

This is the Schedule 1 referred to in the A92 DBFO Project Agreement between Angus Council and Claymore Roads Limited

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

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"Access Rights" means the rights granted to the Company and those authorised by it under Clauses 30 and 31.

"Accommodation Works" means the works detailed in Appendix 1/15 of Part 3 of Schedule 2 (New Works Requirements).

"Accommodation Works Deletion Notice" has the meaning given in Clause 30.3.

"Accommodation Works Site" means the areas of land (or any of them) outwith the New Works Site that the Company reasonably requires to occupy to construct the Accommodation Works.

"Actual Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Additional Works" has the meaning given in Clause 36.1.2.

"Adjudicator" means the adjudicator appointed pursuant to the Disputes Resolution Procedure.

"Advance Works Agreement" means the advance works agreement entered into by Angus Council and the New Works Contractor on 1 and 2 September 2003 for commencement of the New Works prior to the Agreement Date;

"Agreement" means this Agreement and the Schedules annexed and executed as relative hereto.

"Agreement Date" means the date of execution of this Agreement.

"Agreement Expiry Date" has the meaning given in Clause 17.1.

"Aggregate Provisional Payments" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Angus Council" has the meaning given in the recital of the Agreement.

"Angus Council Benchmarking Family" means all of Clackmannanshire Council, Scottish Borders Council, South Ayrshire Council and East Dunbartonshire Council, and the statutory successors of each of those Councils or such substitute or additional authorities as Angus Council and the Company may reasonable agree as representing authorities undertaking functions equivalent or reasonably comparable to the Roads Function for their respective areas.

"Angus Council Contractual Consent" means any agreement, award, certificate, consent, permission, expression of satisfaction, or other approval given by Angus Council or any person on its behalf under the terms of this Agreement.

"Angus Council Change " has the meaning given in Clause 36.1.

"Angus Council Change Notice" has the meaning given in Clause 36.2.1

"Angus Council Representative" means, as at the Agreement Date, The Director of Roads, Angus Council and any substitute therefor as may be appointed by Angus Council for the time being pursuant to Clause 13.4.

"Angus Council Termination Compensation Amount" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Annual Service Report" has the meaning given in Clause 45.7.1.

"Applicant" has the meaning given in paragraph 3.2 of Schedule 8 (Dispute Resolution Procedure).

"Approval" means an approval given by Angus Council in writing in accordance with paragraph 1(h) of Part 2 of this Schedule.

"Associated Company" means in respect of the relevant company, a company which is a subsidiary, a holding company or a company which is a subsidiary of the holding company of the relevant company and, in the case of the Company, shall include each of the Shareholders.

"Audited Heavy Vehicle Measurement Point Crossings" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Audited Other Vehicle Measurement Point Crossings" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Balancing Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Band" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Band Cap " has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Band Rate" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Base Monthly Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Benchmark Cost" has the meaning ascribed to it in Clause 48.5.3.

"Best Value Change in Law" means a Change in Law which comprises:

- (a) Regulations made by the Scottish Ministers in the exercise of powers conferred upon them by Section 13(3) of the 2003 Act the substance of which amounts to a change in a performance standard or the introduction of a new performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator);
- (b) a direction made by the Accounts Commission for Scotland in the exercise of powers conferred upon it by Section 13(9) of the 2003 Act which in substance is similar to an order referred to in (a) above; or
- (c) guidance issued by the Scottish Ministers or Accounts Commission for Scotland or other competent authority, the content of which Angus Council is required to have regard to in applying (a) or (b) above.

"Best Value Duty" means the duty imposed or to be imposed on Angus Council by Section 1 of the 2003 Act in relation to, inter alia, the Operations.

"Best Value Public Performance Reports" means the best value performance reports which are required to be published by Angus Council in accordance with Section 13(1) of the 2003 Act.

"Best Value Review" means any review of the Roads Function which is required to be undertaken by Angus Council in compliance with the Best Value Duty.

"Calculation Date" has the meaning given in Clause 44.

"Calculation Schedule" means a schedule in the form set out in Part 4 of Schedule 7 (Payment Mechanism).

"Cancellation Notice" has the meaning given in Clause 36.6.1(c).

"Capital Cost Increase" means in relation to a Relevant Matter the amount of the Fixed Price and/or Tendered Price therefor (if any) accepted by Angus Council and (except insofar as covered by such Fixed Price or Tendered Price) the amount if any by which -

- (a) Capital Expenditure (in addition to such Fixed Price or Tendered Price) is demonstrably incurred by the Company in carrying out -
 - (i) the New Works;
 - (ii) the O&M Services; or
 - (iii) any other obligations under this Agreement,

as a result of the Relevant Matter under consideration having taken all reasonable steps to minimise such Capital Expenditure

exceeds:

- (b) Capital Expenditure which would have been demonstrably incurred by the Company in carrying out -
- (i) the New Works;
 - (ii) the O&M Services, or
 - (iii) any other obligations under this Agreement;
- without the Relevant Matter under consideration.

For the avoidance of doubt, if a Tendered Price is accepted by Angus Council any reasonable additional costs properly and demonstrably incurred and arising under the terms of the Tendered Price shall be added subsequently and recovered as a Capital Cost Increase insofar as such terms have been brought to the attention of Angus Council prior to Angus Council accepting such Tendered Price.

"Capital Cost Saving" means in relation to a Relevant Matter the amount if any by which-

- (a) Capital Expenditure demonstrably incurred by the Company in carrying out-
- (i) the New Works; or
 - (ii) the O&M Services; or
 - (iii) any other obligation under this Agreement,
- as a result of the Relevant Matter under consideration having taken reasonable steps to minimise such Capital Expenditure
- is less than:
- (b) Capital Expenditure (disregarding such Fixed Price) which would have been demonstrably incurred by the Company in carrying out -
- (i) the New Works;
 - (ii) the O&M Services; or
 - (iii) any other obligation under this Agreement,
- disregarding the Related Matter under consideration.

"Capital Expenditure" means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time.

"Capital Legislative Change" has the meaning give in Clause 38.1.

"Category 1 Defect" and **"Category 2 Defect"** have the meanings given in Paragraph 2.5 of Part 2 of Schedule 4 (O&M Requirements).

"CDM Regulations" means the Construction (Design and Management) Regulations 1994 (as amended).

"Certification Procedure" means prior to New Works Final Completion the certification procedure contained within Schedule 2, Part 4 (Certification) and after New Works Final Completion the certification procedure contained within Schedule 4, Part 6 (Certification Procedure).

"Certified" means that the Design, Design Element or any part of the Design or Design Element has been certified in accordance with the Certification Procedure.

"Cessation of Service" has the meaning ascribed to it in Clause 57.2.1.

"Change Adjustment" means an adjustment to the Unitary Charge in accordance with Part 3 of Schedule 7 (Payment Mechanism).

"Change Appraisal" has the meaning given in Clause 36.3.

"Change in Law" has the meaning given in Clause 38.1.

"Checker" means (a) in respect of earthworks and Category 3 Structures Tony Gee & Partners; (b) in respect of landscaping and earthworks (aesthetics only) means Gillespies; in respect of temporary works means the New Works Contractor; and (c) in respect of all other design elements means Faber Maunsell, or in each case such substitute as may be appointed in accordance with this Agreement.

"Checker's Contracts" means the contracts dated on or about the date hereof between the New Works Contractor and each of Tony Gee & Partners, Gillespies and Faber Maunsell for the checking of the design of the New Works.

"Checker Warranty" means the warranty executed on or about the Agreement Date between Angus Council, the New Works Contractor and each of Tony Gee Partners, Gillespies and Faber Maunsell.

