Contract or
 - (ii) under any other contract with
 - (a) the Scottish Ministers
 - (b) any department
 - (c) office
 - (d) agency
 - (e) authority or
 - (f) otherwiseof the Crown.

10.6 Contract Price Fluctuations

- 10.6.1 The amount payable by the Scottish Ministers to the Operating Company in any payment under this Contract (other than amounts due under this Clause) shall only be increased or decreased in accordance with the provisions of Clauses 10.6.1 to 10.6.6 inclusive where there shall be any changes in the following Index Figures published by the Department of Trade and Industry in the Monthly Bulletin of Indices "Civil Engineering Formula - 1990 Series" and "Structural Steelwork Formula - 1990 Series" namely
- (i) the Index of Labour and Supervision (Index 1)

- (ii) the Index of providing and maintaining Contractor's Equipment (Index 2-Plant and Road Vehicles)
- (iii) the Indices of material prices applicable to those materials listed in Clause 10.6.4.

The net total of such increases and decreases shall be given effect to in determining any sums payable to the Operating Company.

10.6.2 For the purpose of this Contract

- (i) "Final Index Figure" shall mean any Index Figure appropriate to Clause 10.6.1 not qualified in the said Bulletin as provisional
- (ii) "Base Index Figure" shall mean the appropriate Final Index Figure applicable to the date 42 days prior to the date for the return of tenders and

'Current Index Figure' shall mean the appropriate Final Index Figure to be applied to any payment made or due to be made by the Scottish Ministers pursuant to Clauses 10.3.1 to 10.3.6 inclusive and shall be the appropriate Final Index Figure applicable to the date 42 days prior to the last day of the period to which the payment relates subject to the proviso that for any payments made after the Fifth or any extended Annual Period it shall be the last day of the last Annual Period.

provided for any work the value of which shall be included in any such payment and such work shall form part of the Operations for which the due date (or extended date) for completion for such part precedes the last day of the period to which the payment relates the Current Index Figure shall be the Final Index Figure applicable to the date 42 days prior to the due date (or extended date) for completion whichever of the dates shall be the earliest.

Notwithstanding any other provision of this Contract where in Annex 5 to this Schedule 1 there shall be no Item Category assigned to a particular item in Part 2 of Schedule 2 such item shall not be subject to adjustment in accordance with the provisions of Clauses 10.6.1 to 10.6.6 inclusive.

The 'Effective Value' in respect of the whole or any part (for each Item Category) shall be the difference between

- (a) the amount that in the opinion of the Scottish Minister

shall be due to the Operating Company under Clause 10.3.3 (before deducting retention) or

the amount (if any) due to the Operating Company under Clause 10.3.4 (but in each case before deducting sums previously paid on account)

less any amounts for Nominated Sub-contractors or any other items based on actual cost or current prices and any sums for increases or decreases in the Contract Price under Clauses 10.6.1 to 10.6.6 inclusive and
- (b) the amount calculated in accordance with Clause 10.6.2 (ii)(a) and included in the last preceding interim payment made by the Scottish Ministers in accordance with Clauses 10.3.1 to 10.3.10 inclusive.

Provided that in the case of the first payment the Effective Value shall be the amount calculated in accordance with Clause 10.6.2 (ii)(a).

10.6.3 Any increase or decrease in the amounts otherwise payable under Clauses 10.3 1 to 10.3.10 inclusive for items in each Item Category pursuant to Clause 10.6.1 shall be calculated by multiplying the Effective Value by a Price Fluctuation Factor.

This shall be the net sum of the products obtained by multiplying each of the proportions given in Clauses 10.6.4 (i) (ii) and (iii) 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.

10.6.4 For the purpose of calculating the Price Fluctuation Factor the proportions referred to in Clause 10.6.3 shall (irrespective of the actual constituents of the work) be as follows and the total of such proportions shall amount to unity

	Item Category A	Item Category B	Item Category C	
(i)	0.60	0.30	0.20	in respect of labour and supervision costs subject to adjustment by reference to the Index referred to in Clause 10.6.1 (i) (Index 1)
(ii)	0.25	0.30	0.25	in respect of costs of provision and use of providing and maintaining Operating Company's Equipment which shall be subject to adjustment by reference to the Index referred to in Clause 10.6.1 (ii) (Index 2)
(iii)	the following proportions for materials named which shall be subject to adjustment by reference to the relevant indices referred to in Clause 10.6.1 (iii).			
	Item Category A	Item Category B	Item Category C	
	0.00	0.02	0.00	for Aggregates (Index 3)
	0.00	0.05	0.00	for Bricks and Clay Products (Index 4)
	0.00	0.01	0.00	for Cements (Index 5)
	0.00	0.03	0.00	for Ready Mix Concrete (Index 6)
	0.00	0.02	0.00	for Cast and Spun Iron Products (Index 7)
	0.00	0.00	0.00	for Plastic Products (Index 8)
	0.00	0.02	0.35	for Coated Macadam and Bituminous Products (Index 9)
	0.05	0.05	0.05	for Derv Fuel (Index 10)
	0.00	0.05	0.05	for Gas Oil Fuel (Index 11)

	0.00	0.02	0.00	for Timber	(Index 12)
	0.00	0.01	0.00	for Steel for Reinforcement	(Index 13)
	0.00	0.02	0.00	for Metal Sections	(Index 14)
	0.00	0.00	0.00	for Steel Sheet Piling	(Index 15)
	0.00	0.00	0.00	for Structural Steelwork	(Index S3)
				for Civil Engineering Works	
(iv)	0.10	0.10	0.10	For all other costs which shall not be subject to any adjustment	
Total	<u>1.00</u>	<u>1.00</u>	<u>1.00</u>		

10.6.5 Provisional Index Figures in the bulletin referred to in Clause 10.6.1 may be used for the provisional adjustment of interim valuations but such adjustments shall be subsequently recalculated on the basis of the corresponding Final Index Figures.

10.6.6 Clauses 18.1.1 to 18.1.11 inclusive shall not apply except to the extent that any matter dealt with therein shall not be covered by the Index of the Cost of Labour in Civil Engineering Construction.

11 PROPERTY IN MATERIALS AND PLANT AND VESTING OF GOODS AND MATERIALS

11.1 Property in Materials and Plant

11.1.1 For the purpose of Clauses 11.1.1 to 11.1.9 inclusive

- (i) the expression "Plant" shall mean any Constructional Plant temporary works and materials for temporary works but shall exclude any vehicles engaged in transporting any labour Plant or materials to or from the Unit
- (ii) the expression "agreement for hire" shall be deemed not to include an agreement for hire purchase.

11.1.2 All Plant goods and materials owned by the Operating Company or by any company in which the Operating Company has a controlling interest shall when

- (i) on the Unit or
 - (ii) being used for the execution of the Operations
- be deemed to be the property of the Scottish Ministers.

11.1.3 With a view to securing in the event of a forfeiture the continued availability for the purpose of executing the Operations of any hired Plant the Operating Company shall not bring on to the Unit any hired Plant unless the agreement for the hire of such Plant contains a provision that the owner of such Plant shall

- (i) on request in writing made by the Scottish Ministers within 7 days after the date on which any forfeiture has become effective and
- (ii) on the Scottish Ministers undertaking to pay all hire charges in respect of such Plant from such date hire such Plant to the Scottish Ministers on the same terms as such Plant was hired 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.

11.1.4 Where the Scottish Ministers shall enter into any agreement for the hire of Plant pursuant to Clause 11.1.3

- (i) all sums properly paid by the Scottish Ministers under the provisions of any such agreement and
- (ii) all expenses incurred by them (including stamp duties) in entering into such agreement

shall be deemed for the purpose of the other provisions of this Contract to be part of the cost of completing the Operations.

11.1.5 Upon any written request made at any time by the Scottish Ministers in relation to any item of Plant the Operating Company shall

- (i) forthwith in writing notify to them the name and address of the owner thereof and
- (ii) provide a copy of the terms under which such Plant was hired to the Operating Company and
- (iii) in the case of hired Plant certify in writing that the agreement for the hire thereof contains a provision in accordance with the requirements of Clause 11.1.3.

11.1.6 If the Operating Company shall fail to remove any Plant goods or materials as required pursuant to Clause 4.8.1 within such reasonable time after execution of the Operations as may be allowed by the Scottish Ministers then the Scottish Ministers may at their option

- (i) sell or otherwise dispose of any such items which shall be the property of the Operating Company and
- (ii) return any such items that shall not be the property of the Operating Company to the owner thereof at the Operating Company's expense.

Provided always that the Scottish Ministers shall after deducting from any proceeds of any sale the

- (i) costs
- (ii) charges and
- (iii) 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 shall be insufficient to meet all such

- (i) costs
- (ii) charges and
- (iii) expenses

together with such costs charges and expenses whatsoever of the Scottish Ministers the excess shall be a debt due from the Operating Company to the

Scottish Ministers and shall be deductible or recoverable by the Scottish Ministers from any monies due or that may become due to the Operating Company under this Contract or may be recovered by the Scottish Ministers from the Operating Company at law.

11.1.7 Subject to the provisions of

- (i) Clauses 12.1.1 to 12.1.3 inclusive and
- (ii) Clauses 17.2.1 to 17.2.5 inclusive

the Scottish Ministers shall not at any time be liable for

- (i) the loss of or
- (ii) damage to

any of the

- (i) Plant
- (ii) goods or
- (iii) materials

which have been deemed to become the property of the Scottish Ministers.

11.1.8 The Operating Company shall where entering into any sub-contract for the execution of any part of the Operations incorporate in such sub-contract (by reference or otherwise) the provisions of Clauses 11.1.1 to 11.1.9 inclusive in relation to Plant goods or materials brought on to the Unit by the sub-contractor.

11.1.9 Clauses 11.1.1 to 11.1.9 inclusive

- (i) shall not be deemed to imply any consent or approval or acceptance by the Scottish Ministers of the materials or other matters referred to herein and
- (ii) shall not prevent the rejection of any such materials at any time by the Scottish Ministers.

11.2 Vesting of Goods and Materials not on the Unit

11.2.1 Where an Order identifies goods or materials for which payment may be made before the same shall be delivered to the Unit the Operating Company may with a view to securing payment pursuant to Clause 10.3.1(ii) for any such goods and materials transfer the title in the same to the Scottish Ministers before delivery to the Unit provided

- (i) that such goods and materials have been
 - (a) manufactured
 - (b) prepared or
 - (c) made substantially readyfor incorporation in the Site Operations and
- (ii) that the said goods and materials
 - (a) shall be the property of the Operating Company or
 - (b) the Contract for the supply of the same expressly provides that the property therein shall pass unconditionally to the Operating Company.

- 11.2.2 The intention of the Operating Company to transfer the property in any goods or materials to the Scottish Ministers pursuant to Clauses 11.2.1 to 11.2.6 inclusive shall be evidenced by the Operating Company taking or causing the supplier of the said goods or materials to take the following actions namely
- (i) provide to the Scottish Ministers documentary evidence that the property in the said goods or materials shall have been vested in the Operating Company
 - (ii) suitably mark or otherwise plainly identify the said goods and materials in order to show that
 - (a) their destination shall be the Unit
 - (b) that they shall be the property of the Scottish Ministers and
 - (c) (where they are not stored at the premises of the Operating Company) to whose order they shall be held
 - (iii) set aside and store the said goods and materials so marked or identified to the satisfaction of the Scottish Ministers and
 - (iv) 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.
- 11.2.3 When the Scottish Ministers shall consent in writing ownership of the said goods and materials for the purposes of Clauses 11.2.1 to 11.2.6 inclusive 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
- (i) consent by the Scottish Ministers for the purposes of Clauses 11.2.1 to 11.2.6 inclusive or any payment made by them for goods and materials pursuant to Clauses 10.3.1 to 10.3.10 inclusive
 - (a) 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 shall not be in accordance with the provisions of this Contract and
 - (b) upon any such rejection the property in the rejected goods or materials shall immediately revert in the Operating Company
 - (ii) notwithstanding any other provisions of this Contract the Operating Company shall be responsible for
 - (a) any loss or damage to such goods and materials
 - (b) for the cost of storing handling and transporting the same and
 - (c) effecting such additional insurance as may be necessary to cover the risk of such loss or damage from any cause.
- 11.2.4 Neither the Operating Company nor a sub-contractor nor any other person shall have a lien on any goods or materials which have vested in the Scottish Ministers under Clause 11.2.3 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 sub-contractors and other persons dealing with any such goods or materials.

- 11.2.5 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 Clause 11.2.3.

Where the Operating Company shall fail to do so the Scottish Ministers may

- (i) enter any premises of the Operating Company or of any sub-contractor
- (ii) remove such goods and materials and
- (iii) recover the cost of so doing from the Operating Company.

- 11.2.6 The Operating Company shall incorporate provisions equivalent to those provided in Clauses 11.2.1 to 11.2.6 inclusive in every sub-contract in which provision shall be made for payment in respect of goods or materials before the same have been delivered to the Unit.

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PART 4 – INDEMNITIES AND INSURANCE

12 CARE OF THE UNIT, OPERATIONS, INDEMNITY AND INSURANCE

12.1 Care of the Unit and the Operations

12.1.1 Where the Scottish Ministers execute work on the Unit with their own or other contractors workpeople they shall for such work

- (i) have regard for the safety of all persons upon the Unit including but not limited to users of the Unit
- (ii) keep the Unit in an orderly state appropriate to the avoidance of danger to such persons and
- (iii) require such other contractors to have the same regard for safety and the avoidance of danger.

12.1.2 The Excepted Risks that the Operating Company shall not be liable for under Clauses 12.1.3 to 12.6.3 inclusive shall be any loss or damage to the extent that the same shall be

- (i)
 - (a) riot
 - (b) war
 - (c) invasion
 - (d) act of foreign enemies or
 - (e) hostilities (whether war be declared or not)
- (ii)
 - (a) civil war
 - (b) rebellion
 - (c) revolution
 - (d) insurrection or
 - (e) military or usurped power
- (iii) due to ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of
 - (a) nuclear fuel
 - (b) radioactive toxic explosive or
 - (c) other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- (iv) due to pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
- (v) due to the use or occupation by the
 - (a) Scottish Ministers
 - (b) their agents
 - (c) servants or

- (d) any contractor other than the Operating Company (not being employed by the Operating Company) or
 - (e) the public
 - of any part of the Unit and subject to the other provisions of this Contract and
 - (vi) due to any Defect in the Design construction or maintenance of the Unit (other than any Design, management execution and Site Operations provided by the Operating Company pursuant to its obligations under this Contract).
- 12.1.3
- (i) In the event of any loss, damage or injury from any cause whatsoever (except such loss, damage or injury due to any of the Excepted Risks) to
 - (a) any Design forming part of the Operations in an Order
 - (b) any materials plant or equipment forming part of the Operations in an Order and for incorporation within the Unit
 - (c) the Unit (so far as the Unit shall be within the control of the Operating Company) or
 - (d) any person on the Unit including but not limited to users of the Unit (so far as the Unit shall be within the control of the Operating Company)
- while the Operating Company shall be responsible for the care of any such or during the execution of the Operations the Operating Company shall at its own cost replace or rectify such loss damage or injury such that at completion of an Order and in any case at the Expiry Date the Unit shall be in good order and condition and shall comply with the other provisions of this Contract and that the Scottish Ministers shall have no liability in relation to any injuries claims or otherwise pursuant to this Clause 12.1.3.
- (ii) Where any such loss damage or injury arises from any of the Excepted Risks the Operating Company shall if the required as part of an Order, repair and make good the same as aforesaid at the expense of the Scottish Ministers.
 - (iii) The Operating Company shall be liable for any loss or damage to the Operations occasioned by it in the course of any activity carried out by it for the purpose of completing any outstanding Operations or of complying with its obligations under
 - (a) Clause 5.5.1 and
 - (b) Clauses 5.8.1 to 5.8.4 inclusive.
 - (iv) Notwithstanding any other provisions of this Contract the Operating Company shall indemnify the Scottish Ministers against any
 - (a) costs
 - (b) losses or
 - (c) damages
- arising including the indemnification of the Scottish Ministers of all such
- (d) costs

(e) losses or

(f) damages

as a consequence of any Default by the Operating Company that result in the occurrence of an Emergency.

12.2 Damage to Persons and Property

12.2.1 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 so far as this Contract provides otherwise and subject to the exceptions set out in Clause 12.2.2 (the “Exceptions”) indemnify and keep indemnified the Scottish Ministers against all

(i) losses

(ii) actions

(iii) claims

(iv) costs

(v) damages

(vi) demands or

(vii) expenses (including but not limited to all legal costs and disbursements)

incurred by or made against the Scottish Ministers in respect of any

(i) injury to or death of any person or

(ii) loss of use of or damage to any property (other than the Operations) but including surface or other damage to land within the Unit suffered by any persons who own or occupy such land

that may arise out of in connection with or in consequence of (whether directly or indirectly) the execution or the non execution of the Operations including the remedying or non-remedying of any Non-Conformances or Defects therein.

12.2.2 The Exceptions referred to in Clause 12.2.1 that shall be the responsibility of the Scottish Ministers shall be

(i) death of or injury to persons or 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 other than the Operating Company (not being employed by the Operating Company) or

(ii) for any

(a) claims

(b) demands

(c) proceedings

(d) damages

(e) costs or

(f) charges and expenses

in respect thereof or in relation thereto

- (iii) damage to crops adjacent to the Unit (but only in so far as possession or access has not been given to the Operating Company)
- (iv) the use or occupation of land provided by the Scottish Ministers for the purposes of the 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
- (v) the right of the Scottish Ministers to execute any part of the Operations on over under in or through any land and
- (vi) damage that shall be the unavoidable result of the execution of the Operations (except where the Operating Company executes a Design as part of an Order and where subsequently the Site Operations and Non-Conformance Operations for such Design shall be executed either by
 - (a) the Operating Company or
 - (b) under a Works Contract).

12.2.3 The Scottish Ministers shall subject to the provisions of

- (i) Clauses 12.2.4 and
- (ii) Clause 12.2.5

indemnify the Operating Company from and against all

- (i) claims
- (ii) demands
- (iii) proceedings
- (iv) damages
- (v) costs
- (vi) charges and expenses

for the Exceptions referred to in Clause 12.2.2.

12.2.4 The Operating Company's liability to indemnify the Scottish Ministers pursuant to Clause 12.2.1 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

- (i) death
- (ii) injury
- (iii) loss or
- (iv) damage.

12.2.5 The Scottish Ministers liability to indemnify the Operating Company under Clause 12.2.3 for matters referred to in Clause 12.2.2 shall be reduced in proportion to the extent that the act or neglect of the Operating Company may have contributed to the said

- (i) death

- (ii) injury
- (iii) loss or
- (iv) damage.

12.2.6 The Scottish Ministers shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to

- (i) any work person or person in the employment of the Operating Company or
- (ii) any sub-contractor

except to the extent where such accident or injury results from or shall have been contributed to by the

- (i) negligent act
- (ii) omission or
- (iii) Default

of the Scottish Ministers.

The Operating Company shall indemnify and keep indemnified the Scottish Ministers against all such

- (i) damages and compensation (except as aforesaid) and against all
- (ii) claims
- (iii) demands
- (iv) proceedings
- (v) costs
- (vi) charges and
- (vii) expenses

whatsoever for same.

12.3 Insurance Generally

12.3.1 Without limitation to its liability under any other provisions of this Contract prior to the Date for Commencement or prior to the Operating Company commencing the execution of any Operations whichever shall be the earlier the Operating Company shall take out and maintain the insurances specified in Clause 3.1 of Annex 6 of Schedule 1.

12.3.2 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

- (i) refuse to pay any sum
- (ii) delay payment of any claim under any of the insurance or
- (iii) render any sum paid out under any of the insurance repayable in whole or in part.

12.4 Insurance Policies and Copies

12.4.1 The Operating Company shall if requested by the Scottish Ministers provide within 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.

The Operating Company shall

- (i) procure and take all steps necessary to ensure that any such information (and any held by third parties acting on behalf of the Operating Company) shall be retained for a period of not less than 5 years after the end of the Contract Period
- (ii) other than the Professional Indemnity insurance where a cover note issued by the insurance broker to the Operating Company shall be sufficient evidence of the existence of the insurance, provide to the Scottish Ministers all
 - (a) insurance policies or
 - (b) broker's placing slipssuitably
 - (a) stamped
 - (b) initialled and
 - (c) datedby all underwriters and
 - (a) endorsements and attachments or
 - (b) broker's placing slip endorsementssuitably
 - (a) stamped
 - (b) initialled and
 - (c) datedby all underwriters and amendments and replacements of the same and other relevant documents as requested by the Scottish Ministers acting reasonably (or copies of the same certified in a manner that shall be acceptable to the Scottish Ministers)
 - (a) prior to the commencement of this Contract
 - (b) prior to the expiry of an existing insurance or
 - (c) within 7 days of receiving a written requesttogether with evidence from the insurer that the premiums payable thereunder shall
 - (a) have been paid to the insurer and
 - (b) that the insurance shall be in full force and effect
- (iii) provide and take all steps and give all necessary instructions to procure the provision of
 - (a) the said policies or

- (b) the other documents referred to in this Clause 12.4.1
- (c) and such additional evidence of compliance with this Clause 12.1.1 to 12.6.3 inclusive.

as may be required by the Scottish Ministers.

12.5 Rights of Subrogation, Non-Vitiation, Changes to Policy Provisions, Waiver of Disclosure Obligation and Notice of Cancellation

12.5.1 Except for the Professional Indemnity insurance requirement all the insurance required under the provisions of this Contract shall be subject to

- (i) the waiver of all duties of disclosure and
- (ii) the waiver of any rights of subrogation

in so far as the Scottish Ministers and their servants and agents and otherwise shall be concerned

12.5.2 Except for the Professional Indemnity insurance requirement all the insurance required under the other provisions of this Contract including but not limited to Clause 3.1 of Annex 6 of Schedule 1 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 in so far as the Scottish Ministers shall be concerned.

12.5.3 All the insurance required under Clause 3.1 of Annex 6 of Schedule 1 shall be subject to undertakings from the insurers and the Operating Company

- (i) to notify the Scottish Ministers in writing of
 - (a) any intention or request to amend the terms and conditions of the said insurance and
 - (b) to obtain confirmation of the acceptance of these amendments from the Scottish Ministers such acceptance not to be unreasonably withheld
- (ii) to provide to the Scottish Ministers in writing not less than 30 days notice of cancellation or non-renewal of the said insurance and in the case of non-renewal by the Operating Company to allow the Scottish Ministers the opportunity to renew the insurances in accordance with Clause 12.6.1 to 12.6.3 inclusive and
- (iii) accepting that the insurances shall be subject to Scots Law and the jurisdiction of the Scottish Courts.

12.6 Failure to provide suitable evidence of Insurance

12.6.1 If pursuant to Clause 12.4.1 the Operating Company shall fail to produce when required such satisfactory evidence to the Scottish Ministers that there shall be in force any of the insurance required including but not limited to such insurances referred to under

- (i) Clause 12.1.1 to 12.6.3 inclusive
- (ii) Annex 6 to Schedule 1 or
- (iii) any other provisions to this Contract

then the Scottish Ministers may

- (i) effect and keep in force any such insurance
- (ii) secure the renewal of such insurance and
- (iii) pay any such premium as may be necessary for such purpose and
- (iv) from time to time deduct any such amount so paid from any monies due or which may become due to the Operating Company or recover the same as a debt due to the Scottish Ministers from the Operating Company together with all recovery costs and expenses whatsoever incurred by the Scottish Ministers their
 - (a) agents
 - (b) servants and
 - (c) otherwise.

12.6.2 Where the Operating Company fails to comply with any condition imposed by any insurance policy taken out pursuant to

- (i) Clauses 12.1.1 to 12.6.3 inclusive
- (ii) Annex 6 to Schedule 1 or
- (iii) any other provisions of this Contract

it shall indemnify the Scottish Ministers against all losses and claims arising from such failure.

12.6.3 Notwithstanding any other provisions of this Contract failure by the Operating Company to provide the Scottish Ministers with suitable evidence of insurance satisfying the requirements referred to in

- (i) Clauses 12.1.1 to 12.6.3 inclusive and
- (ii) Annex 6 to Schedule 1 or
- (iii) any other provisions of this Contract

shall result in action by the Scottish Ministers in accordance with the provisions of Clause 15.1.1 to 15.3.2 inclusive.

PART 5 – QUALITY, ENVIRONMENT, HEALTH AND SAFETY, FINANCE AND RISK

13 QUALITY, ENVIRONMENT, HEALTH AND SAFETY FINANCE AND RISK MANAGEMENT

13.1 Quality Management System including Quality Plan

13.1.1 Requirements of the Quality Management System including the Quality Plan

13.1.2 For the term of this Contract the Operating Company shall

- (i) establish
- (ii) document
- (iii) implement
- (iv) maintain and
- (v) continually improve

the effectiveness of the Quality Management System consistent with or equivalent to the requirements of

- (i) BS EN ISO 9001
- (ii) BS EN ISO 14001
- (iii) OHSAS 18001
- (iv) Part 1 of Schedule 5 and
- (v) the other provisions of this Contract

for the purpose of demonstrating and ensuring that all aspects of the Operations and for all other matters for which the Operating Company shall be responsible under the terms of this Contract shall be executed in accordance with the terms of this Contract.

13.1.2.1 Without prejudice to the generality of Clause 13.1.2 the Operating Company shall provide a Quality Plan meeting the requirements of BS ISO 10005 comprising the parts identified in and complying with (but not limited to) the requirements referred in Part 1 of Schedule 5.

13.1.2.2 The Quality Plan shall define the relevant roles and functions including but not limited to

- (i) the Operating Company including the
 - (a) Operating Company's Representative
 - (b) the other members of the Core Management Team and
 - (c) all other key Operating Company personnel associated with the execution of the Operations including but not limited to those required in accordance with Part 4 of Schedule 5
- (ii) the Scottish Ministers
- (iii) the Designer(s)
- (iv) the Checker(s)

- (v) the Contract Quality Management Systems Manager
- (vi) the Road Safety Auditor(s)
- (vii) the Planning Supervisor
- (viii) the Works Contractors
- (ix) the Performance Audit Group and
- (x) all other third parties both on and off the Unit.

It shall also cover but shall not be limited to

- (i) the execution of the Operations and any other matters for which the Operating Company shall be responsible under the terms of this Contract including but not limited to
 - (a) the management of Bids and programmes
 - (b) the Contract Control and Management System
 - (c) receipt of Orders and
 - (d) the supervision of the Operations and the Works
- (ii) the provision of records for each Order tracing the origin and location in the Unit of everything incorporated in the Unit by the Operating Company under each Order
- (iii) the provision of records for each Order tracing the origin and location in the Unit of everything incorporated in the Unit by a Works Contractor under a Works Contract
- (iv) the provision of records substantiating all quantities and amounts of items for the Operations for which payment under this Contract shall be claimed by the Operating Company for each Order (this provision shall include for all activities notwithstanding the method of payment referred to in Part 2 of Schedule 2)
- (v) the provision of documented evidence that the Operating Company shall have discharged its obligations under this Contract for everything for which payment under this Contract shall be claimed by the Operating Company
- (vi) the provision of evidence that the Operating Company has searched for identified and corrected all Non-Conformances or Defects that shall be its responsibility under this Contract
- (vii) all hold points as shall be identified in or shall be required by this Contract including without prejudice to the generality of the foregoing each and every
 - (a) Operating Company's Hold Point
 - (b) Scottish Ministers' Hold Point
 - (c) Operating Company's Witness Point and
 - (d) Scottish Ministers' Witness Point
- (viii) the implementation of the Scottish Executive Road Information System as referred to in Part 3 of Schedule 4
- (ix) the provision of the Contract Control and Management System as referred to in Part 2 of Schedule 4 and

- (x) the provision of all
 - (a) procedures
 - (b) method statements and
 - (c) otherwiserequired by this Contract including but not limited to such
 - (a) procedures
 - (b) method statements and
 - (c) otherwisethat shall be required by
 - (a) Clauses 13.1.1 to 13.1.20 inclusive and
 - (b) Part 1 of Schedule 5.

Notwithstanding any other provisions of this Contract the Operating Company shall carry out risk assessments and record the results and subsequent actions arising therefrom in respect of procedures method statements and otherwise.

- 13.1.2.3 The Operating Company shall include or procure the inclusion of documented procedures in the Quality Management System for the effective management of the Operations as shall be required by Part 1 of Schedule 5.

- 13.1.3 By no later than 60 days prior to the commencement of the First Annual Period and prior to any Site Operations commencing whichever shall be the earlier the Operating Company shall submit its developed and detailed Quality Management System including the Quality Plan to the Scottish Ministers for their written consent.

Such submission shall include a developed and detailed Contract Control and Management System that shall be available immediately for use in the manner and detail that shall be required in accordance with the other provisions of this Contract.

- 13.1.4 During the execution of the Operations and the execution of all other matters for which the Operating Company shall be responsible under this Contract the Operating Company's performance under the Quality Management System including the Quality Plan shall be

- (i) examined and
- (ii) thereafter audited
- (iii) by the Performance Audit Group.

Such examination and audit process shall include regular and periodic

- (i) inspection
- (ii) monitoring
- (iii) spot checking and
- (iv) auditing

of the Quality Management System including the Quality Plan.

- 13.1.5 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 shall be responsible under this Contract before those parts of the Quality Management System including the Quality Plan which concern any such aspect of the Operations or such other matters have been completed.

For the purposes of this Clause 13.1.5 a part of the Quality Management System including the Quality Plan shall be considered complete when it shall have been consented to in writing by the Scottish Ministers such consent shall not be unreasonably delayed.

- 13.1.6 Failure by Operating Company to perform its obligations

- 13.1.6.1 Notwithstanding any other provisions of this Contract where in the opinion of the Scottish Ministers the Operating Company shall fail to satisfactorily execute all or any of its obligations described in Clauses 13.1.1 to 13.1.20 inclusive the Scottish Ministers shall in writing so notify the Operating Company.

- 13.1.6.2 Where in the opinion of the Scottish Ministers the Operating Company does not within a reasonable time take reasonable steps to rectify such failure they shall in writing so notify the Operating Company.

- 13.1.6.3 Where the Scottish Ministers have so notified the Operating Company pursuant to Clause 13.1.6.2 they may thereupon make such arrangements and incur such

- (i) costs and expenses including professional fees
- (ii) staff costs
- (iii) overheads and
- (iv) administrative costs

as they shall consider reasonable in all the circumstances for rectifying such failure of the Operating Company and for securing compliance with the requirements of this Contract for such obligations.

Notwithstanding any other provisions of this Contract where the Scottish Ministers and or the Performance Audit Group audits identify Default by the Operating Company the Scottish Ministers shall be entitled to employ all resources including procuring where necessary additional professional resources to carry out additional audits of the Operations that result as a consequence of such audits.

- 13.1.6.4 Such action by the Scottish Ministers pursuant to this Clause 13.1.6.1 to 13.1.20 inclusive shall not entitle the Operating Company to any extra payment for or to any extension of time for completion of the Operations.

In this respect the Operating Company shall be liable for such actions of the Scottish Ministers under this Clause 13.1.6.1 to 13.1.20 inclusive as though for such purpose the Operating Company had taken such actions itself.

- 13.1.6.5 The amounts of any costs and expenses whatsoever incurred by the Scottish Ministers or by persons authorised to act on behalf of the Scottish Ministers pursuant to this Clause 13.1.6.1 to 13.1.20 inclusive shall be particularised and notified in writing by the Scottish Ministers to the Operating Company.

Notwithstanding any other provisions of this Contract

- (i) all such amounts shall be recoverable as sums of money due by the Operating Company to the Scottish Ministers and
- (ii) such sums shall be deducted from the next payment due to the Operating Company pursuant to the other provisions of this Contract.