"Company" has the meaning given in the recital of this Agreement.

"Company Change" means (except for those changes permitted in accordance with paragraph 2.6 of Part 1 of Schedule 2 (New Works Requirements)) a change proposed by the Company in accordance with Clause 37.1.

"Company Change Notice" has the meaning given in Clause 37.1.

"Company Event of Default" has the meaning given in Clause 52.1.

"Company's Rectification Plan" has the meaning given in Clause 52.5.

"Company Representative" means the person appointed by the Company pursuant to Clause 13.5 who as at the Agreement Date is Robert Fairful or such substitute therefor as may be appointed by the Company for the time being pursuant to Clause 13.7 and notified to Angus Council.

"Compensatable Loss" in respect of a Compensation Event means:-

- (a) Capital Cost Increases; and/or
- (b) Recurrent Cost Increases; and/or
- (c) Revenue Loss; and/or
- (d) any other losses, costs and/or expenses incurred by the Company that it would not have incurred but for the Compensation Event (including, for the avoidance of doubt, any costs incurred in mitigating the occurrence of the Compensation Event),

directly incurred by the Company as a consequence of a Compensation Event (the Company having taken all reasonable steps to mitigate such Compensatable Losses) and off-setting any Capital Cost Savings, Recurrent Cost Savings, Revenue Gain and any other savings (if any) directly incurred as a consequence of such Compensation Event (the Company having taken all reasonable steps to maximise the same).

"Compensation Event" means-

- (a) a breach by Angus Council or the Angus Council Representative of any of Angus Council's obligations under this Agreement (including any warranties); or
- (b) any suspension of the Operations required by Angus Council in accordance with Clause 35A.2(c);
- (c) a failure or delay by Angus Council to issue a Permit to Use when required to do so in accordance with Clause 23.4 or the withdrawal of the same by Angus Council;
- (d) a failure or delay by Angus Council to issue a New Works Final Completion Acceptance Notice when required to do so in accordance with Clause 24.1;
- (e) an opening up in terms of paragraph 6.2 of Part 1 of Schedule 2 and paragraph 7.2 of Part 1 of Schedule 4; or
- (f) any event deemed to be a Compensation Event under this Agreement.

"Compensation Notice" has the meaning given in Clause 27.1.

"Competent Authority" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Conceptual Design" means the drawings, specifications and other documents forming Schedule 3 as may be amended from time to time in accordance with this Agreement.

"Conceptual Operation and Maintenance Proposals" means the drawings, specifications and other documents forming Schedule 5 as may be amended from time to time in accordance with this Agreement.

"Conceptual Quality Plan" means the plan provided by the Company forming Part 2 of Schedule 6 (Quality Assurance).

"Confirmation Notice" has the meaning given in Clause 36.6.1(b).

"Consult and Comply" means to adhere to the consultation procedures provided within paragraph 1.8 of Part 4 of Schedule 2, in respect of the New Works and paragraph 1.6 of Part 6 of Schedule 4, in respect of the O&M Works.

"Consultation Certificate" means a certificate to be submitted by the Company in accordance with paragraph 1.8 of Part 4 of Schedule 2 (Certification) in respect of the New Works and paragraph 1.6 of Part 6 of Schedule 4 (Certification) in respect of the O&M Works and in the form provided in Annex 1 of Part 4 of Schedule 2 and Annex 1 of Part 6 of Schedule 4 respectively.

"Contingent Funding Liabilities" means any form of direct or indirect obligation on the part of the Shareholders to provide or procure the provision of any funding or bond guarantee, indemnity, letter of credit or other form of credit support whatsoever to the Project that when such obligation is released, causes an alteration to the Financial Model and the base case internal rate of return to the Shareholder.

"Contracting Associate" means the Designer, Checker, Road Safety Auditor, New Works Contractor, O&M Contractor, Planning Supervisor, Project Quality Director and other Associated Company of the Company or New Works Contractor or O&M Contractor which performs any function in connection with this Agreement or the Operations during any period during which such party has contractual obligations to the Company in connection with performance of the Operations.

"Corresponding Day" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Corrupt Gifts Termination Amount" has the meaning given in paragraph 5 of Schedule 11 (Termination Compensation).

"Customer Satisfaction Survey" has the meaning given in Clause 45.6.1.

"Customer Satisfaction Survey Date" means each of the 5th, 10th, 15th, 20th and 25th anniversaries of the Scheduled Permit to Use Date or Permit to Use Date, whichever is the earlier.

"Daily Two Way Traffic" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Default Interest Rate" means the "default rate" determined in accordance with Clause 9.4 of the Funding Agreement.

"Default Notice" has the meaning given in Clause 50.1.1.

"Default Notice Remedy Period" has the meaning given in Clause 50.1.1.

"Defect" means any defect howsoever arising including without limitation:-

- (a) any defect that is the result of defective design or defective materials or defective workmanship;
- (b) in addition in the case of the New Works any failure to meet, or to continue to meet (except to the extent permitted in the O&M Requirements), the New Works Requirements; and
- (c) any damage, destruction or other effect consequential on such defect.

"Defects Correction Period" has the meaning given in Clause 17.2(d).

"Defective Equipment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Delay Notice" has the meaning given in Clause 25.1.

"Deemed Unavailable" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Design" means all drawings, specifications and all other documents submitted by the Company and acknowledged by Angus Council in accordance with the Certification Procedure detailed in Part 4 of Schedule 2 (Certification) and paragraphs 1.2 and 1.3 of Part 6 of Schedule 4 (Certification) respectively.

"Design and Construction Criteria" means the Design and Construction Criteria forming Part 2 of Schedule 2 (New Works Requirements) and Part 4 of Schedule 4 (O&M Requirements).

"Design Certificate" means a certificate to be submitted to Angus Council by the Company in accordance with paragraph 1.2 of Part 4 of Schedule 2 (New Works Requirements) or paragraph 1.2 of Part 6 of Schedule 4 (O&M Requirements) and in the form provided for within Annex 1 of Part 4 of Schedule 2 (Certification) and Annex 1 of Part 6 of Schedule 4 (Certification) respectively.

"Design Contract" means the contract on or about the date hereof between the New Works Contractor and the Designer for the design of the New Works.

"Design Data" means all calculations, designs, design information, specifications, plans, drawings, graphs, sketches, models and other

materials, including all eye readable or computer or other machine readable data, prepared or to be prepared by or on behalf of the Company or Angus Council relating to the design or construction of any aspect of the Operations.

"Design Element" means any part or element of the Design as identified within Section 2 of Part 2 of Schedule 2 (Brief Description of Works) and Part 4 of Schedule 4 respectively.

"Design Warranty" means the warranty between the Designer and Angus Council executed on or about the Agreement Date.

"Designer" means Faber Maunsell or such substitute as may be appointed in accordance with this Agreement.

"Designing Contractor" has the meaning given in Clause 18.2.

"Discriminatory Change in Law" has the meaning given in Clause 38.1.

"Dispute" has the meaning given in Clause 61.

"Disputed Matter" has the meaning given in Clause 36.6.1(a).

"Disputes Resolution Procedure" means the procedure set out in Schedule 8 (Dispute Resolution Procedure).

"Distribution"

means whether in cash or kind, any:

- (i) dividend or other distribution in respect of share capital;
- (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
- (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise) but excluding reasonable directors fees and other reasonable fees and/or expenses properly payable under the Subordinated Financing Agreements;
- (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the Agreement Date (excluding the Project Documents and the Financing Documents and payments, loans or transfers thereunder) and was neither in the ordinary course of business nor on reasonable commercial terms;
- (v) the payment of any other benefit, (excluding benefits under Project Documents or Financing Documents), which is not paid in the ordinary course of business and on reasonable commercial terms;

- (vi) the value, if any, to the Shareholders of the early release of any Contingent Funding Liabilities.

"DMRB" or "Design Manual for Roads and Bridges" means the Design Manual for Roads and Bridges as specified in paragraph 1.1 of Section 1 of Part 2 of Schedule 2, (New Works Requirements) and paragraph 1.3 of Part 2 of Schedule 4 and paragraph 1.1 of Part 4 of Schedule 4 Schedule 4 (O&M Requirements) respectively, as the context so requires.

"DPA" has the meaning given in Clause 66.1.

"Dundee City Council" means the local authority so named constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at 21 City Square, Dundee, DD1 3BY.

"Emergency Response Procedure" means the procedures contained in paragraph 1.8 of Part 2 of Schedule 4.

"Emergency Procedure Strategy" or "EPS" means the procedure to be prepared by the Company and submitted to Angus Council in accordance with the obligations within Paragraph 1.8 of Part 2 of Schedule 4 (O&M Requirements).

"Equity" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Equity Investment" means any equity or subordinated debt which has been invested into the Company.

"Equity IRR" means the projected blended rate of return to the Relevant Persons over the full term of the Agreement having regard to Distributions made and projected to be made.

"Excess Amount" means the amount, if any, by which each Distribution exceeds the Projected Threshold Amount for such Distribution.

"Excluded Landscape Works" means any incomplete Landscape Works not exceeding £100,000 in value provided that a certificate issued by the Landscape Architect shall be conclusive evidence as to the value of the Excluded Landscape Works.

"Excluded Landscape Works Retention Sum" has the meaning given to it in Clause 24.6.

"Exempt Refinancing" means:

- (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge in the Financial Model including as a consequence of a Relevant Matter;
- (b) a change in taxation or change in accounting treatment;

- (c) exercise of rights, waivers, consents under the Financing Documents and similar actions thereunder:
- (i) in relation to any of the New Works Contract, the O&M Contract or any contract for the provision of management services and in each case any replacement thereof or in relation to this Agreement and;
 - (A) which are required in order to implement an Angus Council Change, a Company Change or to comply with a Change in Law; or
 - (B) a direct expense of the Company,

(other than a release or reduction of existing reserve accounts and/or equivalent security which is not for the purpose of funding costs and expenses of the Company or meeting obligations under the Financing Documents); or
 - (ii) which relate to day to day administrative and supervisory matters that are in respect of breaches of obligations, representations or warranties, late or non-provision of information or amendments to sub-contracts;
 - (iii) required to permit advances to be made under the Funding Agreement(s)
- (d) any sale of shares in the Company by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Company;
- (e) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- (f) any Qualifying Bank Transaction except to the extent that any such Qualifying Bank Transaction is part of an arrangement which gives rise to a Refinancing Gain.

"Existing A92" means the existing public road classified as the A92 between chainage zero at Claypotts, Dundee and chainage 18500 metres at Elliot, Arbroath as shown on drawing numbers A92/CH/02-03, CH/05-07, CH/09 and CH/11 forming Part 9 of Schedule 2.

"Existing Roads" means those Site Roads which have not been constructed as part of the New Works, including the Existing A92.

"Event of Default" has the meaning given to it in the Funding Agreement.

"**Faber Maunsell**" means Faber Maunsell Limited whose registered office is at Marlborough House, Upper Marlborough Road, St Albans, Herts, AL1 3UT.

"**Facility Agent**" means Axa Investment Managers UK Limited of 7 Newgate Street, London EC1A 7NX and/or such other facility agent as may be appointed in accordance with the Funding Agreement(s).

"**Financial Model**" means the financial model 2 copies of which have been signed by the Parties setting out the basis on which the financing of the construction of the New Works and the performance of the O&M Services have been calculated by the Company (including without limitation the assumptions used, the cell logic network for the financial model software and any documentation necessary to operate the financial model), whether embodied on disk or other electronic storage medium as from time to time updated to reflect any:-

- a) Change Adjustment; and
- b) Refinancing (other than a Qualifying Refinancing).

"**Financing Documents**" means those documents defined as "Finance Documents" in the Funding Agreements on the Agreement Date (excluding for the avoidance of doubt Subordinated Financing Agreements) and any amendment, variation, novation, supplement or replacement thereof from time to time.

"**First Notice**" has the meaning given in paragraph 3.2 of Schedule 8 (Dispute Resolution Procedure).

"**Fixed Price**" means a fixed price quotation (excluding financing costs) for the implementation of an Angus Council Change incorporating all such information including quantities as Angus Council may reasonably require to enable it to properly evaluate such quotation excluding, for the avoidance of doubt, a Tendered Price.

"**Force Majeure Event**" means the occurrence after the date of the Agreement of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination or
- (c) pressure waves caused by devices travelling at supersonic speeds,

unless (in the case of (b) only) the source or cause of such occurrence is the direct result of actions of the Company where they are the Affected Party or of Angus Council where it is the Affected Party;

"**Force Majeure Termination Compensation Amount**" has the meaning given in paragraph 2.1 in Schedule 11 (Termination Compensation).

"**Full Service Period**" has the meaning given in Clause 17.1.

"Funder" means all or any of the persons who provide financing or funding under the Funding Agreement(s) (including any permitted assignee or transferee thereof) and any counterparty to the Hedging Agreement(s).

"Funder's Technical Adviser" means Symonds Group Limited of Symonds House, Wood Street, East Grinstead, West Sussex RH19 1UU or such other technical adviser(s) as may be appointed in accordance with the Funding Agreement.

"Funder Direct Agreement" means the agreement between the Security Trustee, the Facility Agent, Angus Council and the Company executed on or about the Agreement Date.

"Funding Agreements" means the loan facilities agreement(s) dated on or about the same date as this Agreement between the Company and the Facility Agent and others pursuant to which the Company has obtained finance to undertake the Operations and any replacement, amendment, variation, novation or supplement thereof including any replacement, supplement or additional facility arrangement for the purpose of any refinancing or for financing any Relevant Matter.

"General Change in Law" has the meaning given in Clause 38.1.

"Gillespies" means Gillespies LLP, Gillespie House, Wood Street, Altrincham WA14 1ED.

"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 design, construction, operation and maintenance of roads similar in type to the Project Roads (including without limitation in the field of information communication technology), is seeking in good faith to comply with the same contractual obligations as the obligations of the Company under this Agreement.

"Guidance" means the Design Manual for Roads and Bridges, the Manual of Contract Documents for Highways Works, any Technical Memoranda issued by the Scottish Executive or the Highways Agency and other guidance forming part of the New Works Requirements or the O&M Requirements all as at 12 August 2002 or, if different, the dates specified in Schedule 2 or Schedule 4.

"Handback Amount" has the meaning given in paragraph 2.5 of Part 3 of Schedule 4 (Handback).

"Handback Certificate" means the Handback Certificate to be submitted by Angus Council to the Company where Angus Council are satisfied that the Company has fulfilled its handback obligations as detailed within Part 3 of Schedule 4 (Handback).

"Handback Inspection" has the meaning given in paragraph 2.5 of Part 3 of Schedule 4 (O&M Requirements).

"Heavy Vehicle Actual Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Heavy Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Heavy Vehicles" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Hedging Agreement" means the interest rate swap agreement dated on or about the date hereof entered into by the Company for the purpose of hedging or limiting the Company's interest rate exposure under the Funding Agreements.