13.1.7 Where the Operating Company does not submit the developed and detailed Quality Management System including the Quality Plan including but not limited to the Contract Control and Management System to the Scottish Ministers by no later than the date or time referred to in Clause 13.1.3 the Scottish Ministers shall be entitled to terminate this Contract in accordance with Clause 16.1.3.

13.1.8 The Operating Company shall from time to time as circumstances change from that considered or contemplated when the Quality Plan was originally produced submit to the Scottish Ministers for their written consent any changes to the Quality Management System and Quality Plan required for the Quality Management System and Quality Plan to continue to comply with the provisions of this Contract.

13.1.9 Where the Operating Company shall fail to submit changes to the Quality Management System including the Quality Plan required pursuant to Clause 13.1.8 then the Scottish Ministers may in writing notify the Operating Company of changes that shall be necessary to enable the Quality Management System including the Quality Plan to comply with the requirements of this Contract.

In any such event the Operating Company shall introduce such changes into the Quality Management System including the Quality Plan forthwith.

In any such event the Scottish Ministers shall be entitled to recover from the Operating Company all

- (i) costs and expenses whatsoever (including professional fees staff costs overheads and administrative costs)
- (ii) all abortive costs and
- (iii) other sums

that have been incurred where they 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 Clause 13.1.9 shall be the responsibility of the Operating Company.

13.1.10 Where the Performance Audit Group shall have given written notice to the Operating Company pursuant to the provisions of Part 5 of Schedule 5 to this Contract of an intention to execute an audit of any aspect of the Operations and where the Operating Company shall fail to provide

- (i) any access and facilities or
- (ii) sufficient access and facilities including staff of a standard and at the notified time including the provision of all necessary records required to be maintained by the Operating Company

then the Scottish Ministers shall be entitled to recover from the Operating Company all abortive costs and expenses (including professional fees staff costs

overheads and administrative costs) 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 from the next payment or any subsequent payment thereafter due to be paid to the Operating Company pursuant to Clauses 10.3.1 to 10.3.10 inclusive.

- 13.1.11 For the purposes of Clause 13.1.6 the Operating Company shall provide to the Scottish Ministers access and facilities of a standard sufficient to enable them to take such actions as they consider necessary.

In taking any such actions under said Clause 13.1.6 the Scottish Ministers shall for the Operating Company's Default as described therein be entitled to act as though they were the Operating Company.

- 13.1.12 Application to sub-contracts

- 13.1.12.1 The Operating Company shall ensure in each and every sub-contract and order for goods and services forming part of the Operations that a condition shall be inserted whereby sub-contractors and suppliers shall institute maintain and operate for the term of this Contract the Quality Management System including the Quality Plan complying with the requirements of

- (i) BS EN ISO 9001
- (ii) BS EN ISO 14001
- (iii) OHSAS 18001
- (iv) Part 1 of Schedule 5 and
- (v) the other provisions of this Contract

for the purpose of ensuring and demonstrating that such goods and services forming part of the Operations comply with this Contract.

- 13.1.12.2 The Operating Company shall also ensure that within each and every sub-contract a condition shall be inserted to provide for the Scottish Ministers access and facilities of a standard sufficient to enable them to take such actions as they may consider necessary under Clauses 13.1.1 to 13.1.20 inclusive.

- 13.1.12.3 Notwithstanding any other provisions of this Contract the Operating Company shall employ a Contract Quality Management System Manager who shall be required to be consented to in writing by the Scottish Ministers.

The Contract Quality Management System Manager shall have a direct line of reporting to the Operating Company's executive board.

The duties of the Contract Quality Management System Manager shall include but not be limited to

- (i) ensuring that the Operating Company undertakes the effective
 - (a) establishment
 - (b) documentation
 - (c) implementation
 - (d) maintenance and
 - (e) continual improvement

of the Quality Management System including the Quality Plan

- (ii) auditing the Quality Management System including the Quality Plan at intervals not exceeding 13 weeks and report in writing the findings of any such audit to

- (a) the Operating Company
- (b) the Scottish Ministers and
- (c) the Performance Audit Group

within 1 week of the completion of such audit

- (iii) issue summary reports to the Director at intervals not exceeding 26 weeks.

The summary report shall include but not be limited to

- (a) the programme and subjects for Contract Quality Management System Manager audits
- (b) progress of audit findings
- (c) effectiveness of the Quality Management System including the Quality Plan

and any issues affecting the management of the Quality Management System including the Quality Plan and

- (iv) consult with the Operating Company the Scottish Ministers and the Performance Audit Group on all matters relating to the Quality Management System including the Quality Plan and to quality, environment health and safety finance and risk management matters generally.

13.1.13 All materials and workmanship shall be of the respective kinds described in

- (i) any Order and in
- (ii) 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

- (i) Quality Management System including the Quality Plan or
- (ii) any Order.

13.1.14 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

- (i) by the United Kingdom Accreditation Service (UKAS) or
- (ii) by the European Co-operation for Accreditation of Laboratories (EAL).

13.1.15 By no later than 60 days prior to the commencement of the First Annual Period the Operating Company shall provide to the Scottish Ministers a schedule of tests and inspections that shall be required for the tests considered at that time by the Operating Company as being necessary for the anticipated execution of the Site Operations.

Thereafter the said schedule shall be maintained by the Operating Company and supplemented as shall be necessary from time to time to include such tests and

- inspections as may be required for compliance with any Order where such tests and inspections shall have not already been included in the said schedule.
- 13.1.16 Inspection and test plans and documentation for recording compliance shall be provided under the Quality Plan and a copy of such shall be provided to the Scottish Ministers prior to commencement of the activity concerned.
- 13.1.17 Where the Scottish Ministers consider it necessary to undertake any tests under their own direction independent of the Operating Company the Operating Company shall provide such
- (i) assistance
 - (ii) instruments
 - (iii) machines
 - (iv) labour
 - (v) materials
 - (vi) temporary traffic management and safety measures and
 - (vii) other resources
- as shall be required for
- (i) examining
 - (ii) measuring and
 - (iii) testing
- any work and the quality weight or 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.
- 13.1.18 All samples as referred to in Clauses 13.1.1 to 13.1.20 inclusive shall be provided by the Operating Company at its own cost.
- 13.1.19 The cost of making a test shall be borne by the Operating Company where such test shall be clearly called for by the other provisions of this Contract.
- Such tests shall include but shall not be limited to tests under load or tests to ascertain whether the Design of any finished or partially finished work shall be appropriate for the purposes that it was intended to fulfil.
- 13.1.20 Where any test shall be required as part of an Order in accordance with Clause 13.1.13 that was not so intended or provided for or shall be undertaken by the Scottish Ministers in accordance with Clause 13.1.17 then the cost of such test shall be borne by the Operating Company if the test shows the workmanship or materials shall not be in accordance with either
- (i) the provisions of this Contract or
 - (ii) the relevant Order
- but otherwise by the Scottish Ministers.

13.2 Operating Company Non-Conformance Reports

13.2.1 The Operating Company shall produce a report to be issued to the Performance Audit Group at weekly intervals from the commencement of the Mobilisation Period to the end of the Final Annual Period which shall schedule

- (i) the number and
- (ii) the nature and details (sufficient to understand the Non-conformance) of the Non-Conformances which have been recorded in the Quality Management System by the Operating Company identified in the preceding week together with
- (iii) the accumulated total of outstanding Non-Conformances which have not been closed out by the Operating Company in accordance with the requirements of the Quality Management System including the Quality Plan at the time of preparing any such report.

14 OPERATING COMPANY PROPOSALS FOR CHANGE TO THE SCOTTISH MINISTERS' REQUIREMENTS

14.1 Process

14.1.1 The Operating Company may by giving written notice to the Scottish Ministers submit an Operating Company Change Proposal in relation to the Scottish Ministers' Requirements at any time following the first anniversary of the commencement of the First Annual Period.

Such Operating Company Change Proposal shall maintain the efficiency of the Operations and

- (i) improve the efficiency of the Operations with a financial saving to the Scottish Ministers
- (ii) improve the efficiency of the Operations at no additional cost increase to the Scottish Ministers or
- (iii) improve the efficiency of the Operations at additional cost increase to the Scottish Ministers.

14.1.2 Subject to the acceptance of any Operating Company Change Proposal being at the sole discretion of the Scottish Ministers as referred to in Clause 14.1.7

- (i) any savings resulting from a change to the Scottish Ministers' Requirements consequent upon an Operating Company Change Proposal referred to in Clause 14.1.1 shall be shared on an equal basis by the Scottish Ministers and the Operating Company
- (ii) any additional costs resulting from a change to the Scottish Ministers' Requirements consequent upon an Operating Company Change Proposal referred to in Clause 14.1.1 (iii) shall be borne by the Scottish Ministers.

Notwithstanding any other provisions of this Contract for the purpose of this Clause 14.1.2 costs shall mean the costs as calculated by application of the principles referred to in Clause 10.1.1.

14.1.3 Any Operating Company Change Proposal referred to in Clause 14.1.1 shall be accompanied by a full and detailed

- (i) explanation of the reasons for the proposed change
- (ii) explanation of how any risks associated with the proposed change shall be allocated
- (iii) explanation of how any trials of any proposed innovation shall be financed
- (iv) statement of any consideration that the Operating Company shall be 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
- (v) explanation of the benefits arising to the Scottish Ministers from the proposed change
- (vi) demonstration that such proposed change shall have no detrimental effect on the
 - (a) environmental impact
 - (b) safety
 - (c) quality and
 - (d) performanceof the Operations and the Unit
- (vii) demonstration that such proposed change shall not be prejudicial in any way to the safety of
 - (a) users of the Unit or
 - (b) any other person affected by or involved in the performance of the Operations
- (viii) explanation of any consequential changes required to any of the Scottish Ministers' Requirements and
- (ix) explanation that such proposed change would be acceptable to any third party or other person whom the Operating Company
 - (a) shall be obliged to consult in regard to or
 - (b) whose consent shall be requiredfor the implementation of such proposed change.

14.1.4 Any proposal referred to in Clause 14.1.1 (i) and (iii) shall also include the changes that would be required to be made to the Schedule of Rates and Prices in Parts 1 and 2 of Schedule 2 to accommodate such proposed change to the Scottish Ministers' Requirements.

14.1.5 Such rates and prices changes shall in the case of an Operating Company Change Proposal under Clause 14.1.1 (i) reflect fifty percent of the saving proposed consistent with the terms of Clause 14.1.2 (i).

Each rate or price change or additional rate or price proposed shall require to be accompanied by a submission detailing the evaluation and assessment of same.

14.1.6 All the costs and expenses of whatsoever nature associated with the preparation and provision of any such proposed change referred to in Clause 14.1.1 shall be the responsibility of the Operating Company.

Such costs shall include any costs or expenses incurred

- (i) by the Operating Company and
- (ii) the Scottish Ministers in coming to a decision whether or not they find the proposal acceptable.

All such costs incurred by the Scottish Ministers shall be deducted by the Scottish Ministers from payments due to the Operating Company under the provisions of this Contract or otherwise.

14.1.7 Notwithstanding that the Operating Company shall have identified any changes including any savings proposed to the Schedule of Rates and Prices in Part 2 of Schedule 2 the acceptance (or otherwise) of the Operating Company Change Proposal shall be at the sole discretion of the Scottish Ministers.

14.1.8 The Scottish Ministers may consult with the Operating Company on any issues arising from any proposal before arriving at their decision on the acceptability or otherwise of any such Operating Company Change Proposal.

Where the Scottish Ministers shall be prepared to accept any such change to the Scottish Ministers' Requirements in terms of Clause 14.1.7 they may issue an Order.

Notwithstanding any other provisions of this Contract any such Order shall include but not be limited to clarifying

- (i) the changes that shall be made to the Scottish Ministers' Requirements
- (ii) the effective date for such changes to the Scottish Ministers' Requirements
- (iii) changes that shall be made to the Schedule of Rates and Prices in Parts 1 and 2 of Schedule 2 and
- (iv) a requirement that the Operating Company shall confirm in writing to the Scottish Ministers that the Operating Company shall have accepted unequivocally all the clarifications contained in the said Order.

14.1.9 Any change to the Scottish Ministers' Requirements consequent upon an Operating Company Change Proposal shall not be implemented by the Operating Company

- (i) without the prior written consent of the Scottish Ministers in the manner prescribed in Clause 14.1.7 and
- (ii) after written confirmation by the Operating Company to the Scottish Ministers pursuant to the terms of Clause 14.1.8 (iv).

Such confirmation shall require to be received within 14 days of the issue of the Order referred to within Clause 14.1.8.

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PART 6 – DEFAULT TERMINATION FRUSTRATION

15 DEFAULT AND STEP-IN RIGHTS PROVISIONS

15.1 Rights on Default without Prejudice to Termination Rights

- 15.1.1 The Scottish Ministers rights under Clauses 15.1.1 to 15.6.1 inclusive shall be without prejudice to and in addition to the provision of and their rights under, Clauses 13.1.1 to 13.1.20 inclusive and Clauses 16.1.1 to 9 inclusive.

15.2 Remedial Notices and Notices of Non-Conformance

15.2.1 Remedial Notices

- 15.2.1.1 Where the Operating Company commits any Default the Scottish Ministers shall subject to the provisions of Clauses 5.6.1, 5.6.2 and 15.3.1.1 give notice to the Operating Company (a “Remedial Notice”) that shall require the Operating Company

- (i) if the Default shall be capable of remedy to remedy such Default or
- (ii) in the case of a Default that shall relate to the failure of the Operating Company to perform any of its obligations in accordance with the times or dates specified in this Contract or under any Order to perform such obligation

within such period (the “Remedial Period”) as the Scottish Ministers having regard to the nature of the Default may reasonably specify in the Remedial Notice.

- 15.2.1.2 Notwithstanding any other provisions of this Contract the Operating Company shall only be entitled to dispute a Remedial Notice or the reasonableness of the Remedial Period if it shall have given written notice to the Scottish Ministers to refer such dispute in writing within 14 days of receipt of such Remedial Notice to the Dispute Resolution Procedure set out in

- (i) Clauses 18.1.1 to 18.1.11 inclusive and
- (ii) Annex 1 of this Schedule 1.

- 15.2.1.3 A waiver by the Scottish Ministers of any Default of the Operating Company shall not constitute a waiver of any subsequent Default.

15.2.2 Notices of Non-Conformance

- 15.2.2.1 In addition to the rights of the Scottish Ministers under Clauses 15.2.1.1 to 15.2.1.3 inclusive the Performance Audit Group shall issue to the Operating Company a Notice of Non-Conformance in respect of any Default where the Scottish Ministers at their discretion have not at that time issued a Remedial Notice to the Operating Company.

A Notice of Non-Conformance shall be issued to the Operating Company in respect of Non-Conformances including but not limited to

- (i) issues for the attention of the Operating Company raised as an
 - (a) audit finding
 - (b) Observation Resulting from Inspection or
 - (c) Hazard Notice

that have not been closed out by the Operating Company to the satisfaction of the Scottish Ministers

- (ii) issues identified by the Director to be raised as Non-Conformances and
- (iii) issues of any other nature where the Operating Company shall not have complied with the Contract.

15.2.2.2 On receipt of a Notice of Non-Conformance, the Operating Company shall within any timescale referred to in such Notice of Non-compliance

- (i) remedy the Default
- (ii) perform its obligation in accordance with the Contract in a timely manner and without delay and or
- (iii) process the Non-Conformance in accordance with the Quality Management System and submit a report within any timescale referred to in such Notice of Non-Conformance of that processing to the Performance Audit Group for their consideration.

15.2.2.3 Where the Performance Audit Group shall not be satisfied by the report of the Operating Company that the Non-Conformance has been satisfactorily resolved and the Operating Company shall be so notified the Operating Company shall further consider what action it shall take in relation to the Non-Conformance and within 7 Days so notify the Performance Audit Group.

If the Performance Audit Group remain unsatisfied that the Non-Conformance has been resolved the Performance Audit Group shall so advise the Director.

15.2.2.4 The Director shall consider the report of the Performance Audit Group and if satisfied that the Operating Company shall have committed a Default and that that Default shall not have been remedied the Scottish Ministers shall issue a Remedial Notice.

15.2.2.5 The Performance Audit Group shall maintain a register of Notices of Non-Conformance.

15.2.2.6 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.

15.2.2.7 The rights of the Scottish Ministers under Clauses 15.2.1.1 to 15.2.1.3 to issue a Remedial Notice to the Operating Company shall not be affected by the issue or non-issue of a Notice of Non-Conformance in relation any matter or to any action taken or not taken by the Operating Company in respect of any Notice of Non-Conformance.

15.3 Scottish Ministers' Step-in Rights

15.3.1 General

15.3.1.1 Where by the expiry of the Remedial Period specified in a Remedial Notice the Operating Company shall

- (i) have failed to remedy the Default or
- (ii) to perform the obligation for which the Remedial Notice was issued

and the Scottish Ministers do not opt to exercise their option to terminate this Contract under Clause 16.1.2 then the Scottish Ministers shall be entitled to

remedy such Default themselves or to employ other persons to remedy such Default provided that they first notify the Operating Company in writing of their intention to do so.

15.3.1.2 In order to ensure the remedy of such Default in terms of Clause 15.3.1.1 the Scottish Ministers shall be entitled to take such action including but not limited to

- (i) the employment of additional professional staff and
- (ii) to the carrying out of
 - (a) audits
 - (b) tests
 - (c) inspections and
- (iii) the obtaining of professional advice or opinion
- (iv) as they consider prudent or necessary as a consequence of such Default.

15.3.1.3 The Scottish Ministers shall be entitled to recover from the Operating Company all and any proper and reasonable costs and expenses and otherwise including but not limited to

- (i) employment of all necessary resources
- (ii) workpeople
- (iii) Constructional Plant
- (iv) material
- (v) professional fees
- (vi) professional consultant staff
- (vii) their own staff costs
- (viii) all overheads and
- (ix) administrative expenses

incurred by the Scottish Ministers or on their behalf in remedying such Default under Clauses 15.3.1.1 to 15.3.1.3 inclusive together or in any case with any such costs and expenses properly incurred by the Scottish Ministers or on their behalf as a consequence of such Default by the Operating Company including but not limited to

- (i) any loss of service or performance of the Operations suffered by the Scottish Ministers for which they have paid or shall be obliged to pay the Operating Company under this Contract
- (ii) any inconvenience occasioned by the Scottish Ministers as a result of or having to procure resources to execute the action under Clause 15.3.1.1 or 15.3.1.2
- (iii) the adverse effect if any on the Scottish Ministers' budget and or cashflow for management and maintenance of the Unit of meeting the cost of executing any action under Clauses 15.3.1.1 to 15.3.1.3 inclusive
- (iv) the cost if any to the Scottish Ministers in arranging for additional
 - (a) audits

- (b) inspections
- (c) tests
- (d) monitoring (including audits, inspections and monitoring by the Performance Audit Group) or
- (e) otherwise

whether

- (a) at more frequent intervals or
- (b) for a limited period or
- (c) on a permanent basis

as a result of the Scottish Ministers concern that there may be a general failure by the Operating Company to

- (a) perform the Operations or any other matters for which the Operating Company shall be responsible under this Contract of which the failure in question is part but which has not been discovered by the existing audits, inspections or monitoring by the Scottish Ministers (including the Performance Audit Group) of the performance of the Operations and
- (b) any other matters for which the Operating Company shall be responsible under this Contract.

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 otherwise identified in Clause 15.3.1.3 from the next payment or any subsequent payment thereafter due to be paid to the Operating Company pursuant to Clauses 10.3.1.1 to 10.3.10 inclusive.

- 15.3.2 Notwithstanding any other provisions of this Contract where the Default by the Operating Company as referred to in Clause 15.3.1 shall be in respect of the execution or non execution of the Operations or for any other matters which are the responsibility of the Operating Company under this Contract the Scottish Ministers shall be entitled to recover an additional sum (a “Non-Execution Adjustment”) calculated as follows

Non-Execution Adjustment = 12.5 percent times A

where A shall be the full cost the Scottish Ministers shall be otherwise entitled to recover from the Operating Company under Clause 15.3.1.

Notwithstanding the other provisions of this Contract the Scottish Ministers shall be entitled to recover from the Operating Company under this Clause 15.3.2 such Non-Execution Adjustment where there is a Default on the part of the Operating Company that shall become evident by an audit or inspection by the Scottish Ministers and or the Performance Audit Group on behalf of the Scottish Ministers.

Notwithstanding any other provisions of this Contract where during the execution of any part of the Site Operations during which the Operating Company has in place temporary traffic management schemes as defined within the DMRB and where during the execution of such part of the Operations the Operating Company shall have either

- (i) abandoned the execution of the Site Operations for a period exceeding 24 hours to the extent that no material progress shall (in the opinion of the Scottish Ministers) have been achieved in that period in the execution of the Site Operations or
- (ii) 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 Site Operations

then 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 Site Operations shall have been abandoned or delayed at the appropriate charges as set out in Annex 3 of this Schedule 1.

15.4 Rights of Access for Audit

15.4.1 Notwithstanding any other failure by the Operating Company in the performance of its obligations under this Contract, where in accordance with the requirements of Part 5 of Schedule 5 the Scottish Ministers or the Performance Audit Group

- (i) shall have served due notice of an intention to execute an audit or
- (ii) shall execute an ad-hoc unannounced audit

and the Operating Company shall

- (i) fail to allow access to the Scottish Ministers or the Performance Audit Group on any date identified in such notice or
- (ii) fail to provide suitable resources (including but not limited to staff) or
- (iii) fail to provide the information that shall be required to be available for the audit or
- (iv) fail to provide and make available information that should be available in accordance with the provisions of this Contract or
- (v) withhold information from the Scottish Ministers or the Performance Audit Group or
- (vi) provide information that is found to be incorrect in that it does not comply with the requirements of this Contract

then 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
- (ii) procuring additional audit resources to re-execute such audits and
- (iii) 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.

15.4.2 The Scottish Ministers shall be entitled to recover from the Operating Company all

- (i) losses
- (ii) expenses

- (iii) abortive or
- (iv) additional costs (including costs referred to under the other provisions of Clauses 15.1.1 to 15.4.2 inclusive)

whether or not the Scottish Ministers shall have themselves executed the Operations that shall be the subject of a Remedial Notice or whether or not the Operations that have been the subject of a Remedial Notice shall have or shall be executed by any other party.

Without prejudice to the other rights and obligations that the Scottish Ministers may have the Scottish Ministers shall be entitled to recover such costs and expenses and otherwise from the next payment or subsequent payments thereafter due to be paid to the Operating Company pursuant to the other provisions of this Contract.

15.5 No Waiver

- 15.5.1 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 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.

15.6 Savings

- 15.6.1 The rights of the Scottish Ministers under Clauses 15.1.1 to 15.6.1 inclusive shall be 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 or omissions of the Operating Company whether pursuant to any bond guarantee or surety held by the Scottish Ministers in connection with any part of the execution of the Operations or of any other matter for which it shall be liable in connection with this Contract.

16 TERMINATION PROVISIONS

16.1 Termination of this Contract

- 16.1.1 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
- (i) a petition shall have been presented for the bankruptcy of the Operating Company or the sequestration of its estate
 - (ii) there has been a change of control including but not limited to a cumulative change of control as defined in Section 416 of the Income and Corporation Taxes Act 1988 in the Operating Company or any company that shall be the ultimate holding company of the Operating Company
 - (iii) the Operating Company passes a resolution that it be wound up or a court makes an order that the Operating Company be wound up in either case other than for the purposes of reconstruction or amalgamation, or circumstances arise which would entitle a Court to make such an order
 - (iv) the Operating Company shall have made any composition or arrangement with or for the benefit of any or all of its creditors

- (v) an
 - (a) administrator
 - (b) administrative receiver
 - (c) judicial factor
 - (d) manager receiver or
 - (e) trustee

shall have been appointed (whether on an interim basis or otherwise) to manage its affairs or in respect of any part of the property that may from time to time have been comprised in the property and undertaking of the Operating Company or circumstances arise which would entitle a court to appoint such an administrator administrative receiver judicial factor manager receiver or trustee

- (i) where the Operating Company shall be a firm or partnership or number of persons acting together in any capacity where any of the events specified in Clauses 16.1.1 (i) (iv) and (v) have occurred in respect of any partner in the firm or partnership or any of those persons or
- (ii) where the Operating Company shall be a firm or partnership or number of persons acting together in any capacity the firm or partnership or group shall be otherwise dissolved or wound up whether under or in terms of Sections 32, 33, 34 or 35 of the Partnership Act 1890 or otherwise.

16.1.2 Notwithstanding any other provision of this Contract and without prejudice to any other right or remedy which 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

- (i) the Operating Company shall have failed to remedy a Default within the Remedial Period specified in any relevant Remedial Notice issued by the Scottish Ministers under Clause 15.2.1 or
- (ii) the Operating Company commits a Default that shall not be capable of remedy.

16.1.3 Notwithstanding any other provisions of this Contract where the Operating Company does not submit to the Scottish Ministers by no later than 60 days prior to the commencement of the First Annual Period and prior to any Site Operations commencing

- (i) the Quality Management System including the Quality Plan and
- (ii) the Contract Control and Management System

where any such submission shall include a developed and detailed Contract Control and Management System including the Quality Plan that shall be available immediately for use in the manner and detail that shall be required in accordance with the other provisions of this Contract then the Scottish Ministers shall be entitled to terminate this Contract at any time thereafter but prior to submission of the Quality Management System including the Quality Plan or the Contract Control and Management System by the Operating Company and with effect from the date stated in a written notice of termination given by the Scottish Ministers to the Operating Company.

16.1.4 The Scottish Ministers in addition to any other right or power to terminate this Contract that they may have whether in terms of any other Clause or otherwise may terminate this Contract with effect from the date stated in a written notice of termination given by the Scottish Ministers to the Operating Company.

Such date shall be not less than 12 weeks after the date on which the said notice shall have been given.

16.1.5 Nothing in Clauses 16.1.1 to 16.1.4 inclusive shall affect or prejudice in any way any right to terminate this Contract that the Scottish Ministers may have by virtue of

- (i) any other term of this Contract
- (ii) statute or
- (iii) remedy at law.

16.1.6 Where this Contract shall have been terminated pursuant to Clauses 16.1.1 to 16.1.4 inclusive the Operating Company shall take all possible steps to terminate

- (i) at the earliest possible date and
- (ii) on the best possible terms

any

- (i) commitments and
- (ii) liabilities entered into or incurred by the Operating Company

for the purposes of carrying out its obligations under this Contract.

Provided always that such commitments and liabilities include commercial undertakings in connection with the Operations.

16.1.7 Where this Contract shall have been terminated pursuant to Clauses 16.1.1 to 16.1.3 inclusive and the Scottish Ministers then make other arrangements for the execution of the Operations the Scottish Ministers shall be entitled to recover from the Operating Company and the Operating Company shall pay the cost of making

- (i) those 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) and
- (ii) any additional expenditure incurred by the Scottish Ministers in procuring the execution of the Operations over and above that which would reasonably have been expected to be incurred under this Contract in obtaining the execution of the Operations during the unexpired portion of this Contract.

In the event that the Scottish Ministers would have extended the Contract period under Clause 6.2.2 then the Operating Company shall pay to the Scottish Ministers such cost and additional expenditure during such extended period or periods

The Scottish Ministers shall notwithstanding any other provision of this Contract not be liable to pay to the Operating Company any sums on account of this Contract until at least the expiry of the last date of the Contract Period as shall be identified in or by the actions of the Scottish Ministers pursuant to Clauses 16.1.1 to 3 inclusive and in any case until the Scottish Ministers shall have established and calculated

- (i) the sums that may be due from the Operating Company to the Scottish Ministers in accordance with the provisions of Clauses 16.1.1 to 16.1.7 and thereafter until the costs of completion of the Operations
- (ii) damages for delay in completion (if any) and
- (iii) all other expenses incurred by or on behalf of the Scottish Ministers shall have been ascertained to the satisfaction of the Scottish Ministers
- (iv) and thereafter the Operating Company shall then be entitled to receive any sums (if any) as would have been due to the Operating Company upon due completion by the Operating Company after deduction of any sums in terms of this Clause 16.1.7.

Subject to the other provisions of this Contract any such sums due under this Clause 16.1.7 shall become payable on the date on which they shall be ascertained to be due under this Clause 16.1.7.

The final date for payment shall be the date falling 28 days following the date that has been so ascertained. However if such amount shall exceed the sum that would have been payable upon demand

- (i) the Operating Company shall pay to the Scottish Ministers the amount of such excess
- (ii) it shall be deemed to be a debt due by the Operating Company to the Scottish Ministers and
- (iii) such sum shall be recovered accordingly in terms of this Clause 16.1.7.

Any monies due by the Operating Company to the Scottish Ministers pursuant to the provisions of Clauses 16.1.1 to this 16.1.7 shall subject to the other provisions of this Contract take account of the value of any monies remaining to the Scottish Ministers in relation to the Bond and Undertaking.

16.1.8 The Scottish Ministers shall reimburse any expenses properly incurred by the Operating Company in complying with Clause 16.1.6.

16.1.9 The provisions of

- (i) Clauses 1, 2, 4.1.8, 4.2, 4.7, 5.1, 5.8, 5.9, 9.1, 10.1, 10.3.3, 10.3.4, 10.3.5, 10.3.6, 10.3.7, 10.3.8, 10.3.9, 10.3.10, 10.6, 11.1, 12, 15.1, 15.4, 16.1.6, 16.1.7, 16.1.8, 16.1.9, 18.1, 20.2, 20.3.3, 20.4.2, 20.4.3, 20.7, 20.9, 20.10, 20.11, and 23 and
- (ii) any other provision of this Contract necessary for its interpretation or enforcement

shall survive the expiry or termination of this Contract.

17 FRUSTRATION AND WAR PROVISIONS

17.1 Frustration

17.1.1 Where this Contract shall have been frustrated by any supervening event other than war that may occur independently of the will of the parties 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 Clause 17.2.4 where this Contract shall have been abandoned pursuant to Clause 17.2.1.

17.2 War

- 17.2.1 Where during the currency of this Contract there shall be an outbreak of war (whether war shall be declared or not) in which United Kingdom and Northern Ireland shall be engaged on a scale involving general mobilisation of the armed forces of the Crown
- (i) the Operating Company shall for a period of 28 days reckoned from midnight on the date that the order for general mobilisation shall be given continue so far as shall be reasonably possible to execute the Operations in accordance with this Contract and
 - (ii) if the execution of the Operations shall not have been achieved before the said period of 28 days has expired the Operations shall thereupon be deemed to be abandoned unless the Operating Company and the Scottish Ministers otherwise in writing agree.
- 17.2.2 Upon such abandonment of the Operations pursuant to Clauses 17.1.1 and 17.2.1 the Operating Company shall with all due diligence remove from the Unit all Constructional Plant.
- 17.2.3 Where the Operating Company shall fail to remove from the Unit all such Constructional Plant referred to in Clause 17.2.2 the Scottish Ministers shall be entitled to remove from the Unit and dispose of all such Constructional Plant at the cost of the Operating Company.
- 17.2.4 Upon abandonment of the Operations pursuant to Clauses 17.1.1 or 17.2.1 the Scottish Ministers shall pay to the Operating Company (except where such amounts have not already been the subject of earlier payments on account made to the Operating Company) the Contract value of all parts of the Operations carried out before the date of abandonment and also
- (i) the sums that shall be payable for any mobilisation or setting up costs for any Order so far as such part of the Operations have been executed
 - (ii) the cost of materials and goods properly ordered for the Operations which have been delivered to the Operating Company or of which the Operating Company has a liability to accept delivery (such materials shall become the property of the Scottish Ministers once such payment shall have been effected by the Scottish Ministers to Operating Company)
 - (iii) an amount of any expenditure properly incurred by the Operating Company in the expectation of executing the whole of the Operations for any Order where such expenditure shall not have already been recovered by any other payments referred to in Clause 17.2.4
 - (iv) all proper costs of removal referred to under Clause 17.2.2 and
- to this end and without prejudice to the provisions of Clause 17.2.5 the provisions of Clause 10.3.4 shall apply to this Clause 17.2.4 as if the date of such abandonment was the date of issue of the Defects Correction Certificate.
- 17.2.5 Where at any time before the end of the said 28 day period referred to in Clause 17.2.1 any part of the Operations shall have been executed so far as to be usable all provisions of this Contract shall have full force and effect except that
- (i) the Operating Company in lieu of fulfilling its obligations under
 - (a) Clause 5.5.1 and

(b) Clauses 5.8.1 to 5.8.4 inclusive

shall be entitled at its option to allow against the sum due to it under the provisions hereof the cost (calculated at the prices ruling at the beginning of the said period of 28 days) as notified in writing to the Operating Company by the Scottish Ministers at the end of the Defects Correction Period of Non-Conformance Operations that the Operating Company would have been liable for under the said Clauses had they continued to be applicable

- (ii) the Scottish Ministers shall not be entitled at the end of the Defects Correction Period to withhold payment under Clauses 10.3.1 to 10.3.10 inclusive of the retention money or any part thereof except such sum as may be allowable by the Operating Company under the provisions of Clause 17.2.5 (i).