"Index Linked" means, in respect of a sum of money from a particular date, such sum multiplied by the following factor-

$$\frac{\text{RPI (a)}}{\text{RPI (b)}}$$

where:

RPI (a) is the Retail Price Index for the month preceding the month in which falls the date to which such sum is to be Index Linked; and

RPI (b) is the Retail Price Index as at the date from which the sum of money is to be Index Linked or if no such date is specified, as at 12 August 2002.

"Indexation Factor" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Indirect Losses" means any losses which as a matter of Scots Law would be too remote or unforeseeable to be recovered as damages for breach of contract or delict.

"Initial Inspection" has the meaning given in paragraph 2.1 of Part 3 of Schedule 4 (Handback).

"Insurances" means the insurances required to be obtained by the Company in compliance with the terms of this Agreement as specified in Schedule 10 (Insurance).

"Insolvency Event" means the occurrence of any of the following events in respect of the Company:-

- (i) the Company becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (ii) a resolution being passed by the Company for the winding up of the Company;

- (iii) a receiver, liquidator, administrative receiver, supervisor, manager or administrator being appointed in respect of all or any of the assets of the Contractor;
- (iv) any statutory arrangement or composition being entered into with or for the benefit of the Company's creditors except in the course of a corporate reconstruction or amalgamation;
- (v) if the Company suffers an event analogous to the foregoing in any jurisdiction; or
- (vi) if the Company suffers an event analogous to the foregoing that may from time to time be applicable in the United Kingdom.

"Intellectual Property" means all current and future legal and/or equitable interests in registered or unregistered trade marks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unauthorised extraction rights, unregistered designs, inventions, confidential information, know-how or other intellectual property rights arising in connection with or relating to performance of the Operations.

"Interested Parties" means those persons who may be affected by the carrying out of the Operations including without limitation those persons identified as such in paragraph 3 of Part 6 of Schedule 2 (Relevant Authorities and Interested Parties) and paragraph 3 of Part 8 of Schedule 4 (Relevant Authorities and Interested Parties).

"Irrecoverable VAT" has the meaning given in Clause 38.11.

"Lane Occupation" shall have the meaning given in paragraph 7.3 of Part 2 of Schedule 4 (O&M Works).

"Landscape Architect" means Gillespies or such substitute as may be appointed in accordance with this Agreement.

"Landscape Architect Warranty" means a warranty between the Landscape Architect and Angus Council executed on or about the Agreement Date.

"Landscape Works" means the landscaping works required to be provided by the Company under Schedule 2.

"Lane Unavailability Charge" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Legislation" has the meaning given in Clause 38.1.

"Liaison Procedure" means the procedure to be developed by the Company in terms of Part 7 of Schedule 2 (New Works Requirements) and/or in terms of Part 9 of Schedule 4 (O&M Requirements).

"Losses" means any loss, damage, costs or expenses demonstrably incurred excluding in all cases Indirect Losses.

"MCDHW" or "Manual of Contract Documents for Highway Works" means the Manual of Contract Documents for Highway Works in the context specified within Schedules 2 (New Works Requirements) and 4 (O&M Requirements) respectively.

"Measurement Limits of Accuracy" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Method Statement" means the best value assistance and reporting method statement provided by the Company forming Part 4 of Schedule 6.

"Mobile Lane Closure" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Monthly Availability Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Monthly Invoice" has the meaning given in Clause 40.1

"Monthly Lane Unavailability Charge" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Monthly Performance Deduction" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Monthly Report" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Monthly Retention" shall have the meaning given in Clause 29.2.

"Monthly Unitary Charge" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"New A92" means the dual carriageway to be built by the Company to replace the Existing A92 in accordance with the New Works Requirements, the Conceptual Design and the provisions of this Agreement.

"New Local Roads" means all new roads (other than the New A92) to be built by the Company as detailed in Schedule 2 (New Works Requirements) (and irrespective of any classification which may be applied to that road from time to time by the Scottish Executive).

"New Works" has the meaning given in Clause 17.2.

"New Works Contract" means the Sub-contract entered into between the Company and the New Works Contractor in respect of the New Works executed on or about the Agreement Date.

"New Works Contractor" means Morgan Est plc or such substitute as may be appointed by the Company for the time being in accordance with this Agreement.

"New Works Direct Agreement" means the agreement entered into between Angus Council, the Company and the New Works Contractor executed on or about the Agreement Date in respect of the New Works.

"New Works Final Completion" means completion of the New Works fully in accordance with the New Works Requirements except for the Excluded Landscape Works.

"New Works Final Completion Acceptance Notice" has the meaning given in Clause 24.1.1.

"New Works Final Completion Certificate" means a certificate in the form set out in Annex 1, Part 4 of Schedule 2 (New Works Requirements).

"New Works Final Completion Longstop Date" is the date which falls 51 months after the Agreement Date.

"New Works Performance Bond" means the Performance Bond granted by De Montfort Insurance Company plc of The Grange, Rearsby, Leicester LE7 4DY on or about the Agreement Date to Angus Council in respect of the Company's obligations under this Agreement.

"New Works Programme" means the Company's programme for construction of the New Works as the same may be amended from time to time.

"New Works Requirements" means the conditions, procedures, standards, specifications and requirements for design and construction set out or identified in Schedule 2 (New Works Requirements) as amended from time to time in accordance with this Agreement.

"New Works Site" means:-

- (a) the land available for New Works shown on the Drawings listed in Appendix 0/4 provided in Part 3 of Schedule 2 (Specific Requirements) and forming Part 8 of Schedule 2; and
- (b) any further land acquired by, or conveyed to, Angus Council (from any person including the Company) from time to time for the purposes of the New Works.

"New Works Substantial Completion" means:-

- (i) New Works Final Completion save for Accommodation Works and Landscape Works and minor incomplete items which do not prejudice the operation, or safe use by the Users of the New Works provided that lane closures reasonably necessary to permit the completion of

Accommodation Works or Landscape Works shall be deemed not to prejudice the operation or safe use by Users of the New Works; and

- (ii) satisfactory completion of the Stage 3 Road Safety Audit for the New Works.

"New Works Substantial Completion Certificate" means a certificate confirming that the Company has achieved New Works Substantial Completion in the form set out in Annex 1 of Part 4 of Schedule 2 (New Works Requirements).

"Notice" means any notice to be given under this Agreement.

"Notified Departure" has the meaning given in Clause 40.A.2.

"O&M Construction" has the meaning given in paragraph 1.1(a) of Part 4 of Schedule 4 (O&M Requirements).

"O&M Construction Final Completion" means completion of the O&M Construction in accordance with Part 4 of Schedule 4 (O&M Requirements).

"O&M Construction Final Completion Certificate" means a certificate in the form set out at Annex 1 of Part 6 of Schedule 4 (O&M Requirements).

"O&M Construction Substantial Completion" means O&M Construction Final Completion except for incomplete items which do not prejudice the operation or safe use by Users of the O&M Construction and satisfaction of the Stage 3 Road Safety Audit for the O&M Construction.

"O&M Construction Substantial Completion Certificate" means a certificate confirming that the Company has achieved O&M Construction Substantial Completion in the form set out in Annex 1 of Part 6 of Schedule 4 (O&M Requirements).

"O&M Contract" means the sub-contract between the Company and the O&M Contractor in respect of the O&M Services on or about the Agreement Date hereof.

"O&M Contractor" means Ringway Highway Services Limited or such substitute as may be appointed by the Company for the time being in accordance with this Agreement.

"O&M Direct Agreement" means the agreement between Angus Council, the Company and the O&M Contractor executed on or about the Agreement Date in respect of the O&M Services.

"O&M Requirements" means the conditions, procedures, standards, specifications, and other requirements for the performance of the O&M Services set out in Schedule 4 (O&M Requirements).

"O&M Services" has the meaning given in Clause 17.2.

"O&M Site" means:-

- (a) the areas of land identified on the drawings contained within Part 10 of Schedule 4 (O&M Requirements) less any land from time to time disposed of by Angus Council (following consultation with the Company and which the Company does not reasonably require for access to perform the O&M Services) as surplus having regard to the as-built boundaries of the roads included in the New Works (Angus Council being under no obligation to the Company to dispose of such surplus land);
- (b) any further land acquired by, or conveyed to, Angus Council (from any person including the Company) from time to time for the purposes of the New Works and/or the O&M Services; and
- (c) in addition, in respect of the part of the O&M Services described in Clause 17.2, any part of the New Works Site not included in paragraphs (a) and (b) of this definition.

"O&M Works" means all the works required to be undertaken by the Company in accordance with Part 2 of Schedule 4 (O&M Requirements).

"Off-Peak Periods" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Operations" has the meaning given in Clause 17.2.

"Operations Failure Event" means (save to the extent accrued as a consequence of a Relief Event, a Force Majeure Event or a Qualifying Change in Law) the accrual by the Company of 300 or more Performance Failure Points which have applied (in terms of Part 1 of Schedule 7 (Payment Mechanism)) for 3 or more Payment Months (whether or not consecutive) during any period of 12 Payment Months.

"Orders" means the statutory orders, consents and other documents listed in Schedule 9 (Land, Statutory Orders and Consents) or any one or more of them where the context so requires.

"Other Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Other Vehicle Actual Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Other Vehicles" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Party" means one of the parties to this Agreement and **"Parties"** means the parties to this Agreement.

"Payment Amount" has the meaning given in Clause 27.1.

"Payment Month" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Payment Month Days" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Payment Year" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"PEIRR" means, as at the date of calculation under Clause 44, the projected Equity IRR derived from the Financial Model as at the Calculation Date disregarding the Excess Amounts of any distributions made before the Calculation Date excluding:

- (a) any Refinancing Gain; and
- (b) any Capital Cost Savings or Recurrent Cost Savings shared with Angus Council under Clause 37.4.2.

"Permit to Use" has the meaning given in Clause 23.4.

"Permit to Use Date" has the meaning given in Clause 17.1.

"Permit to Use Longstop Date" is the date which falls 45 months after the Agreement Date.

"Permitted Access Routes" means the permitted access routes set out in Appendix 1/19 of Part 3 of Schedule 2 (New Works Requirements).

"Permitted Borrowing" means:

- (a) any advance to the Company under the Funding Agreements (including for the purpose of funding any Relevant Matter) ; or
- (b) amendment, waiver or exercise of a right under the Financing Documents or the making of further advances or the subscription of further equity:
 - (i) during the Step-In Period; or
 - (ii) if the Senior Annual Debt Service Cover Ratio and/or the Senior Loan Life Cover Ratio are below the level which would trigger an Event of Default under the Financing Agreements; or
 - (iii) for the principal purpose of avoiding or curing an Event of Default under the Funding Agreement;

and (in the case of (b) only) that does not increase Angus Council's liabilities under this Agreement in respect of the Senior Debt by more than 10 per cent (in aggregate over the term of the Agreement) of the principal outstanding at the time of the Permitted Borrowing under the Funding Agreement provided that the purpose of such amendment, waiver or exercise of a right or further advance is to remedy the relevant breach, default or shortage of funds or to avoid an Event of Default under the Funding Agreement.

"Permitted Lane Closure" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Personal Data" has the meaning set out in Clause 66.2.

"Plant" means appliances, machinery, equipment, apparatus and materials not forming part of the New Works.

"Physical Damage Policies" has the meaning set out in Clause 48.2.3.

"Pre-Refinancing Equity IRR" means the nominal post-tax Equity IRR calculated immediately prior to the Refinancing.

"Pricing Assumptions" has the meaning given in Clause 40A.1.

"Private Finance Initiative" means the Government's Private Finance Initiative or any similar or replacement initiative.

"Proceeds" has the meaning given in Clause 48.2.3.

"Prohibited Act" means:-

- (a) offering giving or agreeing to give to any servant of Angus Council any gift or consideration of any kind as an inducement or reward;
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with Angus Council; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with Angus Council;
- (b) entering into this Agreement or any other contract with Angus Council in connection with which commission has been paid or has been agreed to be paid by the Company or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Angus Council;
- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916, or
 - (ii) under Legislation or the common law of Scotland creating offences in respect of fraudulent acts, or
- (d) defrauding or attempting to defraud or conspiring to defraud Angus Council.

"Project" means the A92 Upgrading (Dundee to Arbroath) Project.

"Project Documents" means the project documents listed in Schedule 13 (Project Documents) or any replacement thereof or any amendment thereto made from time to time

"Project Liaison Committee" has the meaning given in Clause 14.1.

"Project Period" means the period from the Agreement Date to the Agreement Expiry Date.

"Project Quality Director" means Nicola Thomson or such substitute as may be appointed by the Company for the time being in accordance with this Agreement.

"Project Roads" means at any time or during any period all the roads in respect of which the Company are obliged to carry out the O&M Services.

"Project Sites" means:-

- (a) the Accommodation Works Site;
- (b) the New Works Site; and
- (c) the O&M Site,

or any one or more of them as the context requires.

"Projected Threshold Amount" of a Distribution means, the amount of that Distribution as shown in the Financial Model adjusted by such percentage as would, if applied to all projected Distributions to be paid to the Shareholders for the remainder of the Project Period as shown in the Company Financial Model, result in the PEIRR as at the Calculation Date equalling the Threshold IRR.

"Proposed Contract" has the meaning given in Clause 18.2.1.

"Proposed Contractor" has the meaning given in Clause 18.2.1.

"Protestor" means any person or persons engaging in Protestor Action.

"Protester Action" means any action taken or threatened to be taken by any person or persons protesting against the carrying out of any part of the Operations, construction of the New Works (or any part thereof) or of roads in general which directly or indirectly affects performance of the Operations including without limitation action or threatened action which results in;

- (a) increases in the cost of performing the Operations (including increased security costs); and/or
- (b) delays in performing the Operations.

"Provisional Benchmark Cost" means £59,845 Index Linked from the Agreement Date.

"Provisional Heavy Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Provisional Heavy Vehicle Monthly Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Provisional Monthly Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Provisional Other Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Provisional Other Vehicle Monthly Usage Payment" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Qualifying Bank" means a bank that is authorised by the Bank of England to accept deposits in the United Kingdom and any monoline insurers or building societies and in addition any other financial institutions as specified in Appendix 1 to this Schedule 1 and such other financial institutions as may be notified and consented to (such consent not to be unreasonably withheld) by Angus Council from time to time.

"Qualifying Bank Transaction" means:

- (a) the disposition by the Funder of any of its rights or interests in the Funding Agreement or any Finance Document to a Qualifying Bank;
- (b) the grant by the Funder to a Qualifying Bank of any rights of participation in respect of the Funding Agreement or any Finance Document; or
- (c) the grant by the Funder to a Qualifying Bank of any other form of benefit or interest in either the Funding Agreement or any Finance Document or the revenues or assets of the Company, whether by way of security or otherwise.

"Qualifying Change in Law" has the meaning given in Clause 38.1.

"Qualifying Change in Law Notice" has the meaning given in Clause 38.2.

"Qualifying Insurer" means a reputable insurer of good standing in the European Insurance market.

"Qualifying Refinancing" means any Exempt Refinancing or a Permitted Borrowing.

"Quality Plan" means the plan developed by the Company in accordance with Part 1 of Schedule 6 (Quality Assurance).