Except where referred to in Clauses 17.2.1 to 17.2.5 inclusive this Contract shall continue to have full force and effect.

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PART 7 – DISPUTES RESOLUTION

18 DISPUTES RESOLUTION

18.1 Disputes Resolution

18.1.1 Disputes shall be resolved in accordance with the provisions set out in

- (i) Clauses 18.1.2 to 18.1.11 inclusive and
- (ii) Annex 1 to Schedule 1.

18.1.2 Where any Dispute shall arise between the Scottish Ministers and the Operating Company either

- (i) the Scottish Ministers or
- (ii) the Operating Company

may give notice in writing (hereinafter referred to as a “Notice of Dispute”) at any time to the other to refer the Dispute to the Disputes Resolution Procedure .

Either the Scottish Ministers or the Operating Company may then refer such Dispute to the Disputes Resolution Procedure.

18.1.3 For the purposes of this Contract the Dispute shall be that stated in the Notice of Dispute and for the purposes of all matters arising concerning this Contract the word “Dispute” shall be construed accordingly

18.1.4 Notwithstanding the existence of a Dispute following the service of a Notice of Dispute and unless this Contract shall have already been terminated or abandoned pursuant to the other provisions of this Contract the Scottish Ministers and the Operating Company shall continue to perform their obligations under this Contract.

18.1.5 The Scottish Ministers and the Operating Company shall give effect forthwith to every decision of the Adjudicator on a Dispute given under Clause 18.1.2 unless and until such decision shall be revised

- (i) by the agreement in writing of the Scottish Ministers and the Operating Company or
- (ii) pursuant to the provisions of
 - (a) Clauses 18.1.1 to 18.1.11 inclusive and
 - (b) Annex 1 to Schedule 1.

18.1.6 Where a Dispute shall arise

- (i) before or after the commencement of the Operations or
- (ii) before or after repudiation or other termination of this Contract

then the Dispute shall be referred to and decided in the first instance by the Adjudicator acting as an independent adjudicator but not as an arbiter.

18.1.7 Any decision of the Adjudicator shall be final and binding upon both

- (i) the Scottish Ministers and
- (ii) the Operating Company

unless and until

- (i) there shall be an amicable settlement in accordance with paragraph 2 of Annex 1 to Schedule 1
- (ii) the Dispute shall have been referred to arbitration as hereinafter and an arbitral award shall have been made

18.1.8 Unless both the Scottish Ministers and the Operating Company shall otherwise agree in writing

- (i) any concessions that shall be made by one party to the Adjudicator or
- (ii) any concessions or agreements (other than a settlement agreement) that shall be made in the course of discussions pursuant to paragraph 2 of Annex 1 to Schedule 1 between the chief executive officer of the Operating Company and the official nominated by the Scottish Ministers

shall be without prejudice and shall not be raised by either the Scottish Ministers or the Operating Company in any subsequent arbitration or other legal proceedings.

18.1.9 Unless this Contract shall have already been terminated the Operating Company shall in every case continue to proceed with the Operations with all due diligence regardless of the nature of any Dispute.

18.1.10 The Scottish Ministers and the Operating Company shall give effect forthwith to every decision of the Adjudicator except and to the extent that

- (i) the same shall have been revised by a settlement reached between the Scottish Ministers and the Operating Company in accordance with the Disputes Resolution Procedure or
- (ii) the same shall form an arbitral award.

18.1.11 Where the Scottish Ministers or the Operating Company shall require 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.

PART 8 – PROVISIONAL AND PRIME COST SUMS

19 PROVISIONAL AND PRIME COST SUMS AND NOMINATED SUB-CONTRACTORS

19.1 Provisional and Prime Cost Sums and Nominated Sub-Contracts

19.1.1 Where any part of the Operations forms part of an Order in connection with any Provisional Sum or Prime Cost Item and the said Operations shall include a requirement in respect of

- (i) any matter of Design or specification or
- (ii) any equipment or plant to be incorporated into the Unit

any such requirement shall be expressly stated in any such Order and shall be included in any Nominated sub-contract.

The obligation of the Operating Company for such part of the Operations shall be only that which has been expressly stated in accordance with this Clause 19.1.1.

19.1.2 For each Prime Cost Item the Scottish Ministers shall be entitled to issue an Order to the Operating Company to employ a Nominated Sub-contractor for such Order.

The Scottish Ministers shall also be entitled with the consent of the Operating Company to issue an Order to the Operating Company to execute any such part of the Operations.

In such an event the Operating Company shall be paid in accordance with the terms of a quotation submitted by him and accepted by the Scottish Ministers or in the absence thereof the value shall be determined in accordance with Clause 10.1.1 to 10.1.7 inclusive.

19.1.3 The Operating Company shall when required by the Scottish Ministers produce all

- (i) quotations
- (ii) invoices
- (iii) vouchers
- (iv) sub-contract documents
- (v) accounts
- (vi) receipts and
- (vii) any other documents

in connection with expenditure for any part of the Operations executed by any Nominated Sub-contractor.

19.1.4 Subject to the other provisions of the Contract the Scottish Ministers for each Provisional Sum shall be entitled to issue an Order to the Operating Company to employ a Nominated Sub-contractor for such Order.

In such an event the Operating Company shall be paid

- (i) in accordance with the terms of a quotation submitted by the Operating Company and accepted by the Scottish Ministers or

- (ii) in the absence of a quotation submitted by the Operating Company the value that shall be determined in accordance with the provisions of Clauses 10.1.1 to 10.1.7 inclusive.

19.2 Objection to Nomination

19.2.1 The Operating Company shall not be required to enter into any sub-contract with any Nominated Sub-contractor against whom the Operating Company may raise reasonable objection or who shall decline to enter into a sub-contract with the Operating Company containing provisions

- (i) that for the Operations the subject of such a sub-contract the Nominated Sub-contractor shall undertake towards the Operating Company such obligations and liabilities as shall enable the Operating Company to discharge its own obligations and liabilities to the Scottish Ministers under the terms of the Contract

- (ii) that the Nominated Sub-contractor shall indemnify the Operating Company against all

- (a) claims
- (b) demands and proceedings
- (c) damages
- (d) costs
- (e) charges and expenses

whatsoever arising out of or in connection with any failure by the Nominated Sub-contractor to perform such obligations or fulfil such liabilities

- (iii) that the Nominated Sub-contractor shall indemnify the Operating Company from and against any negligence by

- (a) the Nominated Sub-contractor
- (b) his agents
- (c) workpeople and servants

and against any misuse by him or them of any Constructional Plant or temporary works provided by the Operating Company for the purposes of the Contract and for all claims as aforesaid or

- (iv) equivalent to those contained in Clauses 17.1.1 and 17.2.5 inclusive.

19.2.2 Where pursuant to Clause 19.2.1 the Operating Company shall not be obliged to enter into a sub-contract with a Nominated Sub-contractor and shall decline to do so the Scottish Ministers shall

- (i) nominate an alternative sub-contractor in which case Clause 19.2.1 shall apply or
- (ii) by the issue of an Order under Clauses 7.1.1 to 7.2.13 inclusive vary the part of the Operations the subject of
 - (a) the Provisional Sum or

- (b) Prime Cost Item including where necessary the omission of any such part of the Operations

so that the Operations may be provided

- (a) by workpeople
- (b) contractors or
- (c) suppliers

as the case may be employed by the Scottish Ministers either

- (a) concurrently with the relevant Operations or
- (b) at some other date

and in each case there shall nevertheless be included in the Contract Price a sum (if any) for the Operating Company's

- (a) charges and
- (b) profit

that shall be a percentage of the estimated value of such omissions as would have been payable to the Operating Company had there been no such omissions and the value thereof had been that estimated in the Schedule of Rates and Prices in Part 2 of Schedule 2.

- (iii) issue an Order that requires the Operating Company to procure a sub-contractor of its own choice and to provide a quotation for such part of the Operations for the Scottish Ministers consideration and action or
- (iv) issue an Order that requires the Operating Company to execute such part of the Operations under Clause 19.2.2.

19.2.3 The Operating Company shall be responsible for the part of the Operations executed by a Nominated Sub-contractor employed by it as if it had itself executed such part of the Operations.

19.2.4 Where any event occurs which in the opinion of the Operating Company justifies the exercise of its right under any forfeiture clause to

- (i) terminate the Nominated Sub-contract or
- (ii) to treat the nominated sub-contract as repudiated by the Nominated Sub-contractor

it shall immediately in writing notify the Scottish Ministers giving its reasons.

19.2.5 For each part of the Operations provided by a Nominated Sub-contractor there shall be included in the Contract Price

- (i) the actual price paid or that shall be due to be paid by the Operating Company in accordance with the terms of the sub-contract (unless any such payment shall be the result of a Default of the Operating Company) net of all
 - (a) trade and other discounts
 - (b) rebates and
 - (c) allowances

other than any discount obtainable by the Operating Company for prompt payment

- (ii) the sum (if any) provided in Part 2 of Schedule 2 the Schedule of Rates and Prices for labours in connection therewith or if forming part of an Order as may be determined by the Scottish Ministers and
- (iii) for all other
 - (a) charges
 - (b) profit and
 - (c) otherwise
- (iv) a sum being a percentage of the actual price paid or due to be paid to the Operating Company calculated at the rate inserted by the Operating Company against the relevant Prime Cost Item in Part 2 of Schedule 2.

19.2.6 Where the Nominated Sub-contractor shall be in breach of the sub-contract that shall cause the Operating Company to be in breach of the Contract the Scottish Ministers shall not enforce any award of any arbiter or judgement that they may obtain against the Operating Company for such breach of Contract except where the Operating Company has been able to recover the amount associated with such award from the Nominated Sub-contractor.

Provided always that if the Operating Company shall not comply with Clause 19.1.3 the Scottish Ministers may enforce any such award or judgement in full.

PART 9 – STATUTORY CONTRACTUAL AND LEGAL REQUIREMENTS ETC

20 STATUTORY CONTRACTUAL AND LEGAL REQUIREMENTS

20.1 New Roads and Street Works Act

20.1.1 For the purposes of this Contract all expressions common to

- (i) the NRSWA and
- (ii) Clauses 20.1.1 to 20.1.3 inclusive

shall have the same meaning as that assigned to them by the NRSWA unless the context otherwise shall infer a different meaning.

20.1.2 In respect of the NRSWA the Scottish Ministers have delegated and do hereby delegate to the Operating Company those Statutory Functions in respect of the NRSWA as referred to in Part 6 of Schedule 7.

20.1.3 Thereafter the Scottish Ministers shall notify the Operating Company from time to time in writing of any changes required in respect of such Statutory Functions delegated to the Operating Company by the Scottish Ministers.

20.1.4 The said statutory functions referred to in Clause 20.1.2 and changes thereto as referred to in Clause 20.1.3 shall be deemed to be incorporated into Part 6 of Schedule 7.

20.2 Patent Rights

20.2.1 The Operating Company shall except as provided in Clause 20.2.4 indemnify the Scottish Ministers from and against all claims and proceedings for or on account of use of any Intellectual Property Rights

- (i) from and against all
 - (a) claims
 - (b) demands
 - (c) damages
 - (d) proceedings
 - (e) costs
 - (f) charges
 - (g) and
 - (h) otherwise
- (ii) expenses whatsoever in respect thereof or in relation thereto
- (iii) in any
 - (a) Constructional Plant
 - (b) machine work or
 - (c) materialused for or in connection with the Operations

20.2.2 Subject to the other provisions of this Contract the Operating Company shall pay all

- (i) tonnage royalties and otherwise
- (ii) other royalties and otherwise
- (iii) rent
- (iv) other payments and
- (v) compensation (if any) for getting
 - (a) stone
 - (b) gravel
 - (c) clay or
 - (d) other material

required for the Operations.

20.2.3 The Operating Company shall obtain and maintain all necessary licences and permissions to make use of all relevant

- (i) patents rights
- (ii) design trademarks
- (iii) names
- (iv) other protected rights and
- (v) otherwise

for the Operations.

20.2.4 The Operating Company shall indemnify the Scottish Ministers from and against all claims and proceedings for or on account of any infringement of all protected rights.

For matters referred to in Clauses 20.2.1 to 20.2.3 inclusive no licence shall be required under any of the Vidal patent numbers

- (i) 1069361
- (ii) 1324686
- (iii) 1543806
- (iv) 1550135 and
- (v) 1563317

by virtue of the agreement between the Crown and M Vidal and the Reinforced Earth Co. Ltd.

20.3 Interference with Adjoining Properties

20.3.1 Subject to the other provisions of this Contract the Operations shall be executed so as not to interfere unnecessarily or improperly with

- (i) the convenience of the public
- (ii) the access to public or private

- (a) roads
- (b) footpaths or
- (c) properties

whether in the possession of the Scottish Ministers or any other person and with the use or occupation thereof or

(iii) any adjoining

- (a) land or
- (b) properties.

20.3.2 The Operating Company shall indemnify the Scottish Ministers for all

- (i) claims
- (ii) demands
- (iii) proceedings
- (iv) damages
- (v) costs
- (vi) charges
- (vii) expenses and
- (viii) otherwise

whatsoever arising out of or in relation to any matters as referred to in Clause 20.3.1.

20.3.3 All parts of the Operations shall be carried out without unreasonable noise and disturbance.

Notwithstanding any other provision of this Contract the Operating Company shall indemnify the Scottish Ministers from and against

- (i) any liability for damages on account of noise or other disturbance or nuisance created while or in executing the Operations and
- (ii) all claims demands proceedings damages costs charges and expenses whatsoever in regard or in relation to such liability.

20.3.4 Notwithstanding and without prejudice to any other provisions of this Contract the Operating Company shall take all necessary precautions in connection with any

- (i) underground water resources (including but not limited to percolating water
- (ii) rivers
- (iii) streams
- (iv) waterways
- (v) drains
- (vi) watercourses
- (vii) lakes
- (viii) ditches
- (ix) reservoirs and

(x) otherwise

to prevent

- (i) any interference with the supply to or abstraction from such sources
- (ii) silting
- (iii) erosion of their beds or banks and
- (iv) pollution of the water so as to affect adversely the quality or appearance thereof or cause injury or death to animal aquatic or plant life.

20.3.5 The Operating Company shall take all necessary measures to prevent

- (i) damage
- (ii) loss
- (iii) injury or
- (iv) nuisance

caused by

- (i) mud
- (ii) dirt
- (iii) stones or
- (iv) other material used or generated

whilst executing the Operations.

Such measures shall include but not be limited to ensuring that no

- (i) fuel
- (ii) lubricant
- (iii) mud
- (iv) dirt
- (v) stones or
- (vi) other material

shall be spilled or deposited on the roads whether or not they open to traffic.

20.3.6 The Operating Company shall take all necessary measures to prevent

- (i) damage
- (ii) loss
- (iii) injury or
- (iv) nuisance

caused by smoke or dust generated whilst executing the Operations.

20.4 Avoidance of Damage to Roads

20.4.1 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 the Roads (Scotland) Act 1984 by any traffic of the Operating Company or any of its sub-contractors.

The Operating Company shall select routes and use vehicles and restrict and distribute loads so that

- (i) any such extraordinary traffic as shall inevitably arise from the moving of
 - (a) Constructional Plant and materials or
 - (b) manufactured or fabricated articles from and to the Unitfrom and to the Unit shall be limited as far as reasonably possible and
- (ii) no unnecessary damage or injury may be occasioned to such roads and bridges.

20.4.2 Subject to the other provisions of this Contract the Operating Company shall

- (i) be responsible for and
- (ii) pay the cost of

strengthening any bridges and altering or improving any road communicating with the Unit to facilitate the movement of Constructional Plant and temporary works required in the execution of the Operations.

The Operating Company shall indemnify the Scottish Ministers against all claims for damage to any road or bridge on routes leading to the Unit caused by such movement.

Such indemnity shall include any claims as may be made by any competent authority directly against the Scottish Ministers pursuant to any Legislation and the Operating Company shall negotiate and pay all claims arising solely out of such damage.

20.4.3 If notwithstanding Clause 20.4.1 any damage shall occur to any bridge or road on routes leading to the Unit arising from the transport of materials or manufactured or fabricated articles in the execution of the Operations the Operating Company shall notify the Scottish Ministers in writing of the event as soon as it shall

- (i) become aware of such damage or
- (ii) receive any claim from the authority entitled to make such claim.

Where under any Legislation the haulier of such materials or manufactured or fabricated articles shall be required to indemnify the road authority against damage the Scottish Ministers shall not be liable for any

- (i) costs
- (ii) charges or
- (iii) expenses

in respect hereof or in relation thereto.

In all other cases the Scottish Ministers shall

- (i) negotiate the settlement of and pay all sums due in respect of such claim
- (ii) indemnify the Operating Company in respect thereof and
- (iii) shall be liable for all
 - (a) claims
 - (b) demands

- (c) proceedings
 - (d) damages
 - (e) costs
 - (f) charges and expenses
- in relation thereto.

Provided always that in so far as any such claim or part thereof shall in the opinion of the Scottish Ministers be due to any failure on the part of the Operating Company to observe and perform its obligations under Clause 20.4.1 then the amount notified in writing to the Operating Company by the Scottish Ministers to be due to such failure 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.

20.4.4 Without prejudice to provisions of Clauses 20.4.1 to 20.4.4 inclusive the Operating Company shall ensure that the Operating Company and its

- (i) sub-contractors and
- (ii) suppliers

shall comply with the requirements of this Contract for routeing of their vehicles.

In this respect the Scottish Ministers shall not in specifying requirements warrant in any way that such route(s) shall 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 routeing requirements.

20.5 Fossils

20.5.1 All

- (i) fossils
 - (ii) coins
 - (iii) articles of
 - (a) value or
 - (b) antiquity
 - (iv) structures
 - (v) other remains or
 - (vi) things of
 - (a) geological or
 - (b) archaeological
- interest

discovered on the Unit shall as between the Scottish Ministers and the Operating Company be deemed to be the absolute property of the Scottish Ministers.

The Operating Company shall

- (i) take reasonable precautions to prevent its workpeople or any other persons from removing or damaging any such article or thing and
- (ii) immediately upon discovery thereof and before removal notify in writing the Scottish Ministers of such discovery and shall execute at the expense of the Scottish Ministers any Order for the treatment or disposal of same.

20.6 Operating Company To Comply With Statutory and Other Procedures Regulations and Procedures

- 20.6.1 Where Operations shall require to be executed within the boundaries of a Government or local authority establishment the Operating Company shall comply with those statutory and other procedures rules and regulations of such establishment that shall apply to such Operations.
- 20.6.2 The Operating Company shall comply with the requirements of this Contract or those that shall be required as part of an Order.
- 20.6.3 Nothing contained in this Contract shall be construed as limiting the Operating Company's liability to comply with Legislation as shall be applicable to the Operations.

20.7 Data Protection Act – Operating Company's Indemnity

- 20.7.1 Notwithstanding any other provisions of this Contract the Operating Company shall fully comply with the provisions of the Data Protection Act 1998 and any equivalent or associated legislation and shall not do anything or permit anything to be done which may lead to a breach of that Act or the equivalent or associated legislation.
- 20.7.2 Without prejudice to the generality of Clause 20.7.1 where the Operating Company shall have obtained without the consent of the Scottish Ministers personal data within the meaning of the Data Protection Act 1998 and where it shall
 - (i) have directly or indirectly disclosed or published the data to any other person
 - (ii) have allowed improper access to the data or
 - (iii) in any event directly or indirectly caused the loss damage or destruction of such datait shall indemnify the Scottish Ministers and the Crown against all
 - (i) claims
 - (ii) proceedings
 - (iii) costs
 - (iv) expenses and
 - (v) otherwisein respect of any damage or distress suffered thereby by any person.

20.8 Non Corrupt Practices

- 20.8.1 The Operating Company shall not

- (i) offer or give or agree to the giving to any person any gift or consideration of any kind 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 or any other contract with the Scottish Ministers or for showing or forbearing to show favour or disfavour of any person in relation to this Contract or any other contract with the Scottish Ministers or
- (ii) 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 it or on its behalf or to its knowledge 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.

20.8.2 Any breach of the prohibitions as referred to in Clause 20.8.1 or the commission of any offence under the Prevention of Corruption Acts 1889 to 1916 by the Operating Company in relation to this or any other contract with the Scottish Ministers shall entitle the Scottish Ministers to enter upon the Unit under Clauses 15.1.1 to 15.6.1 inclusive and expel the Operating Company therefrom.

Thereupon the provisions of Clauses 15.1.1 to 15.6.1 inclusive shall have effect as if such breach or offence was expressed as a ground therefore by the other provisions of this Contract.

In that case the Operating Company shall not be entitled to payments on this Contract or contracts beyond those (if any) provided for by the other provisions of this Contract.

In addition to the costs and expenses whatsoever recoverable by the Scottish Ministers as shall be provided for in the other provisions of this Contract the Scottish Ministers shall also be entitled to recover from the Operating Company any other costs or losses incurred by the Scottish Ministers consequent upon such entry and expulsion under Clauses 20.8.1 to 20.8.4 inclusive and to receive from the Operating Company such sums that in the opinion of the Scottish Ministers represents the amount or value of any gift consideration paid or agreed to be paid in breach of Clauses 20.8.1 to 20.8.4 inclusive.

20.8.3 In every sub-contract for any part of the Operations the Operating Company shall incorporate such provision as shall

- (i) impose on the sub-contractor liabilities similar to those imposed on the Operating Company by Clauses 20.8.1 to 20.8.4 inclusive and
- (ii) entitle the Operating Company to determine the sub-contract on terms equivalent to those contained in the other provisions of this Contract.

20.8.4 In the event of any breach by the sub-contractor of any such provision 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 sub-contractor.

Failure by the Operating Company to take action shall be a ground for the exercise by the Scottish Ministers of their rights under Clause 20.8.2 to enter the Unit and expel the Operating Company.

When the Operating Company shall exercise its rights against a sub-contractor in accordance with Clause 20.8.1 to 20.8.4 inclusive 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.

- 20.8.5 Any Dispute as to the amount recoverable by the Scottish Ministers from the Operating Company under Clauses 20.8.1 to 20.8.3 inclusive shall be settled in the manner provided by Clauses 18.1.1 to 18.1.11 inclusive.

20.9 Privacy of Information

- 20.9.1 The Operating Company shall only give information concerning this Contract and the Operations for publication

- (i) in the press
- (ii) on radio
- (iii) on television screen or
- (iv) any other medium

in accordance with the provisions of this Contract including but not limited to Part 6 of Schedule 3.

- 20.9.2 The Operating Company shall take all reasonable steps to ensure the observance of the provisions of Clause 20.9.1 by its

- (i) employees
- (ii) agents
- (iii) representatives and
- (iv) sub-contractors.

20.10 Secrecy

- 20.10.1 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 take all reasonable steps to ensure that all persons employed by it in connection with this Contract shall become aware that these statutory provisions apply to them during the continuance and after the completion or earlier termination of this Contract.

- 20.10.2 Information concerning this Contract and any information obtained either by
- (i) the Operating Company in the course of the execution of this Contract or
 - (ii) by any person employed by it 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 Clause 20.10.1 such information shall not at any time be disclosed by the Operating Company or by any such person without the prior written consent of the Scottish Ministers except to such persons and to such extent as may be necessary for the execution of this Contract.

20.10.3 Notwithstanding the generality of Clause 20.10.1 the provisions of Clause 20.11.5 shall operate without prejudice to and to be read subject to the application of the Official Secrets Acts 1911 to 1989.

20.11 Intellectual Property Rights and Ownership of the Information

20.11.1 All Intellectual Property Rights in and ownership of all

- (i) data
 - (ii) Designs
 - (iii) drawings
 - (iv) inventions
 - (v) ideas
 - (vi) photographs
 - (vii) reports
 - (viii) software
 - (ix) specifications and
 - (x) other materials or works or Operations or activities
- of whatsoever nature

- (i) conceived
- (ii) developed
- (iii) made or
- (iv) otherwise produced

by the Operating Company or given to the Operating Company by anyone or made aware to the Operating Company by anyone (whether in electronic form on paper or in any other form) in the course of or otherwise arising from the execution of the Operations all of which

- (i) data
- (ii) Designs
- (iii) drawings
- (iv) inventions
- (v) ideas
- (vi) photographs
- (vii) reports
- (viii) software
- (ix) specifications and
- (x) other materials or works

shall be hereinafter referred to as the "Information"

is hereby assigned to and shall vest in and be the property of the Scottish Ministers.

Such Information shall include the other information referred to or specified in the other provisions of this Contract including but not limited to the provisions of Clauses 20.10.1 to 20.10.3 inclusive.

By entering into this Contract the Operating Company assigns makes over and transfers all

- (i) right
- (ii) title and
- (iii) interest

present and future to the Information and the Intellectual Property Rights in the Information to the Scottish Ministers and shall execute or procure the execution of any deed or document and do all other things necessary to ensure that all such

- (i) rights
- (ii) title and
- (iii) interest

present and future in and to the Information and the Intellectual Property Rights in such vest in the Scottish Ministers.

20.11.2 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 or any of the Information and shall do all such acts and things as the Scottish Ministers shall require in writing in connection with any such assistance.

The Operating Company shall bear all costs and expenses for such assistance to the Scottish Ministers.

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 Clauses 20.11.1 to 20.11.8 inclusive.

The Operating Company hereby confirms that with respect to any third party a certificate signed by an officer of the Scottish Ministers shall be conclusive evidence that

- (i) any act or thing done by the Scottish Ministers or
- (ii) any deed or document executed by the Scottish Ministers

shall fall within the authority of the Scottish Ministers to act as agent in accordance with the provisions of Clauses 20.11.1 to 20.11.8 inclusive.

20.11.3 The Operating Company shall warrant and shall undertake that the Operating Company shall be free to assign

- (i) all right
- (ii) title and
- (iii) interest

present and future in and to such Information and the Intellectual Property Rights therein to the Scottish Ministers in accordance with Clauses 20.11.1 to 20.11.8 inclusive without any

- (i) third party claims
- (ii) liens
- (iii) charges or
- (iv) encumbrances of any kind

and that the Operating Company shall be free of any duties or obligations to third parties that may conflict with the terms of Clauses 20.11.1 to 20.11.8 inclusive.

20.11.4 The Operating Company shall warrant that the Information shall not infringe any Intellectual Property Rights of which a third party shall be the proprietor.

20.11.5 Notwithstanding and without prejudice to any other provision of this Contract, or to the application of the Official Secrets Acts 1911 to 1989 the Operating Company shall keep and shall ensure that its

- (i) agents
- (ii) employees and
- (iii) representatives

keep the Information secret and confidential and shall

- (i) not at any time for any reason whatsoever disclose them to any third party
- (ii) use them or
- (iii) permit them to be so disclosed or used

except as shall be permitted by the other provisions of this Contract to enable the Operating Company to execute the Operations.

20.11.6 Notwithstanding the other provisions of this Contract the Operating Company shall indemnify and keep indemnified the Scottish Ministers and any employee or representative of the Scottish Ministers against all

- (i) actions
- (ii) charges
- (iii) claims
- (iv) costs
- (v) demands
- (vi) expenses
- (vii) losses or
- (viii) suits

that shall be incurred by or shall be brought against the Scottish Ministers or any employee or representative of the Scottish Ministers arising from or in connection with or which shall be incurred by reason of any breach of Clause 20.11.3 by the Operating Company and any infringement or alleged infringement of any Intellectual Property Rights by reason of the use or possession of the Information or any part of them by the Scottish Ministers or any employee or representative of the Scottish Ministers including without prejudice to the generality of the foregoing

- (i) any legal expenses that shall be incurred by the Scottish Ministers any member employee or representative of the Scottish Ministers
- (ii) any sums that shall have been 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) all costs and expenses that shall have been incurred by
 - (a) the Scottish Ministers or
 - (b) any member employee or representative of the Scottish Ministersin obtaining an appropriate substitute or replacement for any item that it shall be unable to use in consequence of any judgement given in any
 - (a) action
 - (b) claim or
 - (c) suitin respect of any such infringement or any alleged infringement and the actual cost of any such substitute or replacement.

20.11.7 The Scottish Ministers shall permit the Operating Company to use all

- (i) data
- (ii) reports
- (iii) drawings
- (iv) specifications
- (v) Designs
- (vi) photographs
- (vii) ideas
- (viii) inventions
- (ix) software or
- (x) any other materials or works

in respect of which the Intellectual Property Rights shall be vested in it but only for the purposes of and to the extent necessary for the proper provision of the Operations in accordance with this Contract and for no other purpose whatsoever unless the Scottish Ministers shall have consented in writing to the Operating Company that permits the use of such for another purpose.

20.11.8 The rights and obligations of the parties under Clauses 20.11.1 to 20.11.8 inclusive shall survive the expiry or the termination of this Contract howsoever arising.

20.12 Freedom of Information

20.12.1 All information submitted to the Scottish Ministers may need to be disclosed or published by the Scottish Ministers.

Without prejudice to the foregoing generality the Scottish Ministers may disclose information in compliance with

- (i) the Freedom of Information (Scotland) Act 2002 (the decisions of the Scottish Ministers in the interpretation thereof shall be final and conclusive in any
 - (a) Dispute
 - (b) difference or
 - (c) questionarising in respect of disclosure under its terms)
- (ii) any other law or
- (iii) as a consequence of judicial order or order by any court tribunal or person with the authority to order disclosure.

Further the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents.

- 20.12.2 When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that they provide to Members of the Scottish Parliament or Members of the United Kingdom Parliament. Such disclosure shall not be treated as a breach of this agreement.

21 THE CONSTRUCTION DESIGN AND MANAGEMENT (CDM) REGULATIONS

21.1 CDM Regulations

- 21.1.1 Where the CDM Regulations apply to the Operations the Operating Company is appointed to act in the role of the Principal Contractor.
- 21.1.2 Notwithstanding the provisions of Clause 21.1.1 the Operating Company shall not act in the role of the Principal Contractor for Works Contracts unless the Operating Company organisation or member organisation of the Operating Company shall be the Works Contractor.
- 21.1.3 Where the CDM Regulations apply to the Operations the Operating Company is appointed to act in the role of Planning Supervisor for Works Contracts.
- 21.1.4 Subject to the provisions of Clause 21.1.3 where the CDM Regulations apply to the Operations the Operating Company is appointed to act in the role of Planning Supervisor for all the remaining Operations.
- 21.1.5 When taking any actions as either the Principal Contractor or the Planning Supervisor the Operating Company shall record in writing that such actions shall be being taken in accordance with the provisions of the CDM Regulations.
- 21.1.6 Any action required by the Principal Contractor and the Planning Supervisor pursuant to Clauses 21.1.1 to 21.1.5 inclusive with particular reference to any alteration or amendment to the Health and Safety Plan shall not entitle the Operating Company to any additional payment or extension of time for such provision and action.