"Quality System" means the quality system to be provided to Angus Council under paragraph (b) of Part B of Part 1 of Schedule 6 (Quality Assurance).

“Quarter” means each period of 3 consecutive Payment Months ending, respectively on 30 June, 30 September, 31 December and 31 March save for: (i) the first Quarter which shall begin on the Permit to Use Date and shall end on the 30 June, 30 September, 31 December or 31 March next following (whichever date occurs first); and (ii) the final Quarter which shall end on the Agreement Expiry Date.

“Recurrent Cost” means any expenditure (whether recurrent or not) incurred in relation to the provision of the Operations or the Company's obligations under this Agreement which is not Capital Expenditure.

“Recurrent Cost Increase” means in the case of a Relevant Matter the amount (if any) by which:

- (a) the Recurrent Cost incurred and/or to be incurred by the Company in complying with its obligations under the Agreement so as to incorporate the Relevant Matter under consideration, subject to the Company taking all reasonable steps (having regard to its continuing obligations under this Agreement) to minimise such Recurrent Costs insofar as attributable to such Relevant Matter;

exceeds

- (b) the Recurrent Cost which would have been incurred by the Company in complying with its obligations under the Agreement without the Relevant Matter under consideration.

“Recurrent Cost Saving” means in the case of a Relevant Matter the amount (if any) by which:

- (a) the Recurrent Cost incurred and/or to be incurred by the Company in complying with its obligations under the Agreement so as to incorporate the Relevant Matter under consideration subject to the Company taking reasonable steps (having regard to its continuing obligations under this contract) to minimise such Recurrent Cost insofar as attributable to such Relevant Matter;

is less than

- (b) the Recurrent Cost which would have been incurred by the Company in complying with its obligations under the Agreement without the Relevant Matter under consideration.

“Rectification Notice” has the meaning given in Clause 52.4.

"Redundancy Payment" has the meaning given in paragraph 2.1.10 of Schedule 11 (Termination Compensation).

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of the Funding Agreement or any Financing Document;

- (b) the exercise of any right by the Company, or the grant of any waiver or consent by the Funders, under any Funding Agreement or any Financing Document; or
- (c) the disposition of any rights or interests in, or the creation of any participation in respect of, the Funding Agreement or any Financing Document or the creation or granting of any other form of benefit or interest in either the Funding Agreement or any Financing Document or the contracts, revenues or assets of the Company whether by way of security or otherwise.

"Refinancing Gain" means an amount equal to the greater of zero and (A-B)-C-D, where:

- A = the net present value of the Distributions calculated using a discount rate equal to the Threshold Equity IRR projected, immediately prior to a Refinancing (other than a Qualifying Refinancing) (taking into account the effect of the Refinancing, (other than a Qualifying Refinancing)) in the Post Refinancing Financial Model, to be made to each Relevant Person over the remaining term of the Agreement following that Refinancing;
- B = the net present value of the Distributions calculated using a discount rate equal to the Threshold Equity IRR projected immediately prior to a Refinancing (but without taking into account the effect of the Refinancing) in the Pre Refinancing Financial Model to be made to each Relevant Person over the remaining terms of the Agreement following the Refinancing;
- C = any amount required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR (as demonstrated by adjustment to the Pre Refinancing Financial Model); and
- D = the reasonable and proper costs incurred by each Party (including any costs of the Funder payable as a condition of the Refinancing) directly in connection with the Refinancing.

"Refinancing Notice" has the meaning given in Clause 42.2.

"Reinstatement Plan" has the meaning given in Clause 48.2.2.

"Reinstatement Works" has the meaning given in Clause 48.2.1.

"Relevant Authority" means the relevant authorities listed in paragraph 2 of Part 6 of Schedule 2 (New Works Requirements) and paragraph 2 of Part 8 of Schedule 4 (O&M Requirements) respectively.

"Relevant Consents" has the meaning given in Clause 36.3.5.

"Relevant Emergency" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Relevant Matter" means (as appropriate) an Angus Council Change, a Company Change, a Change in Law, a Compensation Event or a Notified Departure.

"Relevant Period" in respect of a PEIRR Calculation, means the period commencing on the Calculation Date for that PEIRR Calculation and ending on the day before the next Calculation Date, or if later the Agreement Expiry Date.

"Relevant Person" means a Shareholder and any of its Affiliates.

"Relief Events" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;
- (b) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (c) any accidental loss or damage to (i) the New Works (in the case of accidental loss or damage prior to the Permit to Use Date); or (ii) to the Project Roads (in the case of accidental loss or damage after the Permit to Use Date);
- (d) any failure or shortage of power, fuel or transport;
- (e) any blockage or embargo which does not constitute a Force Majeure Event;
- (f) any Protester Action or the presence of Trespassers affecting the Project Sites (other than Protestor Action directed at the Company (or any of its Sub-Contractors) and which is not directed at the Project);
- (g) the discovery of fossils, antiquities or unexploded ordnance at any of the Project Sites;
- (h) any:-
 - (i) official strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other dispute,generally affecting the roads construction industry or the roads operation and maintenance industry or a significant sector of them;
- (j) a Change in Law;

- (k) an Angus Council Change;
- (l) the occurrence of any risk which the Company is required to insure against under this Agreement; or
- (m) a Compensation Event.

"Relief Notice" has the meaning given in Clause 49.4.

"Relief Period" has the meaning given in Clause 49.4.3.

"Relief Request" has the meaning given in Clause 49.1.

"Remedy Period" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Renewal Amount" has the meaning given in paragraph 2.2(a)(iii) of Part 3 of Schedule 4 (O&M Requirements).

"Renewal Programme" has the meaning given in paragraph 2.2(a)(ii) of Part 3 of Part of the Schedule 4 (O&M Requirements).

"Renewal Works" has the meaning given in paragraph 2.2(a)(i) of Part 3 of Schedule 4 (O&M Requirements).

"Replacement Service Provider" means any successor to the Company or any sub-contractor of the Company in the provision of the O&M Services upon the Cessation of Service.

"Required Action" has the meaning given in Clause 50.2.1(c).

"Respondent" has the meaning given in Schedule 8 (Dispute Resolution Procedure).

"Restricted Period Winter Maintenance" has the meaning given in Clause 17.3.2.

"Restricted Services" has the meaning give in Clause 17.1.

"Restricted Services Period" has the meaning given in Clause 17.1.

"Restricted Services Commencement Date" has the meaning given in Clause 17.1.

"Retail Price Index" or "RPI" means:-

- (a) the General Index of Retail Prices (all items) published by the Central Statistical Office; or
- (b) if the said General Index ceases to be published in its present form, such index as may replace said General Index for the purposes of calculating the amount payable on repayment of 2.5% Index Linked Treasury Loan Stock 2011, adjusted, if necessary, for any differences

in the reference dates used in compiling said General Index and the replacement index; or

- (c) in the absence of such other index, such index as the parties may agree or in default of agreement, as the Disputes Resolution Procedure may determine produces as nearly as possible the same result as the Retail Price Index would have produced (after adjusting, if necessary, for any differences in the reference dates used in compiling the Retail Price Index and the replacement index).

"Retention Sum" means the sum calculated in accordance with Clause 29.3.

"Revenue Gain" means an increase in payments made by Angus Council in accordance with Clause 39.1 which would not have been paid but for the Relevant Matter.

"Revenue Loss" means the absence of, delay in, or a reduction in payments made by Angus Council in accordance with Clause 39.1 which would have been paid but for the Relevant Matter.

"Review Procedure" means the review procedure contained within Schedule 15 (Review Procedure).