PART 10 – TAX MATTERS INCLUDING VAT

22 TAX PROVISIONS

22.1 Tax Matters

22.1.1 The rates and prices contained in the Schedule of Rates and Prices in Part 2 of Schedule 2 shall be deemed to take account of the levels and incidence 42 days prior to the date for the return of Tenders of

- (i) the
 - (a) taxes
 - (b) levies
 - (c) contributions
 - (d) premiums or
 - (e) refunds

(including but not limited to national insurance contributions but excluding income tax and any other levy payable under the Industrial Training Act 1982 thereof for the time being in force) which shall be by law payable by or to the Operating Company in respect of their workpeople engaged on this Contract and

- (ii) any landfill tax payable by the Operating Company pursuant to the Finance Act 1996 (Sections 39-71 and Schedule 5) and Landfill Tax Regulations thereof for the time being in force

and shall not take account or be deemed to take account of any level or incidence of the matters referred to earlier in Clause 22.1.1 foreseeable or known to take effect at some later date.

22.1.2 If after the date for return of Tenders there shall occur any change in the level or incidence of any such

- (i) taxes
- (ii) levies
- (iii) contributions
- (iv) premiums or
- (v) refunds

in Clause 22.1.1 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 necessary information (including but not limited to tax invoices and tax receipts and otherwise) in the opinion of the Scottish Ministers required to demonstrate any consequential adjustment to the Contract Price.

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.

22.2 Value Added Tax

- 22.2.1 The Operating Company shall be deemed not to have allowed in its Tender for the tax payable by it as a taxable person to the Commissioners of Customs and Excise being tax chargeable on any taxable supplies to the Scottish Ministers which shall be made under this Contract.
- 22.2.2 The Operating Company shall not include in any Statement submitted under Clauses 10.3.1 to 10.3.10 inclusive any element on account of tax in any item or claim contained in or submitted with any such Statement.
- 22.2.3 Without prejudice to the provisions of Clause 22.2.4 the Operating Company shall concurrently with the submission of every Statement referred to in Clause 22.2.2 provide to the Scottish Ministers a written estimate showing those supplies of goods and services and the values thereof included in each said Statement and on which tax shall be properly chargeable by the Commissioners for Customs and Excise on the supply to the Scottish Ministers of any goods or services by the Operating Company under this Contract at a rate other than zero.
- 22.2.4 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 Commissioners of Customs and Excise on the supply to the Scottish Ministers of any goods and or services by the Operating Company under this Contract.
- 22.2.5 If any dispute arises between either the Scottish Ministers or the Operating Company and the Commissioners of Customs and Excise in connection with any 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 render to the other such support and assistance as may be necessary to resolve such dispute.
- 22.2.6 Clauses 18.1.1 to 18.1.11 inclusive shall not apply to any disputes arising under Clauses 22.2.1 to 22.2.5 inclusive.

PART 11 - TUPE

23 TRANSFER OF UNDERTAKINGS

23.1 Transfer of Undertakings

23.1.1 Where under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 1981 there shall be a transfer of an undertaking to the Operating Company the Operating Company shall be responsible for bearing all

- (i) costs
- (ii) expenses
- (iii) liabilities and
- (iv) obligations

that arise therefrom and shall indemnify the Scottish Ministers for any claims by any person therewith.

23.1.2 Operating Company information relating to TUPE

23.1.2.1 Subject to the other provisions of this Contract at any time during the existence of this Contract or after its expiry or termination (howsoever arising) the Operating Company shall provide to the Scottish Ministers in writing such information as the Scottish Ministers may require relating to employees of the Operating Company in the performance of the Operations.

Such information shall be provided within such reasonable period and in such format(s) as may be specified by the Scottish Ministers.

Such information shall include but not be limited to

- (i) the number of such employees
- (ii) the name of the post in which each such employee shall be employed
- (iii) the salary or wages and other remuneration or benefits paid to or given to each such employee by the Operating Company
- (iv) the period of notice required to terminate the employment of each such employee and
- (v) the whole terms and conditions of any occupational pension scheme of which any such employee is a member together with the number of such employees who are members of each such scheme.

23.1.2.2 The Scottish Ministers shall be entitled to give the information provided to it by the Operating Company in accordance with Clause 23.1.2.1 to any

- (i) firm
- (ii) company
- (iii) person or
- (iv) other legal entity

invited or to be invited by the Scottish Ministers to tender in respect of any contract for undertaking work on the Unit or any part thereof for any period commencing after the Contract Termination Date (howsoever arising).

23.1.2.3 The Operating Company irrevocably waives the right of confidentiality and any other right that it may have in respect of the information provided by it in terms of Clause 23.1.2.1.

The Operating Company irrevocably consents to the disclosure of the said information by the Scottish Ministers in accordance with the provisions of Clause 23.1.2.2.

Further the Operating Company undertakes that the conditions of employment of the Operating Company's employees shall be such that the Operating Company shall be entitled to release to the Scottish Ministers for the purposes of Clauses 23.1.1 to 23.1.3 inclusive information that would otherwise be confidential between the Operating Company's employees and the Operating Company.

23.1.3 The provisions of Clauses 23.1.1 to 23.1.3 shall apply during the existence of this Contract and after its expiry or termination howsoever arising.

PART 12 – SPECIAL REQUIREMENTS

24 SPECIAL REQUIREMENTS PROVISIONS

24.1 Special Requirements

24.1.1 When making arrangements for and when undertaking Operations which shall involve or impinge upon the interests of any organisation who's Special Requirements shall be specified in Annex 4 to Schedule 1 the Operating Company shall comply with the Special Requirements in relation to such organisation.

The Special Requirements specified in Annex 4 to this Schedule 1 shall be

- (i) “Special Requirements in relation to Network Rail”
- (ii) “Special Requirements in relation to Scottish and Southern Energy Plc and Scottish Power plc”
- (iii) “Special Requirements in relation to Transco”
- (iv) “Special Requirements in relation to British Telecom plc Scotland”
- (v) “Special Requirements in relation to NTL”
- (vi) “Special Requirements in relation to Thus Plc (formerly Scottish Telecom)”
- (vii) “Special Requirements in relation to Scottish Water”
- (viii) “Special Requirements in relation to Scottish Environment Protection Agency (SEPA)”
- (ix) “Special Requirements in relation to the National Driver Information and Control System (NADICS)”
- (x) “Special Requirements in relation to the Scottish Executive Rural Affairs Department”
- (xi) “Special Requirements in relation to Scottish Natural Heritage”
- (xii) “Special Requirements in relation to Historic Scotland”
- (xiii) “Special Requirements in relation to the Health & Safety Executive”
- (xiv) “Special Requirements in relation to the Civil Aviation Authority”
- (xv) “Special Requirements in relation to the British Coal Corporation”
- (xvi) “Special Requirements in relation to the British Waterways Board”.

24.1.2 In each and every case where within the several documents forming the Special Requirements referred to in Clause 24.1.1 reference shall be made

- (i) to actions by the Secretary of State or the Scottish Ministers and or
- (ii) to information provided or required to be provided under this Contract by the Secretary of State and or the Scottish Ministers

such references shall be deemed for the purposes of Clauses 24.1.1 to 24.1.4 inclusive to be an action by the Operating Company and or information provided or required to be provided under this Contract by the Operating Company as the context of each particular case requires in relation to this Contract which shall be construed accordingly notwithstanding anything else contained in this Contract.

24.1.3 For the purposes of Clauses 24.1.1 to 24.1.4 inclusive any references in any such documentation referred to therein in the context of the Secretary of State or Secretary of State for Scotland shall be deemed to mean a reference to the Scottish Ministers.

24.1.4 Compliance with such Special Requirements referred to in Clauses 24.1.1 to 24.1.3 inclusive shall not relieve the Operating Company of any of its other obligations and liabilities under this Contract.

Fulfilment of such other obligations and liabilities shall not relieve it of its responsibility to comply with the said Special Requirements

This is Document “Schedule 1” referred to in this Contract

CONDITIONS OF CONTRACT

SCHEDULE 1 - ANNEXES

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This is ‘Annex 1’ referred to in the Conditions of Contract forming Schedule 1 to this Contract

ANNEX 1 TO SCHEDULE 1 TO THIS CONTRACT – Disputes Resolution Procedure

1 Adjudication Procedure

1.1 Subject to Clauses 18.1.1 to 18.1.10 inclusive

- (i) the Scottish Ministers and
- (ii) the Operating Company may give notice to each other in writing to refer a Dispute to adjudication at any time.

Such notice shall specify the difference or matter in dispute and shall set out the principal facts and arguments relating to it which shall include but not be limited to

- (i) a concise summary of the nature and background of the Dispute and the issues arising
- (ii) a statement of the relief claimed
- (iii) a reference to any agreed record of a meeting between the Scottish Ministers and the Operating Company in which the subject matter of the Dispute has been raised
- (iv) a statement of any matters that the Scottish Ministers and the Operating Company have already agreed in relation to the procedure for determination of the Dispute and
- (v) 2 copies of all documents that have an important and direct bearing on issues in relation to the Dispute and on which the claimant to the Dispute intends to rely.

1.2 The Adjudicator shall be agreed in writing between the Scottish Ministers and the Operating Company or (failing such written agreement by the Scottish Ministers and the Operating Company within 30 Days of either the Scottish Ministers or the Operating Company serving on the other a written notice to concur in the appointment of an Adjudicator) a person to be appointed on the application of either the Scottish Ministers or the Operating Company to the President for the time being of the Institution of Civil Engineers.

1.3 The Adjudicator shall have power to

- (i) open up
- (ii) review and
- (iii) revise
- any
- (iv) decision
- (v) opinion
- (vi) instruction
- (vii) direction

(viii) notice (with the exception of statutory notices)

(ix) objection or

(x) certificate of any person given or made pursuant to this Contract

relating in any way to the Dispute save as otherwise expressly provided within this Contract.

1.4 The Adjudicator shall have power to appoint suitably qualified and experienced independent professional advisors as he may reasonably require (and any necessary secretarial assistance as is necessary) to advise him on any issues and the Adjudicator shall have proper regard to such advice in reaching his decision.

1.5 Where after consideration of the written submissions of the Scottish Ministers and the Operating Company the Adjudicator shall be of the opinion that

(i) such written submissions shall be insufficient for him to reach a decision or

(ii) clarification of the precise question that is being addressed to him is required then he shall so notify in writing the Scottish Ministers and the Operating Company forthwith and in that event he shall be entitled to determine the further procedures which he considers necessary to enable him to resolve the Dispute.

The Adjudicator shall be required to reach a decision in writing in accordance with the timetable hereinafter provided.

In the event of the Adjudicator failing to do so either the Scottish Ministers or the Operating Company may serve a fresh notice in terms of paragraph 1.1 of this Annex 1 to Schedule 1 and request another Adjudicator to act in accordance with the provisions of this Annex 1 to this Schedule 1. Such Adjudicator shall provide a reasoned decision in writing to the Scottish Ministers and the Operating Company.

1.6 The Adjudicator shall have power

(i) to hold a hearing or otherwise or to take oral evidence from the Scottish Ministers and the Operating Company

(ii) to fix the date time and place of any meetings, hearings or inspections that he deems appropriate giving the Scottish Ministers and the Operating Company reasonable notice thereof and declaring that the Scottish Ministers and the Operating Company may appoint representatives to appear on their behalf at any hearing

(iii) to examine any witness or conduct an inspection of any property or thing relevant to the Dispute in the absence of any other representative of the Scottish Ministers or the Operating Company or any other person

(iv) to allow at his sole discretion refuse or limit the appearance of witnesses whether witnesses of fact or expert witnesses

(v) to allow any witness who gives oral evidence at a hearing to be questioned by the Scottish Ministers and the Operating Company under the control of the Adjudicator.

The Adjudicator may put questions at any stage of the examination of the witness and such witness shall be obliged to answer

- (vi) to allow at his discretion the evidence of any witness to be presented in written form either as a signed statement or by a duly sworn affidavit. Either the Scottish Ministers or the Operating Company may make representations that such a witness shall attend for oral examinations at a hearing.

If the Adjudicator so orders and if the witness thereafter fails to attend the Adjudicator may place such weight on the evidence as he considers fit or exclude it altogether

- (vii) at any time to permit either the Scottish Ministers or the Operating Company to amend any submission
- (viii) to continue with the reference to the adjudication in default of appearance or of any act by either the Scottish Ministers or the Operating Company in like manner as a Judge of the Court of Session may continue with proceedings in that Court when either the Scottish Ministers or the Operating Company shall fail to comply with an order of that Court or requirement of rules of Court including power to strike out any claim defence counter claim or other submission and to make any decision consequent upon any such striking out in the event that either the Scottish Ministers or the Operating Company shall fail within the timescale specified in this procedure or in any order to do any act required by this procedure or to comply with any order of the Adjudicator
- (ix) to order either the Scottish Ministers or the Operating Company to produce to the other and to the Adjudicator for inspection and to supply copies of any documents in that party's possession custody or power which in the event of a Dispute the Adjudicator determines to be relevant.

Subject to the rules of privilege and in the event of privilege being claimed the Adjudicator shall have power hereunder to decide this question
- (x) to order either the Scottish Ministers or the Operating Company to answer interrogations on the application to the other party
- (xi) to require the Scottish Ministers or the Operating Company to submit if required in advance of any meeting or hearing or inspection a list of questions that they require him to treat with special attention
- (xii) to order the inspection preservation storage or interim custody of any property or thing relevant to the Dispute under the control of either Scottish Ministers or the Operating Company
- (xiii) to order samples to be taken observations to be made and experiments to be tried that may in the Adjudicator's discretion be necessary or expedient for the purpose of obtaining full information or evidence
- (xiv) to require the Scottish Ministers and the Operating Company to provide written statements of their respective cases in relation to particular issues to provide written answers and to provide reasons for any disagreement
- (xv) to award simple interest to the successful party to the adjudication on any sums held to be due from one party to the other from any date including any date prior to the date of reference to adjudication.

The rate of interest shall be at the discretion of the Adjudicator

- (xvi) to ensure that all meetings hearings or inspections shall be in private unless the Scottish Ministers and the Operating Company agree otherwise and
 - (xvii) to allow the Scottish Ministers and the Operating Company to appoint representatives to appear on their behalf subject to such proof of authority as the Adjudicator may require.
- 1.7 Notwithstanding any of the foregoing nothing in this procedure shall be taken as conferring power upon the Adjudicator to order
 - (i) either the Scottish Ministers
 - (ii) the Operating Company or
 - (iii) a representative of either the Scottish Ministers or the Operating Companyto give evidence (whether in person or by way of documentary or similar evidence) that could not be ordered if the proceedings were before the Court of Session.
- 1.8 Unless already appointed the Scottish Ministers and the Operating Company shall secure the Adjudicator's appointment within 7 days of the notice referred to in paragraph 1.1 of this Annex 1 to this Schedule 1.
- 1.9 The Dispute shall be referred to the Adjudicator within 7 days of the notice referred to in paragraph 1.1 of this Annex 1 to this Schedule 1.
- 1.10 The Adjudicator shall issue his decision in writing to both the Scottish Ministers and the Operating Company within 28 days of referral of the Dispute to him or such longer period after referral as shall be agreed by the Scottish Ministers and the Operating Company.

The Adjudicator may make separate decisions on different issues at different times.
- 1.11 Notwithstanding paragraph 1.10 of this Annex 1 to this Schedule 1 with the written consent of both parties to the Dispute the Adjudicator may extend the period of 28 days referred to in paragraph 1.10 of this Annex 1 to this Schedule 1 by up to 14 days.
- 1.12 The Adjudicator's decision shall be binding until the Dispute shall be finally determined by legal proceedings by agreement or by arbitration as provided in paragraph 3 (Arbitration) of this Annex 1 to this Schedule 1.
- 1.13 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law necessary to determine the Dispute.
- 1.14 The Adjudicator shall not be liable for anything done or omitted in the discharge of his functions as Adjudicator unless the act of omission shall be in bad faith and any employee or agent of the Adjudicator shall similarly not be liable.
- 1.15 The costs of and incidental to retaining the Adjudicator and any referral in terms of this procedure and the appointment of the Adjudicator shall be within his award and failing which shall be borne equally between the Scottish Ministers and the Operating Company

However each party shall bear the costs of providing all data information and submissions given by him and the costs and expenses of witnesses and persons retained by him.

The Adjudicator shall not in any event have power to make a decision in respect of the legal or other costs incurred by either the Scottish Ministers or the Operating Company in preparing and presenting its case to the Adjudicator.

1.16 Unless the Scottish Ministers and the Operating Company shall otherwise agree in writing, any representations or concessions made by either

- (i) the Scottish Ministers or
- (ii) the Operating Company

in or in connection with the proceedings before the Adjudicator shall be without prejudice to such party's rights and shall not be raised by either

- (i) the Scottish Ministers or
- (ii) the Operating Company

in any subsequent reference to arbitration pursuant to paragraph 3 (Arbitration) of this Annex 1 to Schedule 1 or other legal proceedings.

1.17 Unless otherwise ordered by the Adjudicator or agreed between the Scottish Ministers and the Operating Company all notices required for the adjudication procedure shall be in writing.

A notice under paragraph 1.3 of this Annex 1 to Schedule 1 shall be served by first class post or delivered by hand.

All other notices and written communications shall be sent by first class post fax or email (confirmed simultaneously by first class post) or delivered by hand.

1.18 Unless the intended recipient shall prove otherwise

- (i) documents sent by first class post shall be deemed to have been received two working days after posting
- (ii) Electronic Copy faxes or deliveries shall be deemed to have been received at the time transmission ceases and
- (iii) hand delivered documents shall be deemed to have been received at the time of delivery to the address stated on their face.

References in the adjudication procedure to receipt of documents shall be construed accordingly.

1.19 Notices shall be effective from the time of receipt.

Periods of time measured with reference to the giving sending or serving of a document shall be measured with reference to the time that the document shall have been received.

1.20 Unless otherwise ordered by the Adjudicator or agreed in writing between the Scottish Ministers and the Operating Company all notices and other documents received on a day which is not a Working Day or after 17:00 hours on any Working Day shall be deemed to have been received on the following Working Day.

2 Amicable Settlement

2.1 In the event either that the Adjudicator's decision pursuant to paragraph 1 of this Annex 1 to Schedule 1 shall not be accepted by either

- (i) the Scottish Ministers or

- (ii) the Operating Company or
- (iii) that the Adjudicator shall have failed to make a decision in accordance with the procedure set out in paragraph 1 of this Annex 1 to Schedule 1

the Dispute shall be referred by notice in writing to the chief executive officer of the Operating Company and the official nominated for that purpose by the Scottish Ministers who shall meet and endeavour to resolve the issues between them.

The joint and unanimous decision of the chief executive officer of the Operating Company and the nominated official of the Scottish Ministers shall be binding upon the Scottish Ministers and the Operating Company.

However if they fail to agree within 28 days of the said reference to them either the Scottish Ministers or the Operating Company may require the Dispute to be referred to arbitration.

3 Arbitration

3.1 Where the Adjudicator's decision pursuant to paragraph 1 of this Annex 1 to Schedule 1

- (i) shall not be accepted by either the Scottish Ministers or the Operating Company
- (ii) where the Adjudicator shall have failed to make a decision in accordance with the procedure and timescales set out in paragraph 1 of this Annex 1 to Schedule 1 or
- (iii) where the chief executive officer of the Operating Company and the nominated official of the Scottish Ministers shall have failed to reach agreement pursuant to paragraph 2 of this Annex 1 to Schedule 1 in accordance with the procedure provided in paragraph 2 of this Annex 1 to Schedule 1

either the Scottish Ministers or the Operating Company may serve a notice in writing on the other to refer the Dispute to the arbitration of a single arbiter.

The arbiter shall be agreed in writing between the Scottish Ministers and the Operating Company or (failing such written agreement by the Scottish Ministers and the Operating Company within 30 days of either the Scottish Ministers or the Operating Company serving on the other a written notice to concur in the appointment of an arbiter) a person to be appointed on the application of either the Scottish Ministers or the Operating Company to the President for the time being of the Institution of Civil Engineers.

If

- (i) an arbiter declines the appointment or
- (ii) after appointment shall be removed by order of a competent court or
- (iii) shall be incapable of acting or
- (iv) dies and

the parties do not within 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 arbiter to fill the vacancy.

- 3.2 Any such reference to arbitration shall be
- (i) deemed to be a submission to arbitration within the meaning of the Arbitration (Scotland) Act 1894 as the case may be or any statutory re-enactment or amendment thereof of the time being in force
 - (ii) conducted in accordance with the Institution of Civil Engineers' Arbitration Procedure (Scotland) (1983), or any amendment or modification thereof being in force at the time of the appointment of the arbiter, and in cases where the President of the Institution of Civil Engineers shall be requested to appoint the arbiter he shall direct that the arbitration shall be conducted in accordance with the aforementioned procedure or any amendment or modifications thereof.

The award of the arbiter shall be final and binding on the Scottish Ministers and the Operating Company.

Except where provided in paragraph 2 of this Annex 1 to Schedule 1 no steps shall be taken in the reference to the arbiter until after completion or alleged completion of the Operations unless with the written consent of the Scottish Ministers and the Operating Company.

- 3.3 In any case where the President for the time being of the Institution of Civil Engineers shall not be able to exercise the functions conferred on him by this adjudication procedure the said functions may be exercised on his behalf by a Vice-President for the time being of the said Institution.
- 3.4 The Adjudicator shall not be eligible for appointment as an arbiter unless the Scottish Ministers and the Operating Company otherwise both agree in writing.

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This is ‘Annex 2’ referred to in the Conditions of Contract forming Schedule 1 to this Contract

ANNEX 2 TO SCHEDULE 1 TO THIS CONTRACT–Form Of Bond And Undertaking

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BOND AND UNDERTAKING

by

To be inserted
(hereinafter referred to as the “Guarantor”)

to

The Scottish Ministers

WHEREAS

The Scottish Ministers and Amey Infrastructure Services Ltd (hereinafter referred to as the “Operating Company”) have entered into a contract dated 22 December 2005 for the management and maintenance of the Trunk Road Network for the South West Unit (hereinafter referred to as the “Contract”);

NOW THEREFORE THE GUARANTOR AND THE SCOTTISH MINISTERS HAVE AGREED AS FOLLOWS:-

1. Subject to Clause 4 hereof, we the Guarantor give you The Scottish Ministers our guarantee and undertake and bind and oblige ourselves to pay to you The Scottish Ministers on your first demand:-
 - (a) in the event of termination of this Contract, the sum of £1,500,000 sterling (one million five hundred thousand pounds sterling) except in the event of termination pursuant to Clause 16.1.4 of Schedule 1 where such termination shall not be as a result of a Default by the Operating Company; and
 - (b) in the event of failure by the Operating Company to pay to you when due any sum or sums due under this Contract, the full amount of such sums or sums,

provided that such demand for payment shall be accompanied by a certificate by you or on your behalf that such termination has occurred, or that such sums or sums have not been paid, or that such sums are due to The Scottish Ministers as the case may be.

2. Except in respect of any demand in writing made before such date this Bond and Undertaking shall expire and the Guarantor's liability hereunder shall be released and discharged absolutely, on the date of 31 March 2011

Within 10 Working Days of the completion of all obligations of the Operating Company under the Contract this Bond and Undertaking shall be returned by the Scottish Ministers to the Guarantor.

3. This Bond and Undertaking shall not be prejudiced by any alteration or variation in the terms of this Contract or any time or indulgence given by The Scottish Ministers to the Operating Company.
4. The Guarantor's liability under this Bond and Undertaking shall not exceed in aggregate the sum of £1,500,000 sterling (one million five hundred thousand pounds sterling)
5. This Bond and Undertaking and the benefit thereof shall not be assigned by any of the parties hereto without the prior written consent of the other two parties hereto.
6. This Bond and Undertaking shall be governed by and construed in accordance with the laws of Scotland and the parties hereto prorogate the jurisdiction of the Scottish Courts: IN WITNESS WHEREOF

This is ‘Annex 3’ referred to in the Conditions of Contract forming Schedule 1 to this Contract

ANNEX 3 TO SCHEDULE 1 TO THIS CONTRACT – Lane Occupation Charges and Associated Procedures

The Lane Occupation Charges that shall be applied by the Scottish Ministers pursuant to Clause 15.3 2 shall be as follows

Trunk Road	Lane Occupation Charge
M8 from junction 8 to 29 inclusive	£12,500.00
M77 from junction 1 to 3 inclusive	£12,500.00
M74 from junction 4 to 6 inclusive	£12,500.00
M73 from junction 1 to 2 inclusive	£12,500.00
All other motorways and dual carriageways on the Unit	£6,250.00
All other Trunk Roads on the Unit	£1,250.00

Any payments due to the Scottish Ministers from the Operating Company for Lane Occupation Charges shall be effected by means of a deduction from any sum due by the Scottish Ministers to the Operating Company pursuant to the other provisions of this Contract.

The Operating Company shall be liable to pay to the Scottish Ministers the full Lane Occupation Charge for the Lane Occupation Period irrespective of the actual duration of such Lane Occupation.

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This is 'Annex 4' referred to in the Conditions of Contract forming Schedule 1 to the Contract

ANNEX 4 TO SCHEDULE 1 TO THE CONTRACT – Special Requirements

General

Notwithstanding any other provisions of this Contract and where necessary the Operating Company shall establish with each organisation referred to within this Annex to this Schedule to this Contract the definition of each of the special requirements contained in this Annex to this Schedule to this Contract as shall be applicable to the Operations.

Without prejudice certain terms have been related to the definitions given elsewhere in Schedule 1.

Where this has been done the terms shall generally be at the start of each of the special requirements contained in this Annex to this Schedule.

SPECIAL REQUIREMENTS IN RELATION TO NETWORK RAIL

The Railway is a particularly hazardous environment. The danger from train movements, overhead power lines and electrified rails at ground level must not be underestimated. The Industry's safety policy and safety management systems require the enhancement of some safety legislation and the following clauses indicate areas where the legislative requirements are strengthened or particularised.

The Contractor's attention is particularly drawn to additional Clauses A 2.23 to A 2.25 in Schedule 5 of the Specification and Method of Measurement.

**Definitions
assigned to
them**

1. In these Special Requirements, the following terms shall have the meanings assigned to them.

'Network Rail' means Network Rail, which is incorporated as a registered company in England and Wales.

'Access Permit' means a written authority that access may be made to railway property and the conditions under which such access is made.

'Competent Person' means a person who has such practical and theoretical knowledge and actual experience of the work activity that he is able to assess the risks and hazards implicit in the work, and the consequences of any change in conditions or circumstances.

'Contractor' means the person or person's firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives successors and permitted assigns together with his sub-contractors and their personal representatives and any other persons under the direction and control of the Contractor whilst on railway property.

'The Engineer' means the Engineer as defined in the Contract or other Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purposes of the Contract in place of the said Engineer.

'Hand signalman' means a person appointed by Network Rail to control and protect the safety of trains.

'Lookout man' means a person who has been trained (and certificated by Network Rail) to warn others of the approach of trains and has experience of working on or about the track. The Lookout man is identified by a white badge with the word LOOKOUT.

'On or about the Railway' means all controlled infrastructure including stations.

'Personal Protective Equipment' means all equipment or clothing designed to be worn or held to protect against a hazard likely to endanger health or safety, or an addition or accessory designed to meet this objective.

Controller of Site Safety (COSS)' means the person trained and certificated as competent to ensure a safe system of protection is in place to enable work to be carried out by a group of persons.

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

'Network Rail's Representative' means the Zonal Director of 'Network Rail' or other duly Authorised Representative Agent and/or Organisation Agent appointed for the time being to act on his behalf by Network Rail.

'Service' means electricity cables, gas pipes, water pipes (including piped sewage), other pipelines or telecommunication plant and cables, irrespective of owner.

'Site' means the lands and other places on, under, in or through which the Works are to be executed and any other Lands or places provided by the Employer for the purposes of the Contract on which the Works are carried out.

'Speed Restriction' means a planned restriction on the speed of rail traffic between defined locations.

'The Works' means the Site Operations together with any Ancillary Works and shall particularly refer to those parts to be executed over, upon, under, in or through railway land or in such close proximity to it that it could in the opinion of Network Rail affect such land or railway

traffic and for these particular purposes shall include the acts of inspecting, examining and walking.

Method of Carrying Out the Works

- 2 The Works shall be carried out in a safe manner which avoids risk of harm to railway facilities and traffic and any person entitled to be on railway property and so as to avoid any interference with any such traffic except as previously agreed and to any such persons.

The Contractor shall ensure that any rules regulations or instructions imposed for the protection of rail traffic are strictly observed. The Contractor's attention is drawn particularly to the latest version of the document produced by Network Rail Scotland entitled "Requirements for Constructional Work On or Near Railway Operational Land" with which he shall be obliged to comply.

Contractors Safety Policy

- 3 The Contractor shall provide Network Rail with a copy of each of the following documents (including any Contractor's codes of practices, safety instructions or regulations applicable to the work) for appraisal prior to the commencement of the Works

- a) The Contractor's Health and Safety Case
- b) The Contractor's organisation and arrangements for Health and Safety which shall include the arrangements for managing subcontractors
- c) The Contractor's arrangements for ensuring compliance with all relevant legislation, standards, rules, instructions and the like
- d) The Contractor's Programme for the Works associated with each relevant Works Order. This programme shall be provided to Network Rail for a relevant Works Order whether or not any such programme is required by the Engineer to the Agreement.

Exemptions

- 4 Notwithstanding any provisions in statutory health and safety requirements relating to building and construction work that give exemption to certain work on the operational railway, the Contractor shall comply with all such requirements.

Access to the Railway

- 5 Before any activity is undertaken on the Railway, arrangements for safety provisions shall be in place to address the activity to be undertaken and the particular hazards of the area in which it will be carried out.

The safety provisions are set out in Network Rail's Document RT3 170 'Personal Track Safety Handbook Issue 3 2002/03', obtainable from Network Rail Safety and Standards Directorate, Operations Unit, Network Rail House, DP1 Euston Square, London, NW1 2EE.

Within these provisions and depending on the nature of the work to be carried out, there may be a requirement for the Contractor and his

		relevant personnel to undergo a full medical examination and undertake specific training for personal track safety and be certificated as competent.
Site Familiarisation	6	<p>The Contractor shall ensure that familiarisation training in the characteristics of the Site is given to all his employees and the employees of any sub-contractor employed by him both before commencement of their work and at agreed intervals during the progress of their work.</p> <p>The Contractor shall ensure that his employees and the employees of any sub-contractor employed by him undergo additional familiarisation training if the Site boundary is altered.</p> <p>The Contractor shall brief all visitors to the Site, including staff of Network Rail, of the particular health and safety hazards of the Site. Records of all such briefings shall be kept by the Contractor for audit purposes.</p>
Risk Assessments	7	The Contractor is responsible for arranging suitable and sufficient assessments, to be undertaken by a competent person, of the risks to the health and safety of his personnel and others (including the general public) as a consequence of his work activities. Such risk assessments shall be reviewed or re-assessed when necessary, such as when there is a significant change in work or the working environment. Initial and amended copies shall be supplied to Network Rail as appropriate before work commences or continues.
Use of Network Rail's Land	8	<p>The Contractor shall from time to time be allowed to take possession of so much railway land as may be agreed for the carrying out of the Works (or as laid down in the Contract). Where access to the Site is required by way of railway land the route of such access shall be agreed by Network Rail.</p> <p>Any other railway infrastructure land which is required for temporary use outside that which is essential for the carrying out of the Works shall be the subject of separate negotiations with Network Rail Property.</p> <p>The Contractor shall be responsible for ensuring that no person under his control trespasses beyond the agreed limits of the working area or access route and shall if required so to do provide and maintain to the satisfaction of Network Rail temporary fencing of an approved type to prevent trespass on the railway or neighbouring land.</p>
Emergency Telephone Numbers	9	The Contractor shall provide Network Rail, 7 days prior to commencement of the work on Site, written notification to Network Rail's Representative of the names and telephone numbers of competent personnel capable of organising remedial action in the event of an emergency on the Site outside normal working hours or when the Contractor's employees and the employees of any sub-contractor employed by him are absent from the Site.

Methods of Construction	10	The Contractor shall provide for written approval a detailed statement (including such calculations drawings and design check certificates as are considered necessary by Network Rail) of the methods proposed for the execution of the Works. The statement shall include details of all proposed Temporary Works (including demolition). The method statement shall be submitted in sufficient time to allow for full consideration by Network Rail and for revised proposals to be submitted if necessary.
Fencing of Site	11	All persons not involved with the Works shall be kept well clear of the Site which shall be fenced or barriered off from such persons to the satisfaction of Network Rail. Where necessary the barriers shall include protection from radiation such as that from welding arc or fumes and sparks from oxy-gas flames.
Access and Accommodation for Network Rail	12	<p>Network Rail's Representative shall at all reasonable times have free access to any premises where work is being carried out or materials prepared or manufactured for the Works.</p> <p>When necessary serviced accommodation for Network Rail's Representative shall be provided by the Contractor to the satisfaction of Network Rail.</p> <p>Network Rail's Representative, where reference to Network Rail is required for the purposes of this contract, may be contacted at the following point(s):</p> <p>Address: Ian Cameron, Outside Parties Engineer Tel: 0141 335 2400 Bay 356, Buchanan House Fax: 0141 335 2004 58 Port Dundas Road Glasgow G4 0LQ</p>
Statutory Notification	13	All statutory notices required to be served under the relevant statutory provisions or regulations of the Health & Safety at Work etc Act 1974, or any statutory re-enactment thereof, in respect of work on the operational railway shall be sent by the Contractor to the Health and Safety Executive with copies to Network Rail.
Working Time	14	The Contractor shall comply with Network Rail's policy on working time. (Details of these requirements may be obtained from the Engineer).
Knowledge and Understanding of English	15	The Contractor shall have sufficient knowledge of English (both of English spoken and written) to understand safety information, and safety instructions and training (where relevant).
Alcohol and Drugs	16	The Contractor shall comply with Network Rail's Policy on Alcohol and Drugs. (Details of these requirements may be obtained from the Engineer.)

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SPECIAL REQUIREMENTS IN RELATION TO RELATION TO SCOTTISH AND SOUTHERN ENERGY PLC AND SCOTTISH POWER PLC

Definitions

1. In these Special Requirements the following expressions shall have the meaning assigned to them
 - (i) "Board" means Scottish and Southern Energy plc and/or Scottish Power plc.
 - (ii) "Board's Engineers" means the Area Engineer or the District Engineer or the Generation Engineer and/or his nominee of Scottish Southern Energy plc and/or Scottish Power plc.
 - (iii) "Plant or Equipment" means any plant, equipment, gear, machinery, apparatus or appliance or any part thereof, as defined in the construction (General Provisions) Regulations 1961 and the Construction (Lifting Operations) Regulations 1961.

Works near Overhead Lines

2.
 - (i) A distance of 12 metres shall be maintained at all times between any part of any Plant or Equipment or anything connected to such Plant or Equipment (for example the jib of a crane, hoist, rope, and the like.) and the Board's overhead electric lines except under such restrictions as the Board's Engineers may impose for the safety of persons and the protection of property. The permission of the Board's Engineers shall be obtained in writing before Plant or Equipment is operated, or work of any kind is carried out, within 12 metres of overhead lines.

Notice of Work

- (ii) The Contractor shall give at least one week's notice to the Board's Engineer of the dates upon which it is intended to operate Plant or Equipment or carry out any work for which permission has been given by the Board's Engineers under the preceding paragraph. Such operations or work shall only be carried out in the presence of the Board's Engineers unless notice shall have been obtained in writing from the Board's Engineers that they do not require to be present.

Work by Board

- (iii) In the event of the Board requiring work to be executed on overhead electric lines or supporting pylons during the Term the Contractor shall afford all facilities to the Board's contractors or workmen and the Contractor shall amend his

programme of working to suit any and all requirements of the Board during such period of working.

**Safeguarding
of Board's
Apparatus**

- (iv) The Contractor shall consult the Board's Engineers not less than twenty-eight days before it is proposed to commence work to ascertain whether any underground electricity cables or apparatus will be affected by the proposed work in which event the Contractor shall make all necessary arrangements with the Board to safeguard the cables or apparatus.

**Excavation
Adjacent to
Cables**

- (v) Excavation within 1.50 metres of any underground cable must be carried out by hand. Warning signs and barriers shall be erected by the Contractor adjacent to all cables.

Blasting

- (vi) Blasting shall be carried out within 30 metres of the Board's pylons and overhead lines only in the presence of a Board's Engineer, the costs of whose attendance shall be chargeable to the Contractor.

**Construction
Regulations**

3. The above requirements shall not relieve the Contractor of any responsibility for taking every precaution to avoid risk to persons or damage to property. Risk to persons can be avoided by compliance with the Construction (General Provisions) Regulations 1961 and in particular Regulation 44(2).

Compliance with the above requirements does not relieve the Contractor of any obligations under the Agreement.

SPECIAL REQUIREMENTS IN RELATION TO TRANSCO

1. In these Special Requirements the following terms shall have the meanings assigned to them:-
 - (a) 'Company' means:- Transco Plc. or its successors and assigns.
 - (b) 'Company Representative' means the staff of Transco plc or its Authorised Representatives and Agents.
 - (c) 'Apparatus' means all surface or sub-surface equipment and plant including any gas pipeline(s), main and/or service owned, leased or rented by Transco plc.
2. Transco may request the production of Risk Assessments and Method Statements for any works deemed by them to have the potential to affect, cause risk to, or pose a hazard to the safety and/or integrity of their pipeline system.
3. Before commencing any work or moving heavy plant or equipment over any portion of a Site the Contractor shall confirm details of any Apparatus within a Site with the Company Representative having responsibility for the Unit in question, and who shall be nominated by the Company.
4. Where such details show that the work or the movement of plant or equipment on a Site may endanger any Apparatus, the Contractor shall give the Company Representative at least 7 days written notice of the date on which it is intended to commence such Works or the movement of plant and equipment in order that the presence of any sub-surface Apparatus can be indicated by markers to be supplied by the Company and placed by the Contractor under the supervision of the Company Representative. The Contractor shall ensure that all Apparatus, is adequately protected from damage and such protective measures shall be to the satisfaction of the Company Representative.
5. Every precaution shall be taken to eliminate the potential of damage to Transco Apparatus as a result of the planned Works. Any damage to the said apparatus may be subject to a RIDDOR or other report to the Health and Safety Executive. All costs incurred by Transco for the repair of direct or consequential damage to such apparatus shall be recharged to the Contractor.
6. In the event of a Company marker being disturbed for any reason it shall not be replaced other than in the exact position and to its former depth unless the repositioning is carried out at the direction and under the supervision of a Company Representative.
7. The Contractor shall carry out all work in connection with the Agreement with reference to the requirements of the following publications:-
 - (i) Institute of Gas Engineers : IGE/SR/18 Part 1 and Part 2 (1990), Communication 1947 - 'Safe Working in The Vicinity of Gas Pipelines, Mains and Associated Installation' (Part 1: 'Operating at Pressures in Excess of 2 Bar').

- (ii) Health and Safety Executive (HSE): HS (G) 47 - 'Avoiding danger from underground services'.
 - (iii) Transco Engineering Standard: BGC/PS/SSW2 - 'Code of Practice for Safe Working in The Vicinity of British Gas Transmission Pipelines and Associated Installations Operating at Pressures in Excess of 7 Bar'.
 - (iv) Transco Cathodic Protection Standard GBE/ECP1.
8. The Contractor shall avoid the disturbance of Apparatus more than is absolutely necessary for the completion of the Works in accordance with the Agreement. In particular 'Thrust Blocks' and other such supports shall NOT be disturbed without the specific written approval of the Company Representative. The Contractor shall note that large diameter Gas pipelines may either be:-
- (a) Transmission pipelines frequently operating at pressures exceeding 7 bar.
 - (b) Low pressure local distribution mains.

For different reasons either type poses a considerable hazard to safety if damaged. The Contractor shall also note that smaller Gas distribution pipes may be of yellow plastic, cast iron, steel or other such material and that unless specifically known to the contrary any such services encountered during the course of the Works shall be assumed to be Gas pipelines and treated as such in accordance with these Special Requirements until positively identified otherwise and the Engineer so notified in writing.

9. No vehicle plant or machinery shall cross stand operate or travel within 3.0 metres of any Apparatus Gas pipelines except as approved by the Company Representative. The Contractor shall require to have agreement by the Company Representative of his methods of working near any Apparatus with the Company Representative and ensure that any Apparatus is adequately protected from damage by the use of wooden sleeper tracks or reinforced concrete rafts at crossing points as appropriate. Temporary fencing of adequate strength shall be erected to regulate the movement of vehicles plant and machinery in the vicinity of Apparatus. All such protective measures shall be to the satisfaction of the Company Representative.
10. Where for the purposes of completing the Works in accordance with the Agreement it is necessary to lay a new service across an existing Gas pipeline whether above or below a minimum clearance of 0.6 metres shall be left between the outside of the Gas pipeline and the new service to be installed. Under no circumstance shall a new service be laid parallel above or below a Gas pipeline. Hydraulic or other form of pressure testing of any new services shall not be permitted within 6.0 metres of any Gas pipeline unless precautions have been taken involving the use of pre-installation tested pipeline having a design factor of 0.3 for a distance of 6.0 metres either side of the Gas pipeline and/or such additional precautions including but not limited to sleeving barriers and the like as the Company Representative may require in consultation with the Engineer.
11. The Contractor shall note that Gas pipelines and other Apparatus of the Company is usually cathodically protected to Company standard GBE/ECP1. The Company shall

require to carry out interaction tests to determine whether its own system will be adversely affected by any new service and/or its protective measures. Any work requiring the removal modification and or movement of Apparatus shall only be carried out by the staff of the Company and/or its authorised contractors and Agents. In the event that any cathodic protection posts and/or associated Apparatus require to be removed replaced and/or moved for the purposes of the Works the Contractor shall give not less than seven days written notice of the requirement to the Company.

12. When excavating or backfilling around Apparatus, the Company Representative shall be given not less than 3 days written notice, of the Contractor's intentions in order that he may supervise the Works.
13. Backfilling shall be in 150 millimetre layers, or as may otherwise be directed, consolidated layer by layer to the satisfaction of the Company Representative. Fill shall be free from flints, stones, carbonaceous material or corrosive material. Where slabbing reduces such depth clean sand filling shall be used.
14. All excavation adjacent to Apparatus is to be carried out by hand using safe digging practices until the exact extent and/or location of Apparatus is known. The Contractor shall note the following:-
 - (1) Mechanical borers shall not be used within 5.0 metres of Apparatus.
 - (2) Hand held power assisted tools shall not be used within 1.5 metres of Apparatus without the supervisory presence of a Company Representative.

To prevent any movement of Apparatus during excavation, complete shuttering shall be used as directed by the Engineer if:-

- (a) Excavation is deeper than the depth of cover of adjacent Apparatus.
- (b) Excavation is within 3.0 metres of Apparatus in stable soil.
- (c) Excavation is within 6.0 metres of Apparatus in unstable soil.

Where excavation results in the exposing of Gas pipelines or other Apparatus protective timber cladding shall be applied to the Gas Pipelines or Apparatus to the satisfaction of the Company Representative and shall be maintained until such excavation is reinstated and backfilled.

15. If for the completion of the Works the Contractor intends using any of the following:-
 - (i) Pile driving equipment within 15.0 metres of Apparatus (or such greater distance as may be required to ensure that the MAXIMUM peak particle velocity as measured at the Apparatus does NOT exceed 25 millimetres per second).
 - (ii) Explosives within:-
 - (a) 400.0 metres of exposed Apparatus.
 - (b) 100.0 metres of buried Apparatus.

- (iii) Hot Works welding and the like within 15.0 metres of Apparatus.
- (iv) Hydraulic testing within 6.0 metres of Apparatus.

the Contractor shall advise the Company Representative, giving at least 7 days written notice, in order that any special protective measures for the Apparatus affected may be arranged. The Contractor SHALL NOT proceed with the use of any of the above without the prior written consent of the Company Representatives.

- 16. Where excavations are adjacent to any Apparatus, protection approved by the Company Representative must be applied to the plant. A minimum clearance of 1.5 times the diameter of the pipeline or 250mm (Whichever is the greater) shall be allowed between any apparatus installed close to Transco Apparatus. No manhole, chamber or other structure shall be built over or around Transco Apparatus and no work should be carried out which results in a reduction of cover or protection over such apparatus without prior written consent.
- 17. All Apparatus manholes and/or other access points and chambers within any Site shall be kept clear and unobstructed. Access for vehicles, winches and/or any further equipment required by the Company for the maintenance of its Apparatus, shall be maintained at all reasonable times and unless otherwise agreed in writing by the Company Representative a clearance of 6.0 metres shall be allowed for such access.
- 18. The covers to Apparatus manholes and/or other access points and chambers shall only be lifted under the direct supervision of the Company Representative. No employee of the Contractor or of any sub-contractor employed by the Contractor shall enter any chamber and/or Apparatus of the Company unless under the supervision of the Company Representative and in any case not before a gas check as specified by the Company Representative has been carried out in the presence of the Company Representative and such checks have shown it to be safe to enter the Chamber and/or Apparatus. The Company Representative shall be given reasonable access to all Apparatus and chambers when required.
- 19. In the event of any damage whatsoever even of a minor nature to Apparatus to Gas pipeline coatings and/or test leads the Contractor shall immediately inform the Engineer and report the occurrence by contacting the Company Representative. The Company Representative shall arrange for repairs to be carried out.
- 20. Reference shall be made to the instruction sheet available from Transco entitled "Measures to be taken to protect Transco Plant".

EMERGENCY ACTION

- 21. The following actions shall be taken by the Contractor in the event of suspected damage or gas leak in any of the Apparatus:-
 - (a) Evacuate all personnel from the vicinity of the pipeline damage or leak.

- (b) Remove and/or extinguish all sources of ignition for a distance of at least 200 metres in all directions from the location of the leak. This precaution shall include a ban on the use of any electrical equipment (including mobile phones) falling within this limit.
- (c) IMMEDIATELY inform The Company the Engineer and (if required) the Emergency Services in that order.

THE EMERGENCY TELEPHONE NUMBER OF THE COMPANY IS:-

0800 111 999

- (d) Secure the area from the approach of all employees' traffic and/or the general public.
 - (e) Render every assistance to the Emergency Services and/or the Company as shall be requested for the purposes of mitigating damage arising from the leak and/or for the purposes of securing public safety.
 - (f) **DO NOT ATTEMPT TO REPAIR OR STOP ANY LEAK OF GAS AT THE POINT OF DAMAGE.**
22. Compliance with the above requirements shall not relieve the Contractor of any of his obligations under the Agreement.

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SPECIAL REQUIREMENTS IN RELATION TO BRITISH TELECOM PLC SCOTLAND

1. In these Special Requirements the following terms shall have the meanings assigned to them:-
 - (a) **‘Company’** means:- British Telecom plc.
 - (b) **‘Company Representative’** means the staff of British Telecommunications PLC or its authorised Representative and Agents.
 - (c) **‘Apparatus’** means all surface or sub-surface equipment and plant including any associated cabling and/or ducting owned, leased or rented by British Telecommunications PLC
2. Before commencing any work or moving heavy plant or equipment over any portion of a Site the Contractor shall confirm details of the Apparatus within a Site with the Company Representative having responsibility for the Unit in question, and who shall be nominated by the Company.
3. Where such details show that the Works or the movement of plant or equipment may endanger any Apparatus, the Contractor shall give the Company Representative at least 7 days written notice of the date on which it is intended to commence such Works or the movement of plant and equipment in order that the presence of any sub-surface Apparatus can be indicated by markers to be supplied by the Company and placed by the Contractor under the supervision of a Company Representative. The Contractor shall ensure that all Apparatus and surface running cabling, is adequately protected from damage and such protective measures shall be approved in writing by the Company Representative.
4. In the event of a Company marker being disturbed for any reason it shall not be replaced other than in the exact position and to its former depth unless the repositioning is carried out at the direction and under the supervision of a Company Representative.
5. The Contractor shall take particular care in relation to the protection of Apparatus, where such Apparatus includes the presence within a Site of optical fibre and/or co-axial cabling. The Contractor shall note that damage to such Apparatus is extremely disruptive to the Company network and costly to reinstate. The Contractor shall make every effort to avoid the disturbance of Apparatus more than is absolutely necessary for the completion of the Works in accordance with the Agreement.
6. When excavating around, moving or backfilling around Apparatus, the Company Representative shall be given adequate notice, which shall not be less than 3 days, of the Contractor’s intentions in order that he may supervise the works. The Contractor shall note that the normal depth of cover for Apparatus and ducts is as follows:-
 - (a) In carriageways 600 millimetres, which is to be maintained.
 - (b) In footways 450 millimetres, which is to be maintained.

Where the 600/450 millimetres depth of cover cannot be maintained the Contractor shall carry out the instructions of the Company Representative for the protection of Apparatus and such actions that follow from the Company Representative’s instruction

shall be supervised by a Company Representative. Where the required depth of cover cannot be maintained over cabling, such cables as are affected shall be enclosed and protected in UPVC duct to be supplied by the Company as directed by the Company Representative.

With regard to excavation in the vicinity of Apparatus and ducts the Contractor shall have particular regard to the possibility of reduced cover and the encountering of Apparatus and ducts at depths of cover less than that given at (a) and (b) above.

7. All excavation adjacent to Apparatus shall be carried out by hand until the exact extent and/or location of Apparatus is known. Mechanical borers and/or excavators shall not be used within 1.0 metre of Apparatus without the supervisory presence of a Company Representative. To prevent any movement of Apparatus during excavation, complete shuttering shall be used if:-

- (a) Excavation is deeper than the depth of cover of adjacent Apparatus.
- (b) Excavation is within 1.0 metre of Apparatus in stable soil.
- (c) Excavation is within 5.0 metres of Apparatus in unstable soil.

If for the completion of the Works for a relevant Works Order the Contractor intends using any of the following:-

- (i) Pile driving equipment within 10.0 metres of Apparatus.
- (ii) Explosives within 20.0 metres of Apparatus.
- (iii) Laser equipment within 10.0 metres of Apparatus.

the Contractor shall notify the Company Representative, giving at least 7 days written notice, in order that any special protective measures for the Apparatus affected may be arranged.

8. All Company manholes, joint boxes and/or other access points and chambers within a Site shall be kept clear and unobstructed. Access for vehicles, winches, cabledrums and/or any further equipment required by the Company for the maintenance of its Apparatus, shall be maintained at all reasonable times. The Contractor shall note that footway type jointing chambers are not specified for carriageway loadings and shall need to be adequately protected and/or demolished and rebuilt under the supervision of a Company Representative where such chambers are likely to be placed at risk, either temporarily or permanently, from the movement of plant and/or equipment on any Site.
9. The covers to Company chambers and/or Apparatus shall only be lifted by means of appropriate keys obtained from the Company Representative and under the direct supervision of the Company Representative. No employee of the Contractor or of any sub-contractor employed by the Contractor shall enter any chamber and/or Apparatus of the Company unless under the supervision of the Company Representative and in any case not before the mandatory gas check has been carried out in the presence of the Company Representative and such checks have shown it to be safe to enter the Chamber and/or Apparatus. The Company Representative shall be given reasonable access to all Apparatus and chambers when required.

10. In the event of any damage whatsoever to any Apparatus the Contractor shall immediately inform the Engineer and report the occurrence by contacting the Company as follows:-

Telephone:- DIAL 100 and ask operator for 'FREEPHONE 111/Dial before you dig'.

11. Compliance with the above requirements shall not relieve the Contractor of any of his obligations under the Agreement.

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SPECIAL REQUIREMENTS IN RELATION TO NTL

1. In these Special Requirements the following terms shall have the meanings assigned to them :-
 - a) “Company” means ntl Group Limited.
 - b) “Company’s Representative” means the staff of any of the Regional Business Units of the Company, or its Authorised Representatives and Agents.
 - c) “Apparatus” means all surface and sub-surface equipment and plant including any associated cabling and/or ducting owned, leased or rented by any of the Regional Business Units of the Company.
 - d) Terms defined in the Agreement shall bear the same meaning in these Special Requirements unless the context requires otherwise.
2. Before commencing any work or moving any heavy plant or equipment over a Site the Contractor shall confirm details of the Apparatus within a Site with the Company’s Representative, who can be contacted at the following point:

Regional Business Unit:- ntl Scotland

Address:-

NTL House,
60 Maxwell Road,
Glasgow,
G4 1PR.

Telephone:- 0141 564 0000

Fax:- 0141 564 0770

3. The approximate positions of such Apparatus within a Site where known, shall be shown on Drawings. Such Apparatus is either confined to the verges, footpaths or within carriageways. The Contractor shall arrange for the Company's Representative to accurately locate all buried Apparatus, particularly cable runs, by means of appropriate cable detection equipment.

The Contractor shall verify each location by hand excavated trial holes at 10.0 metre intervals, or at such other intervals as may be deemed necessary by the Company's Representative. All trial holes shall be excavated with caution and due regard for the prevention of damage to the Apparatus.

Trial holes shall be reinstated, appropriate to the surface, with 'permanent reinstatement' in accordance with the New Roads and Street Works Act 1991, including any Orders and Regulations Parts III and IV of the Act, together with all Codes of Practice approved by the Secretaries of State for Transport or equivalent for, Wales and Scotland made under various sections of the Act. Similar works in Northern Ireland shall be in accordance with the Street Works (Northern Ireland) Order 1995, together with all Codes of Practice issued or approved by the department

of the Environment (DoE) made under various Articles of the Street Works (Northern Ireland) Order 1995.

4. Where such details show that the Works or the movement of plant or equipment may endanger any Apparatus, the Contractor shall give the Company's Representative at least 7 days written notice of the date on which it is intended to commence such Works, or the movement of plant and equipment, in order that the presence of any sub-surface Apparatus can be indicated by markers, to be supplied by the Company and placed by the Contractor under the supervision of the Company's Representative. The Contractor shall ensure that all Apparatus, particularly surface running cabling, is adequately protected from damage and such protective measures shall be in accordance with the prior agreement of the Company's Representative. The Contractor shall not under any circumstances aerially suspend surface cabling without the prior consent of the Engineer and then only in a manner as shall be specified by the Company's Representative.
5. In the event of a Company marker being disturbed for any reason it shall not be replaced other than in the exact position and to its former depth, unless the repositioning is carried out at the direction and under the supervision of the Company's Representative.
6. Unless the Apparatus is to be removed as part of the Works, before commencing any work, the Contractor shall arrange for the Company's Representative to carry out, or supervise, all necessary testing, particularly tests on any type of cable forming part of the Apparatus, that is likely to be affected by the Works. Cable testing may include:-
 - limited insulation tests on each length of 'longitudinal cable' - this test shall record the insulation resistance values between unused conductors, unused conductors to armour and armour to earth
 - fibre optic cable tests, including resting dark fibres
 - copper and co-axial cable continuity and integrity tests.

After consultation and agreement by the Company's Representative, the Contractor shall arrange for the Company's Representative to conduct, or supervise, similar testing on all completed Works, prior to issue of the Certificate of Substantial Completion or equivalent as required under the Agreement by the Engineer.

7. The Contractor shall take particular care in relation to the Apparatus, where such Apparatus includes the presence within a Site of optical fibre and/or co-axial and copper cabling. The Contractor shall particularly note that damage to such Apparatus is extremely disruptive to the Company network and costly to reinstate. The Contractor shall make every effort to avoid the disturbance of Apparatus more than is absolutely necessary for the completion of the Works for any relevant Works Order in accordance with the Contract.
8. The Contractor shall give 24 hours written notice to the Engineer before commencing any work within 1.5 metres of the line of surface, or sub-surface Apparatus, and shall notify all operatives, including any sub-contractors, employed by the Contractor of the presence of such Apparatus. This is particularly relevant to any cabling, together with

the need to exercise extreme care and attention, to ensure the prevention of any damage. The Contractor shall ensure that all such excavations take place under the supervision of qualified supervisors (as defined under the Street Works [Qualifications of Supervisors and Operatives] Regulations 1992 - Statutory Instrument 1991 No, 1687, and similar for works in Northern Ireland, both as inferred by Item 3 of these Special Requirements) appropriate to the item of Works, and approved by the Engineer for this purpose with due regard to these Special Requirements.

9. When excavating around, moving or backfilling around Apparatus, the Company's Representative shall be given adequate written notice, which shall not be less than 7 days, of the Contractor's intentions, in order that he may supervise the Works. The Contractor shall note that the normal depth of cover for Apparatus (including, without limitation, ducts) is as follows: WHICH SHALL BE MAINTAINED AT ALL TIMES:-

Type 0, 1 and 2	Carriageway = 600mm All Regional Business Units
Type 3 and 4	Carriageway = 450mm) Footway = 260mm) Glasgow Regional Business Unit Verge = 450mm) only
Type 3 and 4	Carriageway = 450mm) All Regional Business Units Footway = 250mm) (except Glasgow and No-dig Verge = 250mm) Technology)
Type 3 and 4	Carriageway = 600mm) Footway = 600mm) No Dig Technology Verge = 600mm)

Road Categories, and Footways and Footpath Categories are defined in the Specification for the Reinstatement of Openings in Highways - a Code of Practice prepared by the Highway Authorities and Utilities Committee and approved by the Secretaries of State for Transport or equivalent for,, Wales and Scotland, in respect of Orders and Regulations made under Parts III and IV of the New Roads and Street Works Act 1991 - incorporating Advice Notes e and 4 issued by the Highways Authorities and Utilities Committee dated December 1995 and October 1996 respectively [ONLY AS STRICTLY AGREED BY THE COMPANY REPRESENTATIVE].

For works in Northern Ireland, Road Categories, and Footways and Footpath Categories are defined in the Specification for the Reinstatement of Openings in Highways - a Code of Practice prepared by the Northern Ireland Road Authority and Utilities Committee and approved by the Department of the Environment for Northern Ireland, in respect of its powers made under Article 31 of the Street Works (NI) Order 1995.

10. Where the appropriate depths of cover cannot be maintained the Contractor shall carry out the instructions of the Engineer for the protection of Apparatus and such actions that follow from the Engineer's instructions shall have first been agreed by the Company's Representative and be supervised by the Company's Representative. Where the required depth of cover cannot be maintained over cabled ducts, such cabled ducts as are affected shall be protected by special measures agreed with the Company's Representative. The Contractor shall notify the Company's Representative, giving at least 7 days written notice, in order that any special protective measures for the Apparatus affected may be arranged.
11. With regard to excavation in the vicinity of any Apparatus and ducts the Contractor shall have particular regard to the possibility of reduced cover and the encountering of such Company Apparatus and ducts at depths of cover less than that given in item 9 of these Special Requirements.
12. All excavation adjacent to Apparatus shall be carried out by hand until the exact extent and/or excavators shall not be used within 1.0 metre of Apparatus without the supervisory presence of the Company's Representative. To prevent any movement of Apparatus during excavation, complete shuttering shall be used as directed by the Engineer if:-
 - excavation is deeper than the depth of cover of adjacent Apparatus
 - excavation is within 1.0 metre of Apparatus in stable soil
 - excavation is within 5.0 metres of Apparatus in unstable soil
13. If for the completion of the Works the Contractor intends using any of the following:-
 - piling equipment of any form (whether driven, continuous flight auger, driven piles and the like) within 10.0 metres of Apparatus
 - explosives within 20.0 metres of Apparatus
 - laser equipment within 10.0 metres of Apparatus

Again, as in item 10 of these Special Requirements, the Contractor shall notify the Company's Representative, giving at least 7 days written notice, in order that any special protective measures for the Apparatus affected may be arranged.
14. All Apparatus including cabinets, chambers, joint boxes and/or other access points within the Site shall be kept clear and unobstructed. Access for vehicles, winches, cabledrums and/or any further equipment required by the Company for the maintenance of its Apparatus, shall be maintained at all reasonable times. The Contractor shall particularly note that verge and footway type jointing chambers are not specified for carriageway loadings and shall need to be adequately protected and/or demolished and rebuilt under the supervision of the Company's Representative, where such chambers are likely to be placed at risk, either temporarily or permanently, from the movement of plant and/or equipment on a Site.
15. The covers to Company chambers and/or Apparatus shall only be lifted by means of appropriate keys obtained from the Company's Representative and under the direct supervision of the Company's Representative. No employee of the Contractor, or of any sub-contractor employed by the Contractor, shall enter any chamber and/or Apparatus of the Company, unless under the supervision of the Company's

Representative and in any case not before the mandatory gas check has been carried out in the presence of the Company's Representative, such checks having shown it to be safe to enter the chamber and/or Apparatus.

The Company Representative shall be given reasonable access to all chambers and/or Apparatus when required.

16. In the event of any damage whatsoever to Apparatus the Contractor shall immediately inform the Engineer and also report the occurrence to the Company's Representative by contacting the Company by telephone:-

Telephone:- 0800 052 2000 (24 hours)

17. Compliance with the above requirements shall not relieve the Contractor of any of its obligations under the Agreement.

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**SPECIAL REQUIREMENTS IN RELATION TO THUS PLC
(FORMERLY SCOTTISH TELECOM)**

1. Before commencing any work or moving heavy plant or equipment over any portion of any Site the Contractor shall confirm details of THUS underground plant within any Site with the appropriate Telephone Manager.
2. Where such details show that the Contractor's Works or the movement of plant or equipment may endanger the THUS plant the Contractor shall give the Telephone Manager at least one week's notice of the date on which it is intended to commence such work or movement of plant and equipment in order that the presence of buried plant can be indicated by markers to be supplied by THUS and placed by the Contractor under the supervision of a THUS representative. The Contractor shall ensure that THUS plant is protected from damage.
3. In the event of a THUS marker being disturbed for any reason it shall not be replaced other than in the exact position and to its former depth unless the repositioning is carried out at the direction and under the supervision of a THUS representative.
4. Compliance with the above requirements does not relieve the Contractor of any of his obligations under the Agreement.