"Roads Function" means the functions of Angus Council and/or Dundee City Council as roads authority for the local government area of Angus and Dundee respectively pursuant to all statutory powers and duties incumbent upon it including, without limitation, under the Roads (Scotland) Act 1984, the Road Traffic Regulation Act 1984 and the New Roads and Street Works Act 1991.

"Road Safety Auditor" means Alan McGhee, 5 Sentry Knowe, Selkirk TD7 4BE or such substitutes as may be appointed therefor in accordance with this Agreement.

"Road Safety Auditor Contract" means the contract dated on or about the date hereof between the New Works Contractor and the Road Safety Auditor.

"Road Safety Auditor Warranty" means the Road Safety Auditor Warranty to be entered into by the Road Safety Auditors and Angus Council in accordance with the provisions of Clause 18.3.

"Routine Maintenance" means the operations to be performed by the Company in accordance with paragraph 2 of Part 2 of Schedule 4 (O&M Requirements).

"Schedule" means a schedule of this Agreement.

"Scheduled Permit to Use Date" has the meaning give in Clause 17.1.

"Security Interest" means any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lieu, right of set off, or retention of title provision (for the purpose of, or which has the effect of granting a security

interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any assets on terms whereby such asset is or will be leased to or reacquired by the person selling or disposing of it.

"Security Trustee" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Senior Annual Debt Service Cover Ratio" has the meaning given to it in the Funding Agreement.

"Senior Debt" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Senior Debt Cover Ratios" means the Senior Annual Debt Service Cover Ratio and/or the Senior Loan Life Cover Ratio at the levels set out in the Financial Model.

"Senior Loan Life Cover Ratio" has the meaning given to it in the Funding Agreement.

"Shared Risk Insurances" means the insurance policies to be taken out and maintained by the Company with effect from the Permit to Use Date.

"Shareholders" means any persons (or any of them or any person, as the context requires) from time to time holding share capital in the Company or a subsidiary, a holding company or a subsidiary of a holding company of the Company.

"Site Roads" means all roads, whether temporary or permanent (including the Existing Roads) situated within the New Works Site but excluding the New A92.

"Specific Change in Law" has the meaning given in Clause 38.1.

"Specification" shall mean the specifications detailed within Part 3 of Schedule 2 and Part 5 of Schedule 4 (O&M Requirements).

"Staffing Information" has the meaning given in Clause 57.2.2.

"Stage 3 Audit" for the purposes of the New Works Final Completion means the Stage 3 Audit to be completed by the Company and submitted to Angus Council in accordance with paragraph 1.9 of Part 4 of Schedule 2 (New Works Requirements).

"Statutory Undertaker" means an undertaker for the purposes of Parts III or IV of the New Roads and Street Works Act 1991 as defined in Sections 48(4) and 107(4) of that Act.

"Subordinated Debt" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Subordinated Financing Agreements" has the meaning given in paragraph 2.1 of Schedule 11.

"Substitute Checker Warranty" means a warranty having the same commercial effect as the Checker Warranty.

"Substitute Design Warranty" means a warranty having the same commercial effect as the Design Warranty.

"Substitute Landscape Architect Warranty" means a warranty having the same commercial effect as the Landscape Architect Warranty.

"Substitute New Works Direct Agreement" means an agreement having the same commercial effect as the New Works Direct Agreement.

"Substitute O&M Direct Agreement" means an agreement having the same commercial effect as the O&M Direct Agreement.

"Substitute Parent Company Guarantee" means a parent company guarantee having the same commercial effect as the Parent Company Guarantee.

"Substitute Road Safety Auditor Warranty" means an agreement having the same commercial effect as the Road Safety Auditor Warranty.

"Supplied Data" has the meaning given in Clause 3.3

"Tax" has the meaning given in paragraph 2.1 of Schedule 11 (Termination Compensation).

"Tayside Contracts" means the joint direct labour and services organisation constituted in terms of a minute of agreement between Angus Council, Dundee City Council and Perth and Kinross Council dated 29 November, 5 and 8 December, all 1995.

"Temporary Works Certificate" means a certificate in the form set out at Annex 1 of Part 4 of Schedule 2 (New Works Requirements) or Annex 1 of Part 6 of Schedule 4 (O&M Requirements) (as appropriate).

"Tendered Price" means the price calculated pursuant to the report on tenders in accordance with Clause 36.4.

"Tony Gee & Partners" means Tony Gee & Partners, TGP House, 45-47 High Street, Cobham, Surrey KT11 3DP.

"Third Party Rights" has the meaning given in clause 33.1.

"Threshold Equity IRR" means 14%

"Threshold IRR" means 22.5%.

"Traffic Flow Period" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Traffic Measurement Period" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Traffic Measurement Period Days" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Traffic Measurement Points" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Traffic Sign" has the meaning given in Section 64 of the Road Traffic Regulations Act 1984.

"Trespasser" means any person (other than a Protestor) not entitled to be on the Project Sites.

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) and the Acquired Rights Directive EC77/187.

"Unavailable" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Unavailability Event" has the meaning given in paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Uninsurable Risk" means a risk previously included within a policy of insurance specified in Schedule 10 in respect of which:

- (a) insurance is not available from Qualifying Insurers in the European insurance market; or
- (b) the terms of such insurance are such that the risk is not generally being insured against in the European insurance market by contractors in substantially similar businesses to that of the Company in the United Kingdom; or
- (c) the deductibles, limits of indemnities and/or scope of cover from Qualifying Insurers are not available at the levels stated in Schedule 10 or in respect of deductibles and/or limits of indemnity are not available within 5% of the levels stated in Schedule 10 ; or
- (d) or in relation to the Shared Risk Insurances the annual cost of taking out and maintaining with Qualifying Insurers the Shared Risk Insurances exceeds the Benchmark Cost (Index-Linked from the Permit to Use Date) by more than 300% (or such other sum as may be agreed).

"Unitary Charge" means the payment to be made by Angus Council to the Company in accordance with paragraph 1 of Part 1 of Schedule 7 (Payment Mechanism).

"Users" means users of the Project Roads.

"Valid Tender" means a tender received by the Company or the New Works Contractor (as the case may be) which complies with all reasonable material requirements of tender as such requirements are notified to tenders by the Company or the New Works Contractor.

"VAT" means any value added tax in terms of Value Added Tax Act 1994.

"VFM Report" has the meaning given in Clause 43.5.

"VFM Review" has the meaning given in Clause 43.1.

"VFM Review Date" has the meaning given in Clause 43.1.

"Volumetric Traffic Measurement Equipment" has the meaning given in Schedule 7.

"Volumetric Traffic Measurement Point" has the meaning given in Schedule 7.

"Winter Maintenance" means the operations to be performed by the Company in accordance with in paragraph 3 of Part 2 of Schedule 4 (O&M Requirements).

"Working Day" means a day (other than a Saturday or Sunday) on which major clearing banks are open for business in both the City of Edinburgh and the City of London.

"2003 Act" means the Local Government in Scotland Act 2003.