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SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH WATER

1. Scottish Water Authority supplies water and sewerage services.

In these Special Requirements the following terms shall have the meanings assigned to them:-

- (a) 'Authority' means Scottish Water
 - (b) 'Authority's Representative' means the staff of the Scottish Water Authority or its Authorised Representatives and Agents.
2. Before commencing any work or moving heavy plant or equipment over any portion of a Site the Contractor shall confirm details of all underground plant within a Site belonging to the Authority with the appropriate Authority's Representative for the area and service involved.
3. Where such details show that the Contractor's works or the movement of plant or equipment may endanger the Authority's pipes or plant, the Contractor must give Scottish Water at least one week's notice of the date on which it is intended to commence such work or movement of plant and equipment in order that the presence of buried Plant can be indicated by markers. The Contractor shall ensure that the Authority's plant is protected from damage, but if any damage should occur the appropriate Authority's Representative should be notified immediately
4. The following requirements shall also be adhered to:-
 - (a) Before any work is carried out in the vicinity of pipelines trial holes shall be carefully dug by hand to confirm the position of the pipe. Assistance in tracing the line can normally be arranged by Scottish Water, who shall be contacted before any trial holes are excavated.
 - (b) Allow a least 300 millimetres clearance horizontally and vertically between the respective plant in order to allow repair work to be effected.
 - (c) Effect good consolidation on reinstatement in order to reduce the effect of subsidence on the plant.
 - (d) Mechanical excavation shall not be permitted within 1500mm of the established position of a main or associated equipment Machinery working within this limit may only do so in accordance with special instructions which will be given by Scottish Water – otherwise a fence shall be erected to exclude access by mechanical plant except at designated crossing points where suitable protection to the main is provided.
 - (e) Scottish Water shall be consulted before a decision is made to use explosives within 400 metres of a water main.
 - (f) Once exposed, a water main shall be treated with the utmost care to prevent damage from whatever source. Further it shall be supported as necessary at all stages of excavation and back filling, to the satisfaction of Scottish Water. Only short lengths shall be exposed at a time and over a no greater length than having one joint. On completion, permanent supports shall if necessary, be constructed and left to avoid future settlement.
 - (g) In the event of a marker being disturbed for any reason, it shall not be replaced other than in the exact position and to its former depth, unless the repositioning is carried out at the discretion and under the supervision of any Authority's Representative.
 - (h) Written permission shall be obtained from the appropriate Divisional Engineer of the Authority before water is obtained from the Public Supply and in particular the use of fire hydrants is expressly forbidden.

- (i) Scottish Water shall be consulted before any piling is carried out within 15metres of a water main.
- (j) Damage to a water main however slight even if only to the coating of the pipe, shall be reported immediately to Scottish Water and work suspended and men withdrawn until an opportunity to assess the extent of any repair necessary is given.
- (k) No traffic shall be allowed to run over an unprotected main.
- (l) For permanent road crossings the minimum cover over the top of the pipe barrel to finished road level shall be 900mm.

Where permanent roads are to pass over the main, the strip along the line of the main and 1500mm on either side of the centre line of the main shall be excavated to a depth of 150mm below the formation level of the road. A 2.7 metres wide by 150mm thick slab of concrete, reinforced with mesh placed at 40mm cover to the bottom of the slab should be formed over the main, before any general excavation of road forming work commences (see fig. 3). A 150mm layer of hardcore shall be placed over the main if ground condition dictate.

Normal road construction can then proceed across the main providing no undue loading is created on the main (or slab) prior to the road being substantially formed.

- (m) Water mains are normally laid at between 750mm and 1500mm cover but larger mains often cannot follow minor variations in the ground contours readily and it may be shallower or deeper than this.
- (n) Directional drilling or any other type of non open cut installation of services shall not take place near Scottish Water plant or mains without written permission being given. Where damage occurs to a water main the consequences can be very disruptive and far reaching. Where the damage is due to the negligence, act or omission appropriate action will be taken to recover all costs incurred by Scottish Water in the event of an incident or occurrence.
- (o) Where other apparatus or services are to be laid alongside a water main, a minimum separating distance of 600mm shall be observed. All trenches crossing the line of a water main shall be kept as near a right angle to the axis of the main as possible (i.e. shorted possible crossing). Suitable means of trench support shall be used to limit the width of excavation as necessary.

Where it is necessary to lay new apparatus across and above a water main a minimum distance of 150mm shall be left between the bottom of the new apparatus and the top of the main. This 150mm of material shall remain undisturbed and used as a base for the new work. Normal consolidated fill shall then be replaced to surface level. Where apparatus must pass below a water main the trench shall be dug by hand as already specified. When the crossing is complete the trench should be back-filled with lean mix concrete (20/1), up to a point 75mm below the barrel of the water main. The concrete back fill shall extend at least 1200mm on either side of the water main of the trench. Two hard wood boards 200mm x 450mm, (tapered 50mm to 250mm between the 900mm long edges), shall then be wedged under the main (as shown in fig 1).

The excavation shall then be back-filled with granular material in 225mm well-consolidated layers to the original ground level

Services or other apparatus shall not, under any circumstance, be laid parallel below a water main (see fig 1).

- (p) 48 hours written notice of intention to back-fill under, over or adjacent to a water main shall be given to Scottish Water who then may arrange a representative to advise as to the suitability and consolidation of back-fill material over the pipeline. This representative shall also inspect for damage done, using Holiday Detector and the like, if necessary to ensure the continuity of the coating. Notwithstanding this no material shall be used in the back filling which could cause damage to the main then or later. In particular pieces of rock, large stones, frozen materials and other hard fill shall not be returned or tipped into the trenches containing exposed mains or in any part of the trench above.

- (q) For temporary vehicle the cover over the main should be made up to a minimum of 1.5 metres on the top of which 300mm x 300mm x 4.5m long timbers shall be placed (at right angles to the axis of the main). 250mm x 125mm timbers shall then be placed on top of the 300mm x 300mm timbers (lying parallel to the axis of the main). The two layers of timbers shall then be spiked together (see fig 2).

In exceptional circumstances when construction traffic is likely to be heavy, further protection shall be required to the satisfaction of Scottish Water. This shall be reinforced concrete slabs as described in fig 3, that are removable, (see fig 2).

- (r) Before tree planting is carried out near mains written approval shall be obtained from Scottish Water.

The consent to plant trees will indicate what areas may be planted and also the type of trees.

The only hardwood plants which can not be planted directly across the main are hedge plants such as Quickthorn, Blackthorn, etc. and these shall only be planted where a hedge is necessary either for screening purposes or to indicate a field boundary. Poplar and Willow trees shall not be planted within 10 metres of a water main.

The following trees and those of similar size (be either deciduous or evergreen) shall not be planted within 6 metres of a water main or sewer for example Ash, Beech, most Conifers, Elm, Horse Chestnut, Lime, Maple, Oak, Sycamore. Apple and Pear trees also come under this category.

Raspberries, Gooseberries and Blackcurrant may be planted close to a water main or sewer but a 4 metre strip (1.5 metres each side of the water main) shall be left clear at all times.

Dwarf Apple Stocks may be planted to within 3 metres of a water main or sewer.

In cases where screening is required, the following are shallow-rooting and may be planted close to the mains or sewer:-

Blackthorn, Broom, Cotoneaster, Elder, Hazel, Laurel, Privet, Quickthorn, Snowberry and most ornamental shrubs.

Christmas Trees (Picca Abies) may be planted to within 3 metres of the main or sewer. However, permission is given on the strict understanding that the Christmas Trees are clear felled at intervals not exceeding seven years.

- (s) Before any landscaping is carried out near mains approval shall be obtained from Scottish water.

Any consent to landscape will indicate the maximum and minimum depth of earth allowed to be added/subtracted to the overburden over the length of the pipe within

which this applies. No heavy plant should be used on or around the pipe without the express written permission of Scottish Water in case of structural damage.

However, no landscaping over the length of the pipe and the indicated width on the consent will be allowed that would affect Scottish Water's ability to reach the pipe in the event of an emergency.

5. In the event of Scottish Water requiring work to be executed on its apparatus during the Term the Contractor shall amend his programme of working to suit any and all requirements of Scottish Water during such period of working.
6. The Contractor shall under no circumstances allow material to enter the sewerage system or discharge to the sewerage system without the express written permission of Scottish Water.
7. In the event of any damage whatsoever to Water or Sewerage apparatus the Contractor shall immediately inform the Engineer and Customer Services at Scottish Water, Woodlands, St Ninian's Road, Stirling, FK8 2HB. Telephone: 01786 458 848. Fax: 01786 463 841.

SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA)

1 General

- 1.1 The Contractor shall identify all Controlled Waters (including ditches) which may be affected by the Works and the permanent or temporary discharge points to these watercourses.
- 1.2 When the Contractor is planning the Works, agreement shall be sought with the Agency on pollution prevention measures, strategy and emergency procedures for all construction stages. This shall cover (1) the protection of Controlled Waters and sensitive locations by planning site drainage, including the run-off from borrow pits, spoil heaps, haul roads and water-crossing places; and (2) the Design and application of measures (including land acquisition) to provide adequate mitigation of any pollution arising from the project. Contamination of Controlled Waters can lead to serious water quality problems and adversely affect flora and fauna. Therefore, for this and other reasons, the Contractor could be prosecuted under the Control of Pollution Act 1974, as amended by Schedule 23 of the Water Act 1989 and Schedule 16 of the Environment Act 1995. The Agency's formal Consent for discharges may be required and in extreme cases the Engineer or the Engineer's Representative may have to suspend work until adequate pollution prevention measures have been carried out.
- 1.3 In the event of spillage of any polluting substance and/or pollution of any Controlled Waters, the Contractor shall notify the Agency and the Engineer immediately by telephone.
- In this regard it should be noted that the Agency can be contacted on a 24 hour basis.
- 1.4 Where required, the Contractor shall submit to the Engineer his proposals for maintaining the free passage of fish in any watercourse likely to be affected by the Works and these shall be submitted to the Agency for their approval.
- 1.5 Materials which may cause pollution shall not be stored near Controlled Waters nor shall they be stored in such a manner that they may fall or be carried into Controlled Waters. All refuse and debris arising from the Site in the vicinity of Controlled Waters shall be collected and removed as required so that none may fall or be carried into the Controlled Waters.
- 1.6 In the event that temporary sanitation cannot be connected to the public foul sewerage system, the Contractor shall comply with the requirements of the Agency and, if necessary, shall apply for consent for any discharge in compliance with Sections 34 (1) of the Control of Pollution Act 1974.
- 1.7 The Contractor shall not use construction plant in any Controlled Waters without the prior written approval of the Agency. Such approval shall only be given where it can be demonstrated that plant is secure from oil leaks etc.

- 1.8 Where Controlled Waters transect the construction site the Contractor shall agree with the Agency where these should be:-
- (i) diverted around the working area;
 - (ii) temporarily culverted through the working area;
 - (iii) blocked, diverted or overpumped and this shall be limited to a period to be agreed with the Agency and where appropriate, with the District Salmon Fishery Board.
- 1.9 Where construction plant has to cross watercourses, temporary bridges or culverts shall be installed together with suitable mud splash guards. The fording of any Controlled Waters shall not be permitted without the Contractor obtaining the prior written approval of the Agency.
- 1.10 Cut-off drains shall be installed to intercept uncontaminated surface water and thereby prevent it from entering the work area. Agreement shall be reached with the Agency regarding its satisfactory disposal.
- 1.11 Construction plant washing facilities (including wheel washes) shall be designed to operate on total recirculation wherever possible. Where this cannot be achieved, the disposal of wash water to any Controlled Waters shall not take place without adequate settlement and oil removal prior to discharge. The Contractor will require the Agency's consent for such discharges.
- 1.12 Borehole drilling or other ground investigations can produce a polluting effluent which may require treatment before being discharged to Controlled Waters. The Agency shall be advised by the Contractor of the measures to be taken to prevent pollution before the commencement of any such operations liable to give rise to an effluent.

Earthworks

- 1.13 Temporary topsoil and subsoil heaps and stockpiles created after land stripping shall be located at reasonable distances from drains or Controlled Waters to prevent any collected materials from either falling into or being integrated with run-off caused by rain and then discharged into any Controlled Waters. They shall be seeded or bound as soon as practicable after deposition to ensure quick stabilisation and cut-off drains shall be provided to intercept run-off from stockpiles.
- 1.14 Drainage from borrow pits, quarries or spoil areas shall be treated to the satisfaction of the Agency (eg by use of settlement lagoons) before discharge to any drain or Controlled Waters. The Contractor may require the Agency's consent for such discharges.
- 1.15 Only inert and non-toxic materials shall be used to:
- (i) backfill drainage trenches;
 - (ii) backfill burn crossings;

- (iii) infill areas of standing water;
 - (iv) infill areas where contact with groundwater is probable.
- 1.16 Where in-river bunding is required and the geology of the river bed is appropriate, sheet piling shall be used for the in-river bund. However, where native material is subject to excess scouring, imported impervious material such as puddle clay or sand bags shall be used for the formation of in-river bunds after consultation by the Contractor with the Agency. Any material placed within the channel or flood plain during the construction of Temporary Works shall be removed by the Contractor as soon as its function has been fulfilled in a manner which minimises pollution.
- 1.17 The Contractor shall stockpile and replace on completion of the Works any bed material necessarily excavated from a watercourse during construction of the Works. The Contractor shall not remove any bed material from Controlled Waters for use in construction.
- 1.18 Surface water or Groundwater from excavations or other parts of the working area shall not be pumped nor be allowed to issue directly into Controlled Waters or drains but shall receive treatment to ensure removal of pollutants in accordance with the Agency requirements before discharge to Controlled Waters.

Oil Pollution

- 1.19 The Contractor shall ensure that oil is stored well away from any drain or Controlled Waters. Oil storage tanks shall be located on an impermeable base and be surrounded by an impervious bund with no surface water outlet. The bund shall be capable of retaining at least 110% of the volume of the tank.
- 1.20 Valves and couplings connected to oil storage tanks shall be located within the bund and delivery hoses shall be fitted with trigger-type spring handles suspended back within the bund after use. Valves and trigger filler handles shall be kept padlocked when not in use.
- 1.21 The transportation of fuel and oil across the site in drums or other containers shall be avoided as far as practicable. Where this is unavoidable, extreme caution shall be taken to avoid spillages or leaks. The Contractor shall hold adequate stocks of oil-absorbent and containment materials on site. The Contractor shall ensure that relevant staff are familiar with the use of these materials.
- 1.22 Surface water, together with any material which accumulates within the storage tank bund, shall be removed by means of a manually controlled positive lift pump. Oil contaminated water shall be disposed of off site at an appropriate licensed tip site, incineration plant or oil recovery plant.
- 1.23 The Contractor shall ensure that personnel are nominated as being responsible for the supervision of the filling of oil storage tanks, vehicles etc and that a “Nominated Person” is available at all appropriate times.

- 1.24 Mobile fuel and lubricant serving units shall be provided with appropriate quality delivery hoses with trigger type delivery nozzles. These vehicles, when not in use, shall be parked in a secure area within an impermeable bund. Vehicles and plant shall not be refuelled near drains or Controlled Waters. Oil powered pumps, generators and the like shall be positioned on impervious drip trays surrounded by earth or sand bunds and located at least 10 metres from any Controlled Waters. The use of such plant adjacent to Controlled Waters is not permitted and the disposal of waste oil/oily waters from the drip trays shall be by the methods outlined in Clause 22.
- 1.25 The Contractor shall take all reasonable measures to ensure the security of his oil storage facilities, including mobile fuel and lubricant serving units, from acts of wilful damage or vandalism.

Concrete Works

- 1.26 Cement, grout and unset concrete (unless specialist products as approved by the Agency are used) shall not be allowed to enter any Controlled Waters. Prevention may be achieved by diverting the Controlled Waters away from the working area with fixed shuttering or sandbags or by damming the flow upstream and pumping it beyond the working area. The inlet to the pump shall be screened. Residual cement or concrete shall be removed from the original channel before the Controlled Waters are returned to it.
- 1.27 The Contractor shall ensure that drainage from excavations where concrete is being, or has been, newly poured shall not be pumped or allowed to issue directly into Controlled Waters without the prior approval of the Agency.
- 1.28 Tools and equipment shall not be washed in Controlled Waters. If it is necessary to wash equipment on Site, this shall be done well away from Controlled Waters and wash water shall not be discharged directly into Controlled Waters or road drains without appropriate treatment.
- 1.29 The Contractor shall ensure that if concrete has to be sprayed in the vicinity of Controlled Waters (eg on bridges, retaining walls, etc) suitable protective sheeting is provided to prevent rebounded or windblown concrete from falling into Controlled Waters. Rebounded material shall be cleared away before the sheeting is removed.
- 1.30 The direct discharge from any concrete batching plant to Controlled Waters shall not be permitted. Subject to consultation and agreement with the Agency a discharge to soakaway may be permissible.

Miscellaneous

- 1.31 The Contractor shall take suitable precautionary measures, as agreed by the Agency, to prevent any material from falling into Controlled Waters when concreting, waterproofing, bitumen spraying, blast cleaning or painting operations are being carried out above Controlled Waters.
- 1.32 The Contractor should note that any approval by the Agency of the Contractor's proposals will not relieve the Contractor of his responsibilities with respect to any

pollution which may occur. The Agency will not be held liable for any damage or pollution resulting from operations on the site.

- 1.33 The Contractor shall provide to the Agency in advance of the commencement of the Works the names of responsible personnel on site together with 24 hour contact telephone numbers.

The Agency's contact for the Unit in question will be nominated by SEPA Head Office, Erskine Court, The Castle Business Park, Stirling, FK9 4TR, tel 01786 457700, Fax 01786 446885.

Definitions and Glossary of Terms

- 1 "Agency" means:-

the Scottish Environment Protection Agency.

- 2 Bound - to stabilise soil heaps by a method other than seeding such as the use of mesh netting, plastic sheeting etc.

- 3 Contractor - means the person or persons, firm or company whose tender has been accepted by the Employer and involves the Contractors personal representatives, successors and permitted assignees.

- 4 Control of Pollution Act 1974 - an Act made by Parliament to make provision with respect to waste disposal and water pollution. The Control of Pollution Act was amended by Schedule 23 of the Water Act 1989 and Schedule 16 of the Environment Act 1995. Under the Act, as amended, the Agency is empowered to control the entry of polluting matter or effluents into water. It is an offence for any party to cause or knowingly permit polluting materials or effluents to enter or to be discharged to controlled waters without the prior consent of the Agency. To do so might lead to prosecution.

- 5 Controlled Waters - includes coastal waters, inland waters, lochs, ponds, rivers or watercourses and ground waters.

- 6 Consent - the formal written approval or license given by the Agency under the Control of Pollution Act to any party who proposes to make a discharge to Controlled Waters. The Consent will contain certain conditions designed to protect the quality of Controlled Waters.

- 7 Construction Plant - means all appliances or things of whatsoever nature required in or about the construction, completion and maintenance of the Works but does not include materials or other things intended to form or forming part of the Permanent Works.

- 8 Design - means all the work necessary for the preparation and completion of the drawing from which each and every component is to be constructed and includes carrying out all procedures and checks and the obtaining of all approvals and provision of all certificates required by the Contract.

- 9 Effluent - means any liquid, excluding uncontaminated surface or groundwater, including particles and other substances in suspension in the liquid discharged to Controlled Waters.
- 10 Engineer - means the Consulting Engineer or Resident Engineer or such other Engineer appointed from time to time by the Employer and notified in writing to the Contractor to act as Engineer for the purpose of the Contract in place of the said Engineer.
- 11 Engineer's Representative - means a person being the Resident Engineer or assistant of the Engineer appointed from time to time by the Employer or the Engineer and notified in writing to the Contractor by the Engineer to perform the functions set forth in the Contractual document.
- 12 Erosion - the wearing away of rocks or soils through the action of water. The process can be considerably accelerated during engineering as the result of the stable surface soils and vegetation being removed.
- 13 Fauna - a collective term for the animals including, for example, fish, insect larva and other invertebrates of any Controlled Waters.
- 14 Flora - a collective term for the plants of any Controlled Waters.
- 15 Groundwater - any water contained below the surface of the ground of the construction site, eg the ground water table, aquifers etc.
- 16 Inert - stable, unable to react chemically under normal circumstances or to be dissolved in water.
- 17 Licensed Tip Site - a public or privately operated waste disposal site fully licensed to receive the types of material to be disposed of from the building or construction site.
- 18 Non-toxic - not poisonous or harmful to flora or fauna.
- 19 Oil - any fuel oil, petrol, diesel, hydraulic, lubricating oil etc, utilised or stored on the site.
- 20 Seeded - the planting of a fast growing crop of plants such as clover and certain grasses in order to stabilise soil heaps thus preventing soil particles from being washed off by rainfall.
- 21 Site - means the lands and other places on, under, in, or through which the Works are to be executed and any other lands or places provided by the Employer for the purposes of the Contract.
- 22 Sub Contractor - any party or person who is employed to supply materials or undertake works as a subordinate to the Contractor. Pollution prevention is the responsibility of the Contractor and hence the pollution of any Controlled Waters as a consequence of the actions of a Sub Contractor could result in the Contractor being prosecuted.

- 23 Surface Water - any uncontaminated waters which drain off the surface of the ground or can be made to drain or be pumped from an area of ground by the actions of a Contractor.
- 24 Temporary Works - means all temporary works of every kind required in or about the construction, completion and maintenance of the Works.
- 25 Works - means the permanent works together with the Temporary Works.

Guidelines for Water Pollution Prevention from Civil Engineering Contracts

These Guidelines are supplementary to the “Special Requirements” which are a definitive list of clauses for incorporation into contractual documents. The guidelines are intended to be used for advice only and are not a definitive list. The Contractor is fully responsible for the design, construction and maintenance of pollution prevention facilities on the construction site. Within these guidelines “Agency” means Scottish Environmental Protection Agency. The Agency’s formal consent under the Control of Pollution Act 1974 (as amended) must be obtained by the Contractor before the commencement of any discharges to Controlled Waters from the construction site.

1 Pre Construction Requirements

- (i) It is essential that the Contractor contact the Agency at the construction planning stage prior to submitting his bid price for the work.

Contractors should establish with the Agency the type of pollution prevention measure required for the project as certain works may call for the acquisition of substantial areas of land, over and above that needed for construction, in order that if required, appropriate pre-treatment facilities may be installed. Moreover, the contract may be suspended until adequate facilities have been installed and if pollution occurs the Contractor could be prosecuted under the Control of Pollution Act 1974.

- (ii) In addition to consulting with the Agency at an early stage, Contractors must contact riparian owners, fishery and angling concerns in the vicinity of and downstream of the proposed project so that the interests of these parties, which are completely separate to those of the Agency, are protected.

2 Responsibility

The party or company to whom the contract is granted will normally be solely responsible for pollution prevention during the project and in some instances for a specified time following the completion of the work. This responsibility will include the actions of any third party who is contracted or otherwise involved in the project. If a Contractor is exempted from third party responsibility within the contract document he should advise the Agency of such prior to construction commencing.

3 Main Polluting Sources of Controlled Waters

Controlled Waters means all watercourses including minor tributaries, ditches, sub-soil field drains etc (whether ‘dry’ or flowing), lochs, ground water and coastal waters.

There are a number of ways in which civil engineering contracts may lead to the pollution of Controlled Waters and these can generally be categorised as follows:

- (i) The discharge and entry into Controlled Waters of contaminated site run-off or pumped contaminated surface/ground waters.
- (ii) Direct disturbance of the beds of Controlled Waters by excavation or fording of streams or rivers.
- (iii) Loss of oil from machinery or from storage areas.
- (iv) Cement and cement wash from batching plants, storage areas and other areas where cement grout or concrete is being applied.

4 Preventing Erosion

- (i) Erosion is the process whereby soil is transported by wind and water. Natural erosion usually occurs at a slow rate but activities which alter the landscape (such as road building, house construction and industrial site developments) can greatly accelerate the process. The removal of the normal vegetative cover can lead to the loss of large quantities of soil particles and cause pollution of watercourses as the result of these being carried into streams.

The discharge of eroded soil may not only result in pollution but can also induce long term damage to fish stocks and to the general biology of a watercourse. Fine solids may kill fish by coating their gills, or may reduce growth rates and resistance to disease. In addition, accumulation of sediment on the bed will adversely affect the biological diversity of a watercourse, thereby reducing the abundance of food available to fish. The successful development of fish eggs and larvae may also be inhibited.

It is essential that the degree of land disturbance and subsequent erosion is controlled and kept to a minimum. Therefore, any earthmoving works or other similar operations giving rise to contaminated drainage must be carried out in compliance with BSI Code of Practice for Earth Works, BS6031:1981. Before any discharge of contaminated site drainage is made, prior agreements must be made with the Agency regarding the quality and quantity of effluent to be discharged. Where appropriate, the Agency will issue a Temporary Consent to discharge treated site drainage.

- (ii) Sedimentation is the settling out of soil particles, which have been transported by wind and water. The rate of deposition depends primarily on particle size and run-off flow rates. Heavier particles, such as gravel and sand, settle out quicker than fine particles, such as clay, which may become electrostatically charged and stay suspended in water for long periods, contributing to water turbidity and discoloration.
- (iii) A Structured Erosion and Sediment Plan should be prepared for each site and fully discussed with the Agency prior to the commencement of any mechanical works. Such a plan should incorporate the following:

- (a) Pollution risk assessment for the site.
 - (b) Planning and design of appropriate control measures.
 - (c) Management of the system, including the safe disposal methods for settled sludge and dirty water.
 - (d) Contingency planning and emergency procedures. This should include relevant telephone numbers (e.g. Scottish Environment Protection Agency, downstream landowners and water users, etc) and record the availability of equipment to carry out any emergency remedial work.
- (iv) Principles of Control are based on the protection of the soil surface from rainfall and run-off, and on containing eroded soil particles on-site. Fine particles can be very difficult to contain once they have been mobilised and the best way to control the generation of sediment is to prevent erosion taking place. The following principles should be incorporated into the planning, design, construction and management of any measures to control erosion and sedimentation.
- (a) Obtain all necessary agreements and consents before starting work.
 - (b) Keep disturbed areas small by scheduling construction activities to minimise the area of soil exposed and limit the time of exposure. Account should be taken of the season and, in the case of sensitive operations, the weather forecast. Limit the area of construction.
 - (c) Stage the project where practicable e.g. in 100 metre lengths, with complete rehabilitation of each stage before progressing to the next. Only those areas, which can be fully developed in a construction season, should be worked.
 - (d) Run-off from undisturbed areas surrounding a site should be intercepted (e.g. cut-off trenches) and diverted around the works. Temporary erosion-proof outfalls should be utilised where necessary. Isolate the works. If drainage water is clean, keep it clean. Work in the dry by diverting/pumping Controlled Waters around the working area or alternatively by temporary culverts through the working area after agreement with the Agency.
 - (e) Removal of vegetative cover increases the volume and rate of run-off. Contour drains, retention of natural vegetation, provision of buffer strips of vegetation, short slopes and low gradients help keep run-off velocities low and therefore reduce erosion.
 - (f) If some erosion is unavoidable then resultant suspended particles should be contained on site. Plan and implement control measure before undertaking earthworks.
 - (g) Disturbed areas should be stabilised as soon as construction has finished. This may be achieved through structural methods, utilising synthetic

fabrics, hydroseeding and other quick stabilisation/re-vegetation techniques as necessary.

- (h) If not properly maintained some control measures may cause more damage than they prevent. All control measures should be regularly inspected for structural defects and associated leakage. Regular inspections should also be undertaken to ensure that watercourses have not become polluted. The frequency of inspections should be increased at times when the risk of pollution is high, such as during and after heavy rainfall.
- (i) The Contractor and others involved in earthworks, which could pollute the environment, should be aware of their statutory responsibility not to “cause or knowingly permit” water pollution. All such persons should be aware, and should make their employees aware, of the likely causes and consequences of environmental pollution and should be familiar with any control measures and emergency procedures.
- (j) As part of the Erosion and Sediment Control plan, those involved in earthworks should have a contingency arrangement to deal with environmental pollution incidents. A sketch plan showing the location of the drainage system should be prepared and equipment should be available for emergency situations to plug drains, dam ditches, excavate catchpits or retain oil spillages by placing oil absorbent materials or wooden scum boards across watercourses.
- (k) Sediments commonly act as transporting agents for other contaminants. Usually the finer grained sediments are prominent in this regard as they take longer to settle than coarser particles. Consequently, the standard techniques for controlling erosion and sedimentation may not be effective in limiting the off-site transfer for contaminants and other measures may be necessary, such as tankering off-site for suitable disposal to a licensed landfill site or use of approved specialised chemical aids before discharge.
- (l) Whereas it is highly desirable to minimise the amount of erosion on construction sites it will usually also be necessary to provide settlement ponds or lagoons to remove the sediment, which will invariably be present in site drainage. Such facilities will also be required for the drainage from borrow pit and on site quarries. The design and satisfactory operation of settlement ponds or lagoons depends on a number of factors including the anticipated flow rate of the drainage, the settleability of the soil particles and the quality which the discharge must meet in terms of the Agency’s consent requirements.

The Contractor should consider long-term rainfall figures for the area where construction is taking place as this varies significantly in different regions and is an important criterion when determining the size of settlement ponds/lagoons.

The location of settlement ponds/lagoons on natural watercourses should be avoided and, where practical, the location of treatment facilities for the construction phase should be considered with a view to these being utilised as method/treatment systems for any permanent drainage from the site.

Discharges to watercourses from treatment facilities will require the consent of the Agency under the Control of Pollution Act 1974 (as amended).

- (m) Temporary culverts and/or bridges must be provided to enable vehicles to cross watercourses and thus prevent disturbance of the riverbed.
- (n) Stockpiles and spoil heaps should be located well away from watercourses and drainage ditches.

5 Miscellaneous

- (i) Inert and non-toxic materials should be used for:
 - (a) Backfill in drainage trenches.
 - (b) Backfill for stream crossings.
 - (c) Infilling of standing waters.
 - (d) Infilling of places where the material will come into contact with ground water.
- (ii) Blast furnace slag is unsuitable for use in 5 (i) a-d above, nor is it considered suitable for use in shotblasting adjacent to Controlled Waters such as bridge works.
- (iii) The demolition of old concrete structures such as culverts can give rise to potentially toxic dusts and care should be taken to prevent these from entering Controlled Waters.

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SPECIAL REQUIREMENTS IN RELATION TO THE NATIONAL DRIVER INFORMATION AND CONTROL SYSTEM (NADICS)

1. In this Special Requirement, the following terms shall have the meanings assigned to them:
 - (i) 'Authority' means The Scottish Executive, Road Network Management Division.
 - (ii) 'Authority Representative' means the NADICS Operating Agent appointed by the Authority.
 - (iii) 'NADICS Service Contractor' means the specialist service contractor(s) employed by the Authority to maintain NADICS and provide services to ensure the continuous operation of NADICS Apparatus.
 - (iv) 'NADICS Apparatus' means all surface or sub-surface equipment, any electrical power or communication service and any associated cabling and ducting owned, leased or rented by the Authority for the purposes of the provision of 'NADICS Facilities'.
 - (v) 'NADICS Facilities' comprise of:
 - (a) Variable Message Signs (VMS)
 - (b) Emergency Telephones
 - (c) Overhead Motorway Signalling Units (MSU)
 - (d) Motorway Access Control Unit (MAC)
 - (e) Closed Circuit Television Cameras
 - (f) Verge mounted Hazard Warning Signals
 - (g) Sub-surface and overhead traffic detection equipment. (NADICS detectors)
 - (h) ATDC traffic detection solely for SRTDb (ATDC detectors)
 - (i) Control and Road Information Centres.
2. Before commencing any work or moving heavy plant or equipment over any portion of the site, the Operating Company shall confirm with the Authority Representative, details of the NADICS Apparatus installed within the site. The Authority Representative can be contacted at the following point:

Address: National Network Control Centre (NNCC)
32 Elmbank Street
Glasgow G2 4PF
Telephone: Cameron Ferguson (0141 287 9289) or Allan Hill (0141 287 9295)
Fax: 0141 287 9288
3. The approximate positions of NADICS Apparatus within the site, where known, will be shown on contract drawings or NADICS record drawings, but no guarantee can be given as to the accuracy of these drawings. NADICS Apparatus, other than NADICS and ATDC loop detector sites are usually, but not exclusively, located within the verges, central reserves, and road crossings or in equipment above the carriageway. NADICS and ATDC loop detectors are installed in the carriageway, and on motorways in the hard shoulder.

4. On Motorways, Trunk and Principal Roads, where there is closely spaced (within one and a half kilometres) NADICS Apparatus, the main and local distribution communication and power cables run continuously within either or both verges and through road crossings to provide connections between NADICS Apparatus. At some locations the cabling will run within the central reserve and even outside the road boundary. On Trunk and other Roads where the NADICS Apparatus is not closely spaced, the cabling required to provide connections between equipment is located within the verge, central reserve or road crossings. These are local to the NADICS Apparatus and the positions of associated electrical power and communication services. The minimum depth of the cables should be 450 mm, except at road crossings where the minimum depth should be 750mm. However, there are locations, particularly within verges, where this minimum depth is not always provided. Based on geographical areas the cable will be installed in ducts or be directly buried. However, it should be noted that not all cabling in the ducted cable areas are installed in ducts. NADICS and ATDC detectors are cut into carriageways and are normally visible on the surface but such visibility cannot always be guaranteed as detectors may have been installed before laying of the road wearing course.
5. The Operating Company shall be responsible for locating the actual position of all NADICS Apparatus and shall mark the locations prior to any work commencing in the vicinity of NADICS Apparatus. The manner of such marking shall be dependent on the surface under which the Apparatus lies and such marking shall at all times be clearly visible to all parties working on the site. The Operating Company shall notify all operatives, including sub-contractors employed by the Operating Company, of the presence of NADICS Apparatus, particularly cabling, together with the need to exercise extreme care and attention to ensure the prevention of any damage.
6. The Operating Company shall ensure that NADICS Apparatus remains operational at all times, with the exception of Apparatus that the Authority Representative has previously agreed in writing can be isolated. NADICS Apparatus shall only be disconnected or made non-operational following, and at times indicated by, written agreement with the Authority Representative.
7. The Operating Company shall be responsible for ensuring that NADICS apparatus is protected from damage throughout the period of the works. The method of protection shall be such that the Operating Company shall provide access to all NADICS Apparatus for the repair or inspection of any damage, within two hours of its notification, unless, the Authority Representative specifically requires or agrees a different period of time for such access. Depending on the extent of damage or the fault being repaired, access for vehicles, winches, cable drums and/or any further equipment may be required by the Authority. Access to all chambers and cabinets forming part of the NADICS Apparatus shall be kept clear and unobstructed at all times. The Operating Company shall particularly note that surface mounted cabling should not under any circumstances be aurally suspended without the prior consent of the Authority Representative and then only in the manner specified by the Authority Representative.
8. The Operating Company shall not open any NADICS cabinet or isolate any NADICS electrical supply, other than to make a situation safe, without the authority of the Authority Representative. Any disconnection or reconnection of NADICS Apparatus shall be undertaken by the Authority Representative or the NADICS Service Contractor.

9. Where contract or NADICS record drawings, or site investigations undertaken by the Operating Company, show that the Works, or access to these Works, will be within 20 metres of NADICS Apparatus, the Operating Company shall give the Authority Representative written notice of the date on which access to the works is required. The Operating Company shall include with the aforementioned written notice a method statement detailing how they propose to comply with the NADICS Special Requirements. The Authority Representative will review the Method Statement to ensure that it adequately protects the NADICS Apparatus, or minimises the risk of its damage to the satisfaction of the Authority Representative. Where it does not provide this assurance the Authority Representative shall advise the Director that the Operating Company requires to undertake additional measures to be compliant with these Special Requirements.
10. The Operating Company shall give 24 hours written notice to the Director before commencing any work within 1.5m of the line of surface or sub-surface NADICS Apparatus. Where the work comprises excavations, the Operating Company shall ensure that all such excavations take place in the presence of one of the Operating Company's supervisors who has knowledge of the location of NADICS Apparatus. The identity of the Operating Company's supervisor for the purposes of such excavation, shall be made known to the Director and be subject to the approval of the Director.
11. All excavations adjacent to NADICS Apparatus shall be carried out by hand until the exact extent and/or location of such Apparatus is known. Where excavations cannot be carried out by hand mechanical excavators may be used using methods which shall not damage NADICS Apparatus. Mechanical borers, mechanical post drivers or any such method of work which can damage sub surface NADICS Apparatus shall not be undertaken by the Operating Company within 5 metres of any surface NADICS Apparatus or within 1.5 metres of sub surface NADICS Apparatus.
12. To prevent any movement of NADICS Apparatus during excavation, adequate protective and stabilising measures shall be provided by the Operating Company if:
 - (a) Excavation is deeper than the depth of cover adjacent to NADICS Apparatus.
 - (b) Excavation is within 1.5m of NADICS Apparatus in stable soil.
 - (c) Excavation is within 5.0m of NADICS Apparatus in unstable soil.

If the Operating Company intends using any of the following:

- (i) Pile driving equipment within 10m of NADICS Apparatus
- (ii) Explosives within 20m of NADICS Apparatus

Then the Operating Company shall advise the Director and Authority Representative, giving at least 7 days written notice, to permit any special protective measures for the affected NADICS Apparatus to be arranged.

13. In the event of any damage whatsoever to the NADICS Apparatus, the Operating Company shall immediately inform the Authority Representative and the Director. If damage to NADICS Apparatus occurs when the Authority Representative is not

available (normally outwith 0900 and 1700 Monday to Friday) the Operating Company shall immediately inform the National Network Control Centre at 0141 287 9282/3 or 7.

14. Once any damage has been reported, as required by paragraph 13, then the co-ordination and supervision for the repair of the damage shall become the responsibility of the Authority Representative. If the damage results in any NADICS Apparatus no longer being operational then a temporary repair shall whenever feasible, be undertaken by the NADICS Service Contractor to ensure the NADICS Apparatus is made operational at the earliest possible time. If practical and achievable the aforementioned temporary repair shall be undertaken in a permanent manner provided that the permanent repair can be undertaken within the same timescale as the temporary repair. The Operating Company shall make plant and labour resources available at the Site to the Director and/or the Authority Representative, for the purpose of carrying out non specialised work, (e.g. ducting, cabinet foundations, removal of damaged NADICS Apparatus), required to complete the temporary or permanent repair as detailed in this paragraph.
15. Once the NADICS Service Contractor has completed a temporary repair the Authority Representative shall make arrangements to have the permanent repair completed by the NADICS Service Contractor. The Operating Company shall make plant and labour resources available on Site to the Director and/or the Authority Representative for the purpose of carrying out the non specialised work (e.g. ducting, cabinet foundations, removal of damaged NADICS Apparatus) necessary to complete the permanent repair as detailed in this paragraph. The Operating Company shall be responsible for the reinstatement of NADICS Detectors in accordance with the Highway Agency Specification for the Installation of Detector Loops with modifications as specified by the Authority Representative. The Authority Representative shall arrange for the reinstatement of ATDC Detectors. If the Operating Company has not arranged to reinstate NADICS Detectors, within 14 days of damage occurring, the Authority Representative shall have the right to carry out the repair and re-charge all costs to the Operating Company.
16. The standard of permanent repair shall comply with the NADICS Apparatus standards applicable at the time of the damage occurring. In general terms
 - (a) no joints shall be allowed in any of the existing cabling infrastructure.
 - (b) all cabling shall be installed in ducts
 - (c) the NADICS documentation and database records shall be marked up and all tests documented
 - (d) replacement equipment shall be the agreed equivalent of that being replaced.
17. The Operating Company shall provide to the Director and the Authority Representative a written record of all works undertaken on NADICS Apparatus within 14 days of such works being completed. These records shall include the position of all new and repositioned NADICS Apparatus plus any associated test certificates. If tests and investigations prove the NADICS Apparatus has been damaged, the Authority Representative shall provide such evidence to the Director and the Operating Company. The co-ordination and supervision of the repair of the damage shall be responsibility of

the Authority Representative and the NADICS Service Contractor shall undertake the repair.

18. Within one year of the completion of the works, the Authority Representative retains the right to undertake tests and investigations to satisfactorily prove that NADICS Apparatus has not been damaged as a result of the works. If these tests and investigations prove that the NADICS Apparatus has not been damaged, the costs of such tests and investigations shall be the responsibility of the Authority.
19. These requirements do not relieve the Operating Company of any of his obligations under the Contract.
20. The Operating Company shall be responsible for advising the National Network Control Centre of traffic conditions at or on the approach to the site, as detailed elsewhere within the Contract Documentation. Whether or not there are specific requirements for the Operating Company to provide traffic condition information, the Operating Company shall immediately inform the National Network Control Centre (0141 287 9282/3 or 7), of any circumstances causing or will cause unplanned congestion associated with the works.
21. All of the Authority Representative and NADICS Service Contractor costs, associated with the co-ordinating supervision and making temporary and/or permanent repair, shall be the responsibility of the Operating Company. All costs in connection with these works shall be the responsibility of the Operating Company.
22. It should be noted that Trafficmaster have traffic detection equipment which may be either verge (normally coloured blue) or over-bridge mounted.. The Authority has no maintenance responsibility for Trafficmaster equipment.

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SPECIAL REQUIREMENTS IN RELATION TO THE SCOTTISH EXECUTIVE RURAL AFFAIRS DEPARTMENT

- 1 When visiting or working on or near farm on similar premises the Operating Company shall follow the guidelines "Biosecurity Guidance for Business Visitors, Contractors and Utility Workers on or near Farm or Similar Premises" published by the Scottish Executive Environment and Rural Affairs Department and reproduced below.

BIOSECURITY GUIDANCE FOR BUSINESS VISITORS, CONTRACTORS AND UTILITY WORKERS ON OR NEAR FARM OR SIMILAR PREMISES

- 1 Visitors to farm properties and/or buildings where farm animals or crops, etc are kept, for example business visitors, contractors, and utility workers, need to be aware of their role in helping the community combat the transmission of animal and plant diseases.
- 2 The term biosecurity describes the working practices adopted to prevent disease occurring or spreading between farm or similar premises e.g. livestock markets. A common sense approach is required.
- 3 There are two broad farm types – livestock e.g. cattle, sheep, pigs, farmed deer and arable e.g. crops and plants. A mixture is also possible. The following precautions form the basis of guidance followed by Officials of the Scottish Executive Environment and Rural Affairs Department in the absence of an outbreak of a notifiable animal and/or plant disease. The detailed guidance followed by officials is available in Annex A. Business visitors, contractors and/or subcontractors are encouraged to follow these guidelines.
- 4 It is very important to avoid careless behaviour by business visitors, contractor and/or sub-contractors' employees. The risk of spreading disease must be minimised; the consequences for Scotland and further a field can be significant.

General Guidelines

- 5 Business visitors, contractors and/or sub-contractors should contact the farmer or representative **first** to arrange the visit and follow the biosecurity advice given in respect of the relevant land/premises..
- 6 Establish what washing and disinfection facilities are available, and seek information from the farmer on the precautions to be taken at the location concerned.
- 7 Establish whether there are any Separation Areas for controlling the movement of animals. These areas are governed by stricter disease control measures.
- 8 If you are visiting the farm premises as a representative of any organisation, you should ensure that your clothes are not muddy and that your shoes/boots have been cleaned and then disinfected. This is particularly important if visiting a number of farms.
- 9 Business visitors, contractor and/or subcontractor vehicles, including those shared/hired, should be kept clean (inside and outside) to reduce the risk of spreading any disease when travelling to and from farm premises.

- 10 Vehicles should be parked on hard standing, not in any fields containing livestock and should not be driven through fields which have or have recently had stock in them, to the extent that this is feasible without severely limiting access.
- 11 Ensure that gates are left as they are found, as per the Scottish Executive's Biosecurity Code. <http://www.scotland.gov.uk/about/eradra/lah/00015721/biosecurity.aspx>
- 12 Never feed animals or leave food, litter or associated packaging around where animals can eat it, including in adjacent fields.

ANNEX A

BIOSECURITY GUIDANCE FOR OFFICIALS OF THE SCOTTISH EXECUTIVE ON OR NEAR FARM PREMISES.

Detailed Guidance

If officials come into contact with livestock or faecal material, they must thoroughly clean and then disinfect all footwear, leggings etc on entry to and on leaving the farm premises.

All equipment used must be clean on entry and again on departure. Great care must be taken when cleaning electrical apparatus or tools. Where possible equipment should be protected from contamination e.g. using plastic bags. Health and Safety rules must be observed.

It is accepted that working in rural areas may mean that clean vehicles quickly become 'soiled'. It is not proposed that entire vehicles be cleaned and then disinfected but attention should be focused on areas which have contact with the ground or which may not be immediately visible but have dirt thrown up from the ground e.g. wheel arches.

If your vehicle comes into contact with livestock, it should be thoroughly cleaned and then disinfected (do not forget wheel arches) removing contamination of excreta, slurry or similar material before leaving the farm premises.

If waterproof clothing has been used previously at a different location, it must be thoroughly cleaned and then disinfected before entering and leaving the farm premises. All other protective clothing must not be used again until it has been laundered. Disposable boiler suits can either be left on the premises with the owner's agreement or bagged and suitably disposed of.

Disinfecting Procedure

To be effective at killing disease, disinfectant should be applied to a clean surface. Ensure surfaces to be disinfected are clear of mud, faeces and other organic matter by washing in a water bath or hosing down **before** applying disinfectant.

Where no washing and disinfection facilities are available it may be necessary for the official to carry a full disinfecting kit. This comprises an approved disinfectant, bucket, brush, eye goggles, facemask (where appropriate), impervious gloves, waste disposal bags and a reasonable sized container filled with water in case there is none available on the farm.

Only disinfectants approved by Scottish Executive Environment and Rural Affairs Department (SEERAD) should be used. Further details are available from

(www.hmso.gov.uk/legislation/Scotland/ssi2003/20030334.htm).

Specified dilution rates and label recommendations must be strictly adhered to. Further advice is available from the State Veterinary Service through the local Animal Health Office.

(<http://www.scotland.gov.uk/about/ERADRA/LAH/00015721/AHOMAP.aspx>).

When a particular disease risk has been identified e.g. Newcastle disease, Foot and Mouth Disease, further information will be made available on the Scottish Executive website.

First thoroughly clean the boot/sole or equipment and then place in the disinfectant solution and use a hand held brush, brushing away from the face/eyes. If this is unavoidable, you must wear suitable eye protection. Avoid contact with the skin.

The disinfectant solution should then be rinsed off with clean water before drying occurs. The solution may over time damage natural fabrics such as leather so care must be taken to rinse off any excess solution straight away.

Dispose of disinfectant very carefully and preferably with the prior consent of the farmer/owner. Ideally dilute the used disinfectant with water and spread thinly on land well away from watercourses or water supplies.

Visits/Site work on livestock farms

Protective clothing must be worn on all visits/site work that will include entering areas where livestock are present or to which they normally have access.

Disposable boiler type suits can be used for visits/site work providing that they are robust enough for their intended purpose. Disposable clothing must be used only once and must not be re-used.

Waterproof protective clothing and footwear should be worn when entering areas in close proximity to livestock. Footwear must be thoroughly cleaned and then disinfected before entering and leaving the farm premises.

Officials should be aware that some commercial poultry and pig units may have particularly stringent biosecurity requirements. This is an industry rather than statutory requirement. The owner may require freedom from contact with the species for up to 5 days before the proposed work commences. Showering in and out and using protective clothing provided is not uncommon.

Records of all visits/site work should be kept at all times.

Visits/Site Work on arable Farms

The direct transmission of infectious plant diseases is the obvious risk associated with carrying out visits/site work. Officials should therefore ensure that leggings, wellingtons and equipment are thoroughly cleaned and then disinfected between farms.

Officials should also be aware of the possibility of spreading livestock diseases. Again a common sense approach is required. Wherever possible avoid fields with livestock or where manure/slurry has been recently spread.

ALWAYS FOLLOW THE BIOSECURITY ADVICE GIVEN BY INDIVIDUAL FARMERS

**SEERAD
Room 345
Animal Health and Welfare Division
Pentland House
47 Robb's Loan
Edinburgh EH14 1TY**

SPECIAL REQUIREMENTS IN RELATION TO HISTORIC SCOTLAND

1. Definitions

- 1.1 **Archaeological Contractor/Consultant** - means an archaeological organisation with access to professionally qualified staff with appropriate knowledge, experience and skills, and with a track record of successful contract completion.
- 1.2 **Archaeological Reports** - means all the archaeological reports produced under Historic Scotland's management during the scheme's Environmental Assessment process, in compliance with procedures for assessing and mitigating impact on the cultural heritage set out in the Design Manual for Roads and Bridges Volume 11.
- 1.3 **Desk Research** - means the desk-based survey of existing archaeological records held by national and local archives plus the study of additional historic maps, other readily available historic documents and all available aerial photographs, both low level obliques and high level verticals, in order to determine the nature, significance and extent of the recorded archaeological resource of the area to be affected by the Works.
- 1.4 **Environmental Assessment Process** - means to the statutory procedures required in accordance with EC Directive 85/337 as amended by Directive 97/11/EC. The standard methodology for addressing impact on the Cultural Heritage in trunk road schemes is set out in the Design Manual for Roads and Bridges Volume 11.
- 1.5 **Field Research** - means the use of standard archaeological field techniques including field walking, geophysics and trial trenching to build upon and augment the findings of the Desk Research and ensure that, as far as possible, the full archaeological resource and potential of the area to be affected by the Works is understood.
- 1.6 **Historic Scotland's Nominated Archaeologist** - means the archaeologist appointed directly by Historic Scotland to undertake work within the Site on Historic Scotland's behalf, for example the topsoil strip monitoring.
- 1.7 **National Planning Policy Guideline 5** - refers to the statement of Government policy on Archaeology and Planning issued by the (then) Scottish Office Environment Department in January 1994. Amongst other issues this sets out Government policy on how archaeological remains and discoveries should be handled in the planning and execution of developments.
- 1.8 **Planning Advice Note 42** - refers to the advice on good practice on the treatment of archaeological remains in development set out in Archaeology - the Planning Process and Scheduled Monument Procedures published by the (then) Scottish Office Environment Department in January 1994.
- 1.9 **Planning Permission** - means statutory consent under the Town and Country Planning (Scotland) Act 1997.
- 1.10 **Scheduled Monument** - means monument of national importance protected under the Ancient Monuments and Archaeological Areas Act 1979.

- 1.11 **Topsoil Strip** - means the removal of all superficial deposits to the satisfaction of Historic Scotland's nominated archaeologist.
- 1.12 **Topsoil Strip Monitoring** - means the archaeological supervision of the Operating Company's removal of topsoil, with agreed provision for means of removal and the time to be allowed for archaeological investigation of any features found during this process.

2. Topsoil Strip Monitoring

- 2.1 The Operating Company shall afford access, as agreed by the Director, to archaeologists directly appointed by Historic Scotland to monitor topsoil stripping. To enable proper monitoring:
- (i) the Operating Company shall ensure that Historic Scotland's nominated archaeologist is notified in writing of the programme for topsoil stripping at least 14 days before commencement of this activity;
 - (ii) the Operating Company shall appoint a named representative to liaise with Historic Scotland's nominated archaeologist. All communications shall be directed through this individual;
- 2.2 To facilitate the archaeological monitoring work the Operating Company shall ensure that topsoiling procedures shall be conducted as follows.
- (i) As far as possible vehicles removing topsoil shall not track over the subsoil surface, but work away from the subsoil surface.
 - (ii) The topsoil shall be removed completely as it may mask archaeological features.
 - (iii) Constructional Plant used for topsoil removal shall use smooth blades as toothed blades disturb the subsoil surface, making identification of archaeological subsoil features more difficult.
- 2.3 The Operating Company shall allow Historic Scotland's nominated archaeologist sufficient and reasonable time for the recording of archaeological features revealed during topsoil monitoring. The following procedures and timescales shall apply.
- (i) If minor features are located they shall require simple archaeological excavation, note taking, drawing and photography. Where necessary the Operating Company shall assist the archaeologist by employing Constructional Plant present on the Site.
 - (ii) If somewhat larger features are discovered, the progress of the Works may have to be stopped in the area of the features, to allow a sufficient level of archaeological recording to take place. In such cases Historic Scotland's nominated archaeologist shall be authorised to stop the Works, at least within a defined area, for no more than one hour. The archaeologist shall obtain the authorisation of the Director for any longer stoppage.

- (iii) Where substantial remains may be located greater stoppages may be required. The nominated archaeologist shall require agreement in writing from Historic Scotland and the Director before incurring longer stoppages. (Note for information: In such cases Historic Scotland's nominated archaeologist shall ensure that he has a small back-up team of additional trained archaeologists ready for rapid response to such needs.)

3. Unexpected Discoveries/Finds

- 3.1 Should unexpected finds be encountered on the Site during the course of the Works (over and above any finds made during topsoil monitoring), the Operating Company shall consult and comply with Historic Scotland's requirements for the treatment of such finds.
- 3.2 Should such finds result in Historic Scotland requiring their nominated archaeologist to undertake further works on Site, the Operating Company shall co-operate with Historic Scotland's nominated archaeologist. Where necessary the Operating Company shall assist the archaeologist by employing Constructional Plant present on the Site.
- 3.3 In the event of an unexpected find, the Operating Company shall contact Historic Scotland within 24 hours as follows:

Historic Scotland
Longmore House
Salisbury Place
Edinburgh EH9 1SH
Contact: Lily Linge 0131 668 8600

4. Discovery of Human Remains

- 4.1 Any human remains which are encountered, by law, shall be handled differently from other finds, and shall initially be left *in situ* and the relevant authorities (the Police, Procurator Fiscal and Historic Scotland) shall be informed of their discovery within 24 hours. Excavation procedures relating to human remains shall comply with Scots Law as set out in Historic Scotland's published Operational Policy Paper 5: the Treatment of Human Remains in Archaeology.

NOTE: In principle an archaeologist shall always be present during the examination of any human remains encountered, even where the examination is by the notified legal authority. Typically very few accidental discoveries of human remains are those of recent murder victims. Most are of archaeological interest only. Unfortunately, it is not uncommon for sites to have been disturbed either by the finder or by the police in the conduct of their investigations before archaeologists are informed of the discovery, and this can result in the loss of archaeological information.

GUIDANCE NOTES ON GOOD PRACTICE

While the following guidance is not obligatory under the Contract, Scottish Executive Enterprise Transport and Lifelong Learning Department expect that the Operating Company shall take cognisance of this information and apply it to his activities where necessary and appropriate.

If the Operating Company is planning any work outwith the Site, he is responsible for assessing their impact on the archaeological heritage and ensuring their appropriate mitigation. He is expected to comply with the normal principles of government policy which apply to the treatment of archaeological remains and discoveries within development. These are explained in the following two Scottish Executive publications which are part of their wider series of planning guidance.

**National Planning Policy Guideline 5, Archaeology and Planning (NPPG5)
Planning Advice Note 42, Archaeology – the Planning Process and Scheduled Monument Procedures.**

The text of NPPG5 is available on the Scottish Executive Web Site, at www.scotland.gov.uk/planning. Printed copies of both documents can be obtained from Historic Scotland.

Key Points to note

- (i) Government Policy stresses that archaeological remains are a finite and non-renewable resource, part of our environment to be protected and managed.
- (ii) The preservation of archaeological sites and their settings is thus a material consideration in the planning process and will be a factor in the determination of any application for planning consent. Archaeological condition(s) may be attached to the grant of any planning consent.
- (iii) The following broad principles apply in this process: -
 - Developments shall generally be planned to avoid adverse impact on significant archaeological features and their settings.
 - For lesser sites where avoidance is not feasible, an archaeological excavation incorporating the recording and analysis of remains and reporting and publication of findings, together with the deposition of the artefacts in an appropriate museum and the records in the National Monuments Record of Scotland, may be an appropriate alternative.
 - In areas of general archaeological sensitivity but where the full potential remains uncertain, prior archaeological evaluation may be required to establish the facts before a decision is reached on whether either of the two above options should apply.
 - When work is planned outwith the Site the Operating Company shall seek archaeological information and advice at the outset from the appropriate Council Archaeological Service. (A booklet on sources of archaeological

information which gives the contact point for all Council Archaeological Services in Scotland is available from Historic Scotland.)

The Operating Company also consider engaging his own archaeological contractor to provide him with appropriate information and advice at the pre-planning stage, and to undertake any archaeological investigations required. Developers are responsible for meeting the costs of all archaeological work necessitated by their developments.

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SPECIAL REQUIREMENTS IN RELATION TO SCOTTISH NATURAL HERITAGE

- 1 The Operating Company shall take cognisance of the environmental importance of any area affected by the Works and shall comply with all relevant legislation.
- 2 The Operating Company shall consult with Scottish Natural Heritage in this regard and take all reasonable steps to accommodate their recommendations and provide access to the site for Environmental monitoring.
- 3 Address: Scottish Natural Heritage
12 Hope Terrace
EDINBURGH
EH9 2AS

Telephone: 0131 477 4784
- 4 The Operating Company shall liaise with the Ecologist appointed by the Employer and inform the Director a minimum of 7 days prior to commencing Works in any environmentally sensitive areas as identified by the Ecologist.
- 5 The Operating Company shall note that a minimum of 48 hours written notice shall be required by the Scottish Natural Heritage for any consultation response.

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SPECIAL REQUIREMENTS IN RELATION TO HEALTH & SAFETY EXECUTIVE

The Contractor shall take cognisance of the health and safety conditions associated with all facets of the Works and shall comply with all relevant legislation.

The Contractor shall consult with Health & Safety Executive in this regard and take all reasonable steps to accommodate their recommendations and provide access to the Site for health and safety monitoring.

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SPECIAL REQUIREMENTS IN RELATION TO THE CIVIL AVIATION AUTHORITY

1. In these Special Requirements the following terms shall have the meanings assigned to them:-
 - (a) 'Authority' means the UK Civil Aviation Authority.
 - (b) 'Authority's Representative' means the staff of the UK Civil Aviation Authority or its Authorised Representatives Agents.
2. Before commencing any work or moving heavy plant or equipment over any portion of the Site the Contractor shall confirm details of any safety restrictions in relation to equipment and the height of plant (in particular cranes), which may be required by the Authority with the Authority's Representative, who can be contacted at the following point:- Aerodrome Standards, Civil Aviation Authority, Aviation House, Gatwick Airport, West Sussex, RH6 0YR.
3. The Contractor shall note that particular restrictions apply to the use of high mast jib cranes within 3 Kilometres of an active civilian aerodrome or airport and/or in areas known to be used for low flying training. The Contractor is reminded that hazarding an aircraft constitutes an offence in law. Failure by the Contractor to obtain and/or abide by any restrictions requested by the Authority or the Authority's Representative may constitute negligence.
4. The Contractor shall ensure that any restrictions requested by the Authority or the Authority's Representative shall be brought to the attention of and applied by any sub-contractors employed for the purpose of completing the Works.
5. In the case of low flying areas by military aircraft and/or the presence of military airfields, the Contractor should seek guidance from the appropriate military authorities.
6. Compliance with the above requirements shall not relieve the Contractor of any of his other obligations under the Contract.

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SPECIAL REQUIREMENTS IN RELATION TO BRITISH COAL CORPORATION

- 1 In the following Special Requirements the expression 'The Corporation' means British Coal Corporation and the expression 'the Corporation's Engineer' means the person nominated by the Corporation.
- 2 In carrying out the Works the Contractor shall conform to all requests or requirements the Corporation or their representative may consider necessary for the safe carrying out of the Works, and notwithstanding any compliance with such requests or requirements or any supervision exercised by the Corporation shall indemnify the Employer in respect of all claims made by the Corporation for any losses, charges, costs, damages and expenses of every description arising from any cause whatsoever in connection with the said Works including any obstruction or interference with traffic on the Corporation's railways and also which may arise in consequence of working in the vicinity of colliery workings and/or entering colliery workings during the execution of the Works and the period of maintenance.
- 3 The Contractor will be held responsible for and shall indemnify and keep indemnified the Employer in all respect against any damage caused to the Corporation's property, or to any other adjoining property, building or works, whether belonging to the Corporation or the Employer or otherwise and against any accident, damage, injury, loss of life, to any person using or employed on the railway or to the servants, rolling stock, plant or property of the Corporation and the Employer, or person using or employed on the railway or public using the roads or footways affected or interfered with by the Works, if such accident, damage, injury, loss of life or delay shall be in any way consequent upon the Contractor's operations or owing to any omission or neglect of the Contractor, or that of any person or persons in their employ, either directly or indirectly while the Works are in progress or during the period of maintenance including all costs and expenses which the Corporation or the Employer may be put to in defending negotiating or settling such claims.
- 4
 - (a) The Corporation's Engineer or his representative shall at all times have free access to the site where work is being carried out in the vicinity of colliery workings or where shallow colliery workings are encountered in the Works.
 - (b) The Contractor shall notify the Employer and the Corporation as and when such workings are opened and entered.
 - (c) The Contractor shall be responsible for the safe protection of workings to prevent accidents and to restrain the general public from gaining access thereto.
 - (d) The Contractor shall not discharge any water or other liquid matter, or tip any condemned or surplus excavated material into any workings or disused pit shafts without first obtaining permission of the Corporation's Engineer.
 - (e) On completion of the Works the Contractor shall leave any shallow colliery workings and disused pit shafts in a safe condition and in such a condition that access is not possible to any person.
 - (f) The sale of coal extracted is prohibited.

- (g) Where coal is encountered in substantial quantities the Contractor shall notify the Corporation and shall if required load the coal extracted into transport provided by the Corporation, the coal so extracted being the property of the Corporation.
- 5 The Contractor shall take all steps necessary, including the erection and maintenance of fences, to prevent any person from accidentally falling into any excavation or from interfering with any borehole drilled into old mine workings.
- 6 The Contractor shall ensure that nothing is deposited, falls or flows into any borehole or excavation which by itself, or in combination with anything else could cause or aggravate pollution of underground water, or could cause any nuisance or harm to persons or property in the surface or underground vicinity or impede any mining operations.
- 7 The Contractor shall provide maintain and operate, in accordance with the manufacturer's instructions all necessary equipment to detect any flammable or noxious gases from mineworkings. He shall take appropriate precautions to protect site operatives and the general public.
- 8 The programme and method of working shall be such as to ensure that all boreholes are injected with grout as soon as possible after they have been drilled.
- 9 The Contractor shall within three months of completion of remedial treatment of old workings or shafts provide a typed and bound report of the Works carried out to the Employer and British Coal. The report must include a plan on a scale of 1/2,500 showing the locations of boreholes put down and the conditions encountered therein, the proven position of shafts and full details of the treatment carried out. The report must also include all driller's logs and grouting records.
- 10 The carrying out of the above "Special Requirements" and work shall in no way involve British Coal in any expense.
- 11 The above requirements do not relieve the Contractor of any of his obligations under the Contract.