PART 2 : INTERPRETATION

1. General

In this Agreement unless the context requires otherwise:-

- (a) A reference to a clause or to a schedule is a reference to the relevant clause of or schedule to this Agreement and a reference to a Part or Paragraph of a Schedule is a reference to the relevant Part or Paragraph of the relevant Schedule.
- (b) Words importing persons shall include firms, partnerships, corporations and any organisation having a legal personality.
- (c) Words importing the singular shall include the plural and vice versa and a reference to any gender shall be construed as a reference to all genders.
- (d) Defined terms shall include cognate or related expressions if (but only if) the context so requires.
- (e) Without prejudice to Clause 38, reference to -
 - (i) an Act of Parliament or to any subordinate legislation made under an Act of Parliament, or to a Directive or regulations of the European Commission or Council of Ministers, shall include a reference to that Act or other as amended from time to time and to any Act or other, or any provision thereof, which replaces such Act or other, or any provision thereof;
 - (ii) an Act of Parliament shall include any subordinate legislation or codes of practice made thereunder; and
 - (iii) a Directive made by the European Council of ministers shall include primary or subordinate United Kingdom legislation made in the implementation thereof.
- (f) Subject to the provisions of Clause 65 of this Agreement regarding assignation a reference to any person (including a Relevant Authority or an Interested Party) shall include the successors (statutory or otherwise) and assignees, or successors in title, of such person.
- (g) A reference to "land" shall include rights in land.
- (h) A reference to an approval or consent where given or to be given by Angus Council shall be deemed to include a requirement that such approval shall be given in writing unless either (i) the context requires otherwise or (ii) at Angus Council in its sole discretion waives such requirement.

- (i) The eiusdem generis rule shall not apply.

2. Documents Incorporated by Reference

Unless the context requires otherwise in any document expressed as being incorporated in whole or part in this Agreement or otherwise referred to in this Agreement, a reference in such documents to:-

- (a) "Client", "Contractor," "Designer", "Engineer", "Purchaser", "Maintenance Agent" and "Maintenance Organisation" shall be subject to sub-paragraphs (b) and (c) which shall be deemed to be a reference to the Company;
- (b) "Engineer" shall be deemed to be a reference to the Designer where such interpretation is necessary to permit the Company to fulfil its obligations in regard to the Design;
- (c) rights and powers of the "Client", "Purchaser" and "Overseeing Department" shall be deemed to be references to Angus Council; and
- (d) "British Railways", "the British Railways Board", "Network Rail", "Railtrack", "Railtrack Scotland", "ScotRail" and "the railways" shall be deemed to be a reference to the British Railways Board and any successor body or company carrying out any functions carried out, or formerly carried out, by the British Railways Board.

3. Headings

The headings shall not be deemed to be part of nor taken into consideration in the interpretation or construction of this Agreement.

4. Consultation

A requirement on the Company to "consult" any person shall be construed as a requirement to also allow a reasonable period for that person to comment on the matter in question, without limitation to any other requirement of this Agreement.

5. Definitions of Road etc

Any references to a road shall include in each case, without limitation, all carriageways, hard shoulders, slip roads, access roads, side roads, cycleways, pavements, bridges, structures and other road structures whether over or under such road, together with all related supporting infrastructure and amenities (whether within or outwith the Project Sites or any of them), including without limitation all fences and barriers, kerbs, drainage systems including outfalls and balancing ponds, grassed areas, hedges and trees, planted areas, footways, road markings, road traffic signs, road lighting, loop detector systems.

communications installations, public toilets, embankments and cuttings, and including in the case of the Project Roads all land and structures thereon lying within the O&M Site.

6. Amendment to Contracts etc.

A reference to a contract shall be a reference to such contract as amended from time to time except where:-

- (a) the making of such amendment is a breach of this Agreement;
or
- (b) this Agreement expressly provides otherwise.

APPENDIX 1 TO SCHEDULE 1: QUALIFYING BANKS

Abbey National
ABN Amro
Advantus Capital Management Inc.
Aegon USA Investment MGMT Inc.
AIB Capital
AIB Group (UK) plc
AIG Global Investment Corp.
Alliance Capital Management LP
Allmerica Asset Management Inc.
Allstate Investments LLC
Ambac Assurance UK Limited
Ambac Credit Products Limited
American Express Financial Advisors
American Family Insurance
American Money Management
American United Life Insurance Co.
Ameritas Investment Advisors Inc.
Amerus Capital Management
ANZ Bank
Asset Allocation & Management
AXA
AXA Sun Life Plc
BBVA Securities Limited
Baden-Wuerttembergische Bank
Banca di Roma
Banca Monte dei Paschi di Siena
Banca Nazionale del Lavarò
Banco Comercial Portugues
Banco Espirito Santo
Banco OPI
Banco Portugues de Investimento
Bank of America Securities Limited
Bank of Ireland

Bank of Montreal
Bank of Nova Scotia
Bank of Scotland
BTM (Europe) Limited
Barclays Capital Securities Limited
Bayerische Landesbank
BNP Paribas UK Limited
BPI (Securities) Limited
Bear Stearns Bank plc
Bradford & Bingley Building Society
Canada Life Assurance Company
CDC Ixis
CIBC
CIC
Cigna Retirement and Investment Services
Citibank International plc
Citigroup Global Investments
Clydesdale Bank plc
Commerzbank
Conning Asset Management
Conseco Capital Management Inc.
Cooperative Bank
Credit Agricole Indosuez
Credit Lyonnais
Credit Suisse First Boston
Danske Bank
David L Babson & Company Inc.
Delaware Investment Company
Depfa Bank
Deutsche Bank
Dexia
DZ Bank
Dresdner Kleinwort Wasserstein
Equitable of Iowa Companies
Erste Bank

European Investment Bank
Farmers Insurance Group
FGIC
Fortis
FSA
GE Asset Management
GE Capital Finance Girobank
Goldman Sachs International
Great-West Life Assurance Company
Guardian Life Insurance Company of America
Halifax plc
Hamburgische Landesbank
Hartford Investment Management Company (HIMCO), The
HBoS
Heleba
Henderson Global Investors
HSBC
HVB Group (Bayerische Hypo-und Vereinsbank)
Hypovereinsbank
Indianapolis Life Insurance Co.
Indiana Insurance Company
Investec Bank
IKB
ING
ING Investment Management LLC
Banca Intesa
Jefferson Pilot Life Insurance Company
John Hancock Financial Services Inc.
JP Morgan Chase Bank
KBC Ireland
Kentucky Central Life Insurance Company
KfW
Knights of Columbus
Landesbank Baden Wurttemberg
Landesbank Hessen-Thuringen

Landesbank Rheinland Pfalz
Landesbank Schleswig Holstein
LBBW
Lehman Brothers International
Lloyds TSB
LRP
Manufacturers Life Insurance Company
Massachusetts Financial Services
MBIA
Mediobanca
Metropolitan Life Insurance Company
Mizuho
Modern Woodmen of America
Mony Capital Management Inc.
Morgan Stanley
Mutual of Omaha Insurance Co.
Natexis
National Australia Bank
National Life Investment Management Company
Nationwide Building Society
Nationwide Insurance
New York Life Insurance Company
NIB Capital
NM Rothschild
Nordeutsche Landesbank
Nordea Bank Sweden
Northwestern Investment Management Company
Norwich Union
Ohio National Financial Services
Pacific Life Insurance Company
Penn Mutual Life Insurance Company
Phoenix Investment Partners
PPM America Inc.
Principal Capital Management
Provident Mutual Life Insurance Company

Prudential Assurance
Prudential Insurance Company of America
Prudential Portfolio Managers (UK) Limited
Rabobank
Royal Bank of Canada
Royal Bank of Scotland
Sanpaolo IMI
Scotia Capital
Scottish Widows
Singer & Friedlander Limited
Skandinaviska Enskilda Banken
Societe Generale
Standard Life
State Farm Insurance
Sumitomo
Sun Life Assurance Company of Canada
Sun Life Assurance Society Plc
Svenska Handelsbanken
Swiss RE Asset Management
SMBC
Toronto Dominion Bank
TIAA-CREF
Unumprovident Corporation
USAA Investment Management Company
Westdeutsche Landesbank
Woodment Accident and Life Company