SPECIAL REQUIREMENTS IN RELATION TO THE BRITISH WATERWAYS BOARD

- 1 In these Special Requirements the following terms shall have the meanings assigned to them:-
 - (a) 'The Board' means the British Waterways Board.
 - (b) 'Board's Representative' means the Regional Engineering Manager of the British Waterways Board or other duly Authorised Representative and/or Agent appointed for the time being to act on his behalf by The Board.
 - (c) 'Waterway' means any canal river watercourse or channel and/or property or premises of any kind administered owned leased or rented by 'The Board' in pursuit of or as part of its Statutory functions.
- 2 The Contractor shall give the Board's Representative at least 14 days written notice before commencing any work or moving heavy plant or equipment over any portion of the Site and shall provide the Board's Representative with an outline programme for the Works.
- 3 All operations on in or affecting The Board's Waterways property or premises shall be carried out in such a manner so as not to endanger The Board's Waterways property or premises and/or any persons entitled to be present thereon and to avoid (except to the extend agreed in writing) any interference to and the free movement of any persons and/or waterborne traffic.
- 4 The Contractor shall not commence any works, particularly excavation work, until adequate provisions to the satisfaction of the Board's Representative have been taken to ensure the stability and security of any Waterway embankments and/or prevent the escape of water therefrom.
- 5 The Contractor shall, if required by the Board's Representative provide temporary fencing to the satisfaction of the Board's Representative to prevent trespass or the straying of animal or poultry stock.
- 6 The Board's Representative shall at all reasonable times have access to any Waterways property or premises on the Site.
- 7 All lights provided by the Contractor shall be so placed or screened so as not to interfere with any signal lights navigation lights and/or beacons of the Board. Any Temporary Works which may interfere with the sighting of such equipment shall not be erected without the written permission of the Board's Representative.
- 8 The Contractor shall NOT without the specific written permission of the Board's Representative (and then ONLY under such conditions and restrictions as the Board's Representative may require) do any of the following:-
 - (a) use of place plant and/or heavy vehicles exceeding 5 tonnes in weight within 2.0 m of the Waterway edge.

- (b) 'Crane' or otherwise similarly move plant materials and/or vehicles over any Waterway.
- (c) Use floating plant barges and/or pontoons and the like in any Waterway.
- (d) Display any advertisement or other material, except as specifically required by this Special Requirement, on or above Waterways property or premises.
- (e) Discharge surface water of any kind in any way into Waterways property or premises.
- (f) Abstract extract and/or draw water from any Waterways property or premises.
- (g) Store fuel or oil on or in any of The Board's property or premises and/or in close proximity to any Waterway.
- (h) Arrange the re-fuelling and/or servicing point of vehicles and/or plant on or in any of The Board's property or premises and/or in close proximity to any Waterway.

9 The Contractor shall take all necessary measures to prevent:-

- (a) Siltation of any Waterways.
- (b) Damage to the Board's property and premises.
- (c) Floating debris of any sort, including but not limited to, timber, containers of any kind, polythene and/or plastic sheeting type materials, entering Waterways.
- (d) Contamination of Waterways property or premises with any toxic or other polluting matter or liquid of any sort.

In the event of any of the above occurring the Contractor shall immediately inform the Board's Representative and the Engineer and shall immediately carry out the instructions of the latter to abate and remedy the situation.

10 Where for the purposes of completing the Works in accordance with the Contract any Temporary Works are required above the Waterway the Contractor shall, except where otherwise specified in the Contract or agreed in writing by the Board's Representative, provide and maintain a minimum height clearance of not less than 4.0 m above the water surface of the Waterway or highest expected water surface where this is variable.

11 The Contractor shall not reduce the width of any Waterway at any time without the written approval of The Board's Representative. In order to consider a request for a temporary reduction in the width of the Waterway the Board's Representative will require fully detailed proposals, which show evidence that the Contractor has made every effort to minimise the risk of water leakage and/or the hazards for Waterway traffic and the length of time such reduction in Waterway width will be required.

- 12 If completion of the Works in accordance with the Contract necessitates the closure and/or the reduction in width of the Waterway towpath the Contractor shall give to The Board at least 2 days written notice and shall provide to the satisfaction of the Board's Representative:-
- (a) An alternative pedestrian access with a minimum width of 2.0 m with adequate fencing to each side which shall be smoothly surfaced with 75 mm of ashes.
 - (b) An alternative emergency access for The Board's plant and equipment with a minimum width of 3.5 m and adequately surfaced for the passage of such plant and equipment with a maximum gradient of 1 in 10.
- 13 If for the purpose of completing the Works in accordance with the Contract the Contractor requires a temporary closure of any navigable Waterway, the Contractor shall obtain the specific written permission of the Board's Representative for such closure and such closure shall only be carried out under such conditions and restrictions as the Board's Representative may require. (Such permission SHALL NOT be presumed as this will interfere with the Statutory obligations of The Board.)
- 14 Where the completion of the Works in accordance with the Contract on or near the edge of the Waterway involves projections of any kind into the navigable channel and/or anywhere vertically above the line of its edge the Contractor shall:-
- (a) By day mark the extremities from the bank of the projection by the placing thereon of a metal cruciform which shall be painted bright red. The cruciform shall be constructed from four rectangular sheets of metal 450 mm by 225 mm and of adequate thickness, which are welded together at right angles along a common 450 mm side.
 - (b) By night mark the extremities by the placing thereon of two red lights situated side by side 300 mm apart.
 - (c) If the projection of the work into the navigable channel exceeds 500 mm protect the projecting works from the impact of passing waterway craft by floating continuous timber fenders of section not less than 250 mm by 250 mm.
 - (d) Display notice boards 'CAUTION – WORK IN PROGRESS' in bright red letters on a white background of a size indicated by the Board's Representative on the Waterway edge on both banks and on both sides of the Works at a distance of 100.0 m and 200.0 m therefrom and maintain the said notice boards through out the duration of the Works.
- 15 All lights provided by the Contractor shall be so placed or screened so as not to interfere with any Waterborne traffic or signal and/or navigation lights used on The Board's Waterways.
- 16 Any floating plant barge and/or pontoon on the Waterway for which the Contractor has obtained the permission of the Board's Representative shall at all times be properly secured so as not to constitute a hazard to navigation and/or Waterway management and all reasonable precautions shall be taken by the Contractor to prevent accidental or malicious casting adrift or sinking.

- 17 If any plant floating plant barge and/or pontoon falls or sinks or is cast adrift in the Waterway the Contractor shall immediately inform the Board's Representative and the Engineer and take immediate steps to make the hazard known to users of the Waterway. The Contractor shall immediately arrange the salvage/re-securing of the plant floating plant barge and/or pontoon from the Waterway and until such salvage/re-securing has been completed the Contractor shall provide buoys, and markers and erect warning notices indicating the navigation hazard to Waterway users to the satisfaction of the Board's Representative.
- 18 The Contractor shall keep The Board's Waterways property or premises free from rubbish. The Contractor shall not leave rubbish on or in Waterways property or premises and shall subject to the approval of the Engineer clear away and remove all constructional plant surplus materials and Temporary Works from Waterways property or premises as and when these cease to be required for the purposes of the Works. All damage to The Board's property shall be made good by the Contractor to the satisfaction of the Board's Representative.

Emergency Action

- 19 The following actions shall be taken by the Contractor in the event of any breach in any Waterway containment structure or banking:-
- (a) IMMEDIATELY inform The Board the Engineer and (if required) the Emergency services in that order.
 - (b) Secure the area from the approach of traffic and/or the general public.
 - (c) Render every assistance to the Emergency Services and/or The Board as shall be requested for the purposes of mitigating water loss and damage arising from the breach and/or for the purposes or securing public safety.
 - (c) With regard to landslope and any apparent flow direction of any water flowing from the breach, construct if possible and as necessary dams bunds with earth and/or board to prevent or restrain loss of water from the Waterway and/or flows inundating any adjacent property.
- 20 Compliance with the above requirements shall not relieve the Contractor of any of his obligations under the Contract.

This is ‘Annex 5’ referred to in the Conditions of Contract forming Schedule 1 to this Contract

**ANNEX 5 TO SCHEDULE 1 TO THIS CONTRACT – Item Category Assigned To
Particular Items In Schedule 2 To The Contract**

Note: Contract Price Fluctuations is referred in this table as “CPF”

	Section- (Item Number)		Item Category
Series 100		Preliminaries	
	01	Recovery Vehicles	<u>A</u>
	02	Recovery Facility Response	<u>A</u>
Series 200		Site Clearance	<u>A</u>
	01	Site Clearance	<u>A</u>
	02	Take Up or Down and Set Aside for Re-use	<u>A</u>
	03	Take Up or Down and Remove to Store	<u>A</u>
	04	Take Up or Down and or Remove to Licensed Disposal Facility	<u>A</u>
	05	Remove from Store and Take to Licensed Disposal Facility	<u>A</u>
Series 300		Fencing and Environmental Barriers	
	01	Fencing, Gates and Stiles	<u>B</u>
	02	Remove from Store or from where previously Set Aside and Re-erect Fencing, Gates and Stiles	<u>A</u>
	03	Repairs to Existing Fencing – Renew Components	<u>B</u>
	04	Repairs to Existing Fencing - Re-erect Existing Components	<u>A</u>
	05	Excavation in Hard Material	<u>A</u>
Series 400		Road Restraint Systems (Vehicle and Pedestrian)	
	01	Safety Barriers	<u>B</u>
	02	Terminals	<u>B</u>
	03	Connections to Existing Systems	<u>B</u>
	04	Vehicle Parapets	<u>B</u>
	05	Pedestrian Parapets and Pedestrian Guardrails	<u>B</u>
	06	Remove from Store or from where previously Set Aside and Re-erect Safety Barriers Vehicle Barriers Pedestrian Parapets Guardrails and Handrails	<u>A</u>
	07	Post Extension Units	<u>B</u>
	08	Raising Existing Sockets	<u>A</u>
	09	Repairs to Safety Barriers Vehicle Parapets Pedestrian Parapets and Pedestrian Guardrails	<u>B</u>
	10	Temporary Safety Barriers	<u>B</u>
	11	Painting of Safety Barriers Pedestrian Guardrails and Handrails	<u>B</u>
	12	Excavation in Hard Material	<u>A</u>

	Section- (Item Number)		Item Category
Series 500		Drainage and Service Ducts	
	01	Drains, Sewers, Piped Culverts and Service Ducts	<u>B</u>
	02	Filter Drains	<u>B</u>
	03	Fin Drains and Narrow Filter Drains	<u>B</u>
	04	Connections	<u>B</u>
	05	Chambers and Gullies	<u>B</u>
	06	Small Headwalls	<u>B</u>
	07	Soft Spots and Other Voids	<u>A</u>
	08	Replacing Raising or Lowering Covers and Gratings on Existing Chambers and Gullies	<u>A</u>
	09	Remove from Store or from where Previously Set Aside and Reinstall Chamber Covers and Frames, and Gully Gratings and Frames	<u>A</u>
	10	Grouting up of Existing Drains, Sewers, Piped Culverts and Service Ducts	<u>B</u>
	11	Excavation in Hard Material	<u>A</u>
	12	Concrete Bagwork	<u>B</u>
	13	Protection to Existing Sewer Drain or Service Duct	<u>B</u>
	14	Drain Surveys	<u>A</u>
	15	Setting up Closed Circuit Television Equipment for Drain Survey	<u>A</u>
	16	Drain Survey by Closed Circuit Television Camera	<u>A</u>
	17	Reports on Drain Surveys	<u>A</u>
Series 600		Earthworks	
	01	Excavation	<u>A</u>
	02	Excavation in Hard Material	<u>A</u>
	03	Deposition of Fill	<u>A</u>
	04	Disposal of Material	<u>A</u>
	05	Imported Fill	<u>B</u>
	06	Compaction of Fill	<u>A</u>
	07	Geotextiles	<u>B</u>
	08	Soft Spots and Other Voids	<u>A</u>
	09	Disused Sewers, Drains, Cables, Ducts, Pipelines and the Like Occurring at Formation or Sub-Formation Level; Disused Basements, Cellars and the Like and Gullies	<u>A</u>
	10	Topsoiling and Storage of Topsoil	<u>B</u>
	11	Completion of Formation and Sub-formation	<u>A</u>
	12	Lining of Watercourses	<u>B</u>
	13	Clearing of existing Ditches	<u>A</u>
	14	Gabion Walling and Mattresses	<u>B</u>
	15	Trial Pits	<u>A</u>
	16	Breaking Up and Perforation of Redundant Pavements	<u>A</u>
	17	Siding out of Carriageways, Footways and Paved Areas	<u>A</u>

	Section- (Item Number)		Item Category
Series 700		Pavements	
	01	Sub-base	<u>B</u>
	02	Pavement	<u>C</u>
	03	Regulating Course	<u>C</u>
	04	Surface Treatment	<u>C</u>
	05	Tack Coat	<u>C</u>
	06	Cold Milling (Planing)	<u>A</u>
	07	Reinstatement of Paved Areas	<u>C</u>
	08	Repairs to Existing Concrete Carriageway	<u>B</u>
	09	Temporary Repair to Carriageway Defects – Category 1 Defect	<u>C</u>
	10	Saw Cuts	<u>A</u>
	11	Overband Sealing	<u>C</u>
	12	Pavement Reinforcement	<u>B</u>
Series 1100		Kerbs, Footways and Paved Areas	
	01	Kerbs, Channels, Edgings and Combined Drainage and Kerb Blocks and Linear Drainage Channel Systems	<u>B</u>
	02	Replace Kerbs, Channels, Edgings and Combined Drainage and Kerb Blocks and Linear Drainage	<u>B</u>
	03	Additional Concrete for Kerbs, Channels, Edgings and Combined Drainage and Kerb Blocks and Linear Drainage Channel Systems	<u>B</u>
	04	Remove from Store or from where previously Set Aside and Relay Kerbs, Channels, Edgings Combined Drainage and Kerb Blocks and Linear Drainage Channel Systems	<u>A</u>
	05	Footways, Paved Areas and Cycle Facilities	<u>C</u>
	06	Remove from Store or from where previously Set Aside and Relay Paving Flags and Blocks	<u>A</u>
	07	Access Steps	<u>B</u>
	08	Excavation in Hard Material	<u>A</u>
	09	Cold Milling (Planing)	<u>A</u>
	10	Patching of Footways Paved Areas and Cycle Facilities	<u>C</u>
Series 1200		Traffic Signs and Road Markings	
	01	Traffic Sign Faces	<u>B</u>
	02	Traffic Sign Posts	<u>B</u>
	03	Traffic Sign Bases	<u>B</u>
	04	Sign Lighting Units	<u>B</u>
	05	Sign Bracket Arms	<u>B</u>
	06	Remove from Store or from where previously Set Aside and Re-erect Traffic Sign Faces Traffic Sign Posts Sign Lighting Units Sign Bracket Arms	<u>A</u>
	07	Road Markings	<u>B</u>
	08	Removal of Road Markings	<u>A</u>

	Section- (Item Number)		Item Category
	09	Road Studs	<u>B</u>
	10	Remove from Store or from where previously Set Aside and Re-install Road Studs	<u>A</u>
	11	Marker Posts	<u>B</u>
	12	Permanent Bollards	<u>B</u>
	13	Remove from Store or from where previously Set Aside and Re-erect Bollards	<u>A</u>
	14	Node Markers	<u>B</u>
	15	Numbering of Traffic Signs	<u>A</u>
	16	Excavation in Hard Material	<u>A</u>
<u>Series 1300</u>		Road Lighting Columns and Brackets	
	01	Road Lighting Columns, Brackets	<u>B</u>
	02	Remove from Store or from where previously Set Aside and Re-erect Road Lighting Columns	<u>A</u>
	03	Luminaries, Renew Luminaries	<u>B</u>
	04	Numbering of Road Lighting Columns	<u>A</u>
	05	Excavation in Hard Material	<u>A</u>
<u>Series 1400</u>		Electrical Work for Road Lighting and Traffic Signs	
	01	Locating Buried Road Lighting and Traffic Signs Cable	<u>A</u>
	02	Trench for Cable or Duct	<u>A</u>
	03	Cable and Duct	<u>B</u>
	04	Cable Joints, Terminations and Renew Terminations	<u>B</u>
	05	Feeder Pillars	<u>B</u>
	06	Earth Electrodes	<u>B</u>
	07	Disconnection of Cables	<u>A</u>
	08	Equipotential Bonding	<u>B</u>
	09	Temporary Overhead Feed to Road Lighting Units	<u>B</u>
	10	Excavation in Hard Material	<u>A</u>
	11	Remove from Store or from where previously Set Aside and Re-erect any Type of Feeder Pillars	<u>A</u>
<u>Series 1700</u>		Structural Concrete	<u>B</u>
	01	In situ Concrete	<u>B</u>
	02	Pre-cast Concrete	<u>B</u>
	03	Surface Finish of Concrete – Formwork	<u>B</u>
	04	Steel Reinforcement for Structures	<u>B</u>
	05	Structural Concrete Repairs	<u>B</u>
	06	Formwork for Concrete Repairs	<u>B</u>
	07	Steel Reinforcement for Concrete Repairs	<u>B</u>
	08	Backfilling to Structures with Foamed Concrete	<u>B</u>
<u>Series 2000</u>		Waterproofing for Structures	
	01	Waterproofing	<u>B</u>
	02	Removal of Existing Waterproofing	<u>A</u>
	03	Additional Preparation to Bridge Deck	<u>A</u>
	04	Repairs to Existing Waterproofing	<u>B</u>

	Section- (Item Number)		Item Category
	05	Surface Impregnation of Concrete	<u>A</u>
Series 2300		Bridge Expansion Joints and Sealing of Gaps	
	01	Replace Bridge Deck Expansion Joints	<u>B</u>
	02	Sealing of Gaps	<u>B</u>
	03	Renew Joint Sealants	<u>B</u>
Series 2400		Brickwork, Blockwork and Stonework	
	01	Brickwork	<u>B</u>
	02	Blockwork and Stonework	<u>B</u>
	03	Remove from Store or from where previously Set Aside and Relay Brickwork, Blockwork and Stonework	<u>A</u>
	04	Replacement and Re- bedding of Precast Concrete Copings	<u>B</u>
	05	Repointing	<u>B</u>
Series 2600		Miscellaneous	
	01	Apply Anti-Graffiti Coatings	<u>B</u>
Series 3000		Landscaping and Planting	
	01	Ground Preparation and Cultivation	<u>A</u>
	02	Seeding and Turfing	<u>B</u>
	03	Planting	<u>B</u>
	04	Mulching	<u>B</u>
	05	Weed Control	<u>A</u>
	06	Maintenance of Established Trees and Shrubs	<u>A</u>
	07	Stump Grinding Stump Grubbing and Stump Killing Herbicide	<u>A</u>
	08	Control of Rabbits and Deer	<u>A</u>
	09	Watering	<u>A</u>
	10	Tree Guards Tubes and Ties	<u>B</u>
Series 3200		Emergency Response	
	01	Emergency Response	<u>A</u>
Series 3300		Site Investigation	
	01	Rotary Coring of Existing Carriageways	<u>A</u>
	02	Rotary Coring of Existing Structures	<u>A</u>
	03	Inspection Patches on Bridge Structures	<u>A</u>
	04	Structural Investigations	<u>A</u>
	05	Falling Weight Deflectometer Tests	<u>A</u>
	06	Dynamic Cone Penetrometer Tests	<u>A</u>
	07	Trial Holes	<u>A</u>
Series 5000		Maintenance Painting of Steelwork	
	01	Surface Preparation	<u>A</u>
	02	Protective System	<u>B</u>
Series 6100		Management Inspection and Cyclic Maintenance	
	01	Schedule 3 – Administration Procedures and Operations	<u>A</u>
	02	Schedule 4 – Contract Control and Management of the Operations	<u>A</u>

	<u>Section-</u> (Item Number)		Item Category
	03	Schedule 5 – Quality System and Documentation for the Operations	<u>A</u>
	04	Schedule 6 – Design Procurement and Certification Operations	<u>A</u>
	05	Schedule 7 – Management Inspection and Cyclic Maintenance	<u>A</u>
	06	Schedule 8 – Technical Studies and Advice in Connection with the Operations	<u>A</u>
	07	Cyclic Maintenance Operations	<u>A</u>
<u>Series 6200</u>		Professional Service Rates and Prices	
	01	Professional Service Rates – On Site	<u>A</u>
	02	Professional Service Rates – At All Other Locations	<u>A</u>
<u>Series 6300</u>		Payment for the Procurement and Supervision of Works Contracts	
	01	Procurement of Works Contracts	No CPF
	02	Supervision of Works Contracts	No CPF
<u>Series 6400</u>		Time Band Adjustment to Schedule of Rates and Prices	
	01	Adjustment for Time Bands	No CPF
	02	Adjustment for Works Within and Below Non-Tidal Open Water or Tidal Water	No CPF
<u>Series 6500</u>		Time Work Schedule	
	01	Labour	<u>A</u>
	02	Plant	<u>A</u>
	03	Materials	No CPF
	04	Supplementary Services	No CPF
<u>Series 6600</u>		Payment of Accounts	
	01	Payment of Accounts	No CPF
<u>Series 6700</u>		Changes in Scope of Operations	
	01	Changes in the Extent of the Unit Impacting on Lump Sum Activity Items	<u>A</u>
<u>Series 7000</u>		Lump Sum Quotations	
	01	Lump Sum Quotations	No CPF

This is Annex 6 referred to in the Conditions of Contract forming Schedule 1 to this Contract

ANNEX 6 TO SCHEDULE 1 TO THIS CONTRACT – Insurance Requirements

1 General

- 1.1 Subject to the other provisions of this Contract this Annex specifies the
- (i) indemnities that shall be provided by the Operating Company to the Scottish Ministers
 - (ii) minimum amount of insurance that the Operating Company shall be required to effect and maintain in force throughout the entirety of this Contract and
 - (iii) maximum excesses (that being the portion of each claim for which the Insurer(s) shall not be liable to the Operating Company or which the Operating Company shall pay to insurers in respect of a legal liability claim) in respect of the insurance that shall be provided by the Operating Company under the other provisions of this Contract.

2 Indemnity Requirements

- 2.1 In respect of each and every claim or series of claims arising out of any one incident and unlimited during the Contract Period an amount equal to the total costs and expenses of any and every kind arising out of an event that falls to be indemnified as a result of any indemnity that shall be required to be given by the Operating Company within this Contract including but not limited to the indemnities referred to in Part 4 to Schedule 1.

3 Insurance Requirements

- 3.1 Notwithstanding any other provisions of this Contract prior to the commencement of any Operations the Operating Company shall be required to provide evidence to the Scottish Ministers that the insurance referred to in Tables S1A6/3.1 and S1A6/4.1 of this Annex 6 to Schedule 1 shall be in full force and effect.

Table S1A6/3.1

Reference Number	Description of Insurance
1.	Contractor's all risks insurance shall be provided by the Operating Company (including terrorism cover) to the full replacement or reinstatement value of the Permanent and Temporary Works forming any part of <ul style="list-style-type: none">(i) the Operations(ii) Constructional Plant used in the execution of the Operations and(iii) any plant and/or materials that shall be or intended to be incorporated into the Works anywhere in Continental Europe and whilst in transit to Site, including roll on roll off ferries

	<p>for the period of this Contract including any Defects Correction Period and/or any Defects Liability Period.</p> <p>The insurance that shall be provided by the Contractor shall be written in the names including but not limited to those of the Scottish Ministers and the Operating Company and shall include sub-contractors of any tier of the Operating Company.</p> <p>The insurance shall include the endorsements referred to in Clauses 5.1 to 5.3 inclusive of this Annex 6 to this Schedule 1</p>
2.	<p>Public liability insurance in respect of loss or damage to any property, including that of the Scottish Ministers and for the avoidance of doubt including Crown Property or death or injury to any person.</p> <p>The minimum limit of indemnity provided by the Operating Company shall be £155,000,000 (one hundred and fifty five million pounds sterling) in respect of each and every occurrence and unlimited in the period of insurance.</p> <p>The insurance shall be written in the names including but not limited to those of the Scottish Ministers and the Operating Company and shall include the endorsements referred to in Clauses 5.1 to 5.3 inclusive of this Annex 6 to Schedule 1.</p>
3.	<p>Professional indemnity insurance for all Operations including</p> <p>(i) any Design executed by the Operating Company and</p> <p>(ii) for the Operating Company's business in general.</p> <p>The minimum Limit of Indemnity provided by the Operating Company shall be £10,000,000 (ten million pounds sterling) in respect of each and every occurrence and unlimited in the period of insurance but shall be limited to £10,000,000 in the aggregate in respect of Pollution losses including gradual pollution.</p> <p>The insurance that shall be provided by the Operating Company shall cover the acts of the Operating Company and the Operating Company's liability for the acts of any of its contractors and sub-contractors of any tier in accordance with the other provisions of this Contract</p> <p>The insurance that shall be provided by the Operating Company shall include the endorsements referred to in Clauses 5.1 to 5.3 inclusive of this Annex 6 to Schedule 1.</p>
4.	<p>Employers liability insurance with a Limit of Indemnity adequate to satisfy the requirements of the Employers Liability Compulsory Insurance Act 1969 and any subsequent legislation.</p> <p>The insurance that shall be provided by the Operating Company shall include the endorsements referred to in Clauses 5.1 to 5.3 inclusive of this Annex 6 to this Schedule 1.</p>
5.	<p>Contractor's pollution legal liability insurance including consequential clean-up of any part of the Unit.</p>

	<p>Such insurance shall be for a minimum Limit of Indemnity of £10,000,000 (ten million pounds sterling) in respect of any one loss and in the aggregate in the period of insurance.</p> <p>The insurance shall be written in the names including but not limited to those of the Scottish Ministers and the Operating Company and shall include the endorsements referred to in Clauses 5.1 to 5.3 inclusive of this Annex 6 to this Schedule 1.</p>
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4 Excesses

- 4.1 In respect of each insurance that shall be provided by the Operating Company as required by this Contract the amount that the insurer for such insurance shall not be liable for in respect of each and every claims or series of claims arising out of one event shall not exceed

Table S1A6/4.1

Reference Number	Type of Insurance	Excess
1.	Contractors All Risks	<p>£10,000 in respect of each and every loss other than Defective Design Materials and Workmanship where the amount shall be</p> <p>(i) £150,000 in respect of each and every loss and</p> <p>(ii) Contractor's Plant where the amount shall be 10 percent of each and every loss (with a minimum in respect of each and every loss of £10,000)</p>
2.	Public Liability (i) Personal Injury Claims (ii) Property Damage Claims	<p>Nil</p> <p>£10,000 in respect of each and every loss or series of losses arising out of one event. This figure shall be the amount specified in paragraph 3.2.1 of Part 5 of Schedule 4</p>
3	Professional Indemnity	£250,000 in respect of each and every loss or series of losses arising out of one event.
4.	Employers Liability	Nil
5.	Contractors Pollution Legal Liability	£50,000 in respect of each and every loss or series of losses arising out of one event

5 Insurance Policy Requirements

- 5.1 All the insurance referred to in Table S1A6/3.1 of this Annex 6 of this Schedule 1 shall be endorsed by the insurers to the effect that
- (i) such insurance shall be subject to Scots Law and the jurisdiction of the Scottish Courts and
 - (ii) the insurers for such insurance shall provide not less than 30 days written notice to the Scottish Ministers prior to any cancellation non-renewal or modification to any such policy for any such insurance.
- 5.2 The insurance referred to in reference numbers 2 and 5 of Table S1A6/3.1 of this Annex 6 of this Schedule 1 shall be endorsed to the effect that actions between the Insured parties shall be treated as though a separate insurance had been issued to each of them.
- 5.3 The insurance referred to in Clauses 1.1, 2.1 and 5.1 to 5.3 inclusive of this Annex 6 of this Schedule 1 shall be endorsed such that insurers for any such insurance have accepted the following provisions
- (i) Waiver of Duty of Disclosure
 - (a) to waive their rights to receive from the Scottish Ministers disclosure of material circumstances or information
 - (b) to avoid the insurance for any non-disclosure of material circumstances or information by the Scottish Ministers or his servants or agents and
 - (c) to avoid the insurance and/or claim damages against the Scottish Ministers for any misrepresentation made by or on behalf of the Scottish Ministers.
 - (ii) Waiver of Rights of Subrogation

to waive all rights of subrogation and/or claims for contributory negligence against the Scottish Ministers.
 - (iii) Joint Insured Clause

that all the provisions of the insurance (except the sums/insured limits of liability) shall operate as if there was a separate insurance policy with and covering each named insured without right of contribution from any other insurance which shall be carried by an insured.

Without limitation to the foregoing this shall be on the basis that including but not limited to the non-compliance with any insurance term condition or warranty or the non-disclosure and/or misrepresentation of material circumstances or information by the Operating Company or any other co-insured under any such insurance shall not affect the rights and/or interests of the Scottish Ministers under the insurance.
 - (iv) Non-Vitiation Clause

that a vitiating act committed by one under any insurance shall not prejudice the right to indemnity of any other Insured who has an insurable interest in such insurance and who has not committed a vitiating act.

This is ‘Annex 7’ referred to in the Conditions of Contract forming Schedule 1 to this Contract

ANNEX 7 TO SCHEDULE 1 TO THIS CONTRACT – Procedure for adjustment of payments for Series 6100 Winter Service Operations of Part 2 of Schedule 2 to this Contract

1. Subject to the other provisions of this Contract the Operating Company shall be paid the value of item number 05/051 of Series 6100 of Part 2 of Schedule 2 for each month of each Winter Service Period.

2. Adjustment of the values of item number 05/051 of Series 6100 of Part 2 of Schedule 2 shall be carried out annually within the month of June by the Operating Company as referred to in this Annex 7 of this Schedule 1.

The adjustment shall be carried out for each Winter Period and applied retrospectively to payments made to date for the relevant Annual Period.

3. Notwithstanding the provisions of paragraph 1 of this Annex 7 of this Schedule 1 the said value referred to therein shall be adjusted in accordance with Clause 10.3.4.1 (ii) by the application of the following formula which shall produce a factor that shall be applied to each of the said values as a multiplication factor.

The sum resulting from such multiplication shall become a sum to be added to or deducted from the said values referred to within paragraph 1 of this Annex 7 to this Schedule 1.

The formula shall be as follows

$$P = \frac{(M.act - M.ave) \times k \times 100}{M.ave}$$

Where

(i) “P” shall be the percentage adjustment (increase if positive value and reduction if negative value) to be applied to each of the said values referred to in paragraph 1 of this Annex 7 of this Schedule 1.

(ii) “M.act” shall be the actual total MOORI for the Unit for the applicable Winter Service Period

(iii) “M.ave” shall be the average total MOORI for the period from 1990-2003 which shall for the purposes of this Contract be 63 (Sixty three)

(iv) “k” shall be the factor stated by the Operating Company within Part 2 of Schedule 2 as part of its tender. The factor “k” shall be limited to a value between 0 and 0.5.

“MOORI” as referred to in this Annex 7 of this Schedule 1 shall mean the “Meteorological Office Open Road Index” calculated by the Meteorological Office in respect of the Unit and to be used by the Operating Company for the purposes of complying with Clause 10.3.4.1 (ii) and this Annex 7 of this Schedule 1.

The M.act shall be provided in writing by the Meteorological Office to the Operating Company and the Scottish Ministers not later than the last day of July of each Annual Period and the Defects Liability Period.

4. Any payments due to the Operating Company by the Scottish Ministers resulting from such adjustment shall become due to the Operating Company pursuant to the other provisions of this Contract.
5. Any payments due to the Scottish Ministers by the Operating Company resulting from such adjustment shall be effected by means of a deduction from any sum due by the Scottish Ministers to the Operating Company pursuant to the other provisions of this Contract.
6. Where for any Winter Service Period the Meteorological Office shall be unable to provide the M.act the Scottish Ministers and the Operating Company shall in good faith endeavour to agree a derived M.act in consultation with the Meteorological Office.

Where such agreement shall not be reached by 15th December following the expiry of the said period and notwithstanding any other provisions of this Contract the Scottish Ministers and the Operating Company shall appoint an expert to review all the prevailing circumstances and to derive or identify an M.act equivalent within 12 weeks after the said appointment.

Such derived or identified M.act referred to in this paragraph shall be deemed to be the M.act referred to in paragraph 3(ii) of this Annex 7 to Schedule 1.

7. The weather recording stations that shall be used in calculating MOORI are located at:

East Kilbride

Culzean Castle

Auchincruive

Dumfries

Eskdalemuir

Threave

Paisley

(7 sites)