

This is the Schedule 2 referred to in the A92 DBFO Project Agreement between Angus Council and Claymore Roads Limited

**Angus Council
A92 Upgrading - Dundee to Arbroath**

Schedule 2: New Works Requirements

Part 1: General Conditions

Contents	Page Nos
1. General	2-1-2
2. Design.....	2-1-2
3. Construction	2-1-3
4. Access to the Design and Project Sites	2-1-4
5. Superintendence by Company	2-1-4
6. Works not to be Covered up Without Approval	2-1-4
7. Removal of Improper Work, Materials or Employees	2-1-5
8. Payment of Fees and Compliance with Requirements, Rules and Regulations of the Relevant Authorities	2-1-5
9. Paragraph Not Used.....	2-1-5
10. New Roads and Street Works Act 1991.....	2-1-5
11. Patents, Rights and Design Trade Marks.....	2-1-5
12. Construction Traffic	2-1-5
13. Nuisance	2-1-6
14. Not Used	2-1-7
15. Hours of Work	2-1-7
16. Fossils and Antiquities.....	2-1-7
17. Health and Safety	2-1-7
18. Company's Employees.....	2-1-8
19. Clearance of Project Sites on Completion.....	2-1-8
20. Winter Maintenance during Restricted Service Period.....	2.1.9
Appendix 1 New Roads and Street Works Act 1991	2-1-9

Schedule 2: New Works Requirements**Part 1: General Conditions****1. General**

- 1.1 This Schedule describes Angus Council's requirements for the Design and construction of the New Works. Unless otherwise described, all statements refer to the whole of the New Works.

Without prejudice to the other provisions of this Agreement (including, without limitation, Clause 9), the New Works shall be Designed, constructed and completed in accordance with, and so as to comply with all provisions and requirements of, this Schedule.

References in this Part of this Schedule to a Paragraph are unless otherwise specified a reference to the relevant Paragraph of this Part of this Schedule.

2. Design

- 2.1 The Company shall prepare and supervise the preparation of the Design for the New Works sufficient to allow their construction and which shall, inter alia: -

- a) be developed from and subject to paragraph 2.6 to be consistent with the Conceptual Design (Schedule 3);
- b) comply with and be carried out in accordance with, the provisions and requirements of this Schedule;
- c) meet the requirements of and be consistent with the Orders including the Environmental Statement (except insofar as the Environmental Settlement requires or recommends, or recommends the consideration of, works outwith the New Works Site);
- d) meet the requirements of the Quality Plan;
- e) meet the standards of Good Industry Practice; and
- f) meet the requirements of the remainder of this Agreement.

- 2.2 The Company shall ensure that all persons for whom the Company is responsible pursuant to the terms of Clause 10.1 of the Agreement and who are referred to in the Certification Procedure –

- a) are at all relevant times appointed to carry out the procedures referred to in the Certification Procedure; and
- b) at all times comply with the Certification Procedure contained within this Schedule.

- 2.3 Not Used.

- 2.4 Without prejudice to any other provisions of this Agreement, any failure by the Company or by any person for whom the Company is responsible pursuant to Clause 10.1 of the Agreement to fulfil the requirements of such person under the Certification Procedure shall be a breach of the Company's obligation under this Agreement.

- 2.5 The Company shall not commence, or permit the commencement of, construction of any part of the New Works until the relevant certification shall have been submitted to Angus Council in accordance with the Certification Procedure. Design Data the subject of a certification which has been submitted to Angus Council in accordance with the Certification Procedure shall not

be departed from until the relevant certification in respect of such departure shall have been submitted to Angus Council in accordance with the Certification Procedure.

2.6 The Company shall be entitled to make the following changes to the Conceptual Design without requiring Angus Council's consent. The following changes to the Conceptual Design are deemed to be granted provided always that the proposed change does not fall within any of the circumstances referred to in Clauses 37.3.1, 37.3.2, 37.3.4, 37.3.5, 37.3.6 or 37.3.7:

- 1.1 changes to the horizontal alignment;
- 1.2 changes to the vertical alignment of not more than 1000mm (or 3000mm in the case of split level carriageways provided for in the Conceptual Design);
- 1.3 changes to side slopes on embankments and cuttings where the Company Change would result in a slope angle of not more than 1 in 2 over a length of not more than 30 metres (other than in rock cuttings);
- 1.4 changes to the depth dimension of construction layers for the New A92 road pavement;
- 1.5 changes to the type of pavement materials in construction layers for the New A92;
- 1.6 changes which relate to utilisation of the road pavement of the existing carriageway;
- 1.7 changes to kerbs, footways and paved areas including cycle tracks, with the exception of any amendments to the position of the footways and cycle tracks relative to any new carriageways constructed as part of the New Works;
- 1.8 changes to the type of safety fences and barriers;
- 1.9 changes to the extent of the provision of safety fences and barriers;
- 1.10 changes in the diameter of drainage and service ducts;
- 1.11 changes to the extent of the provision of drainage and service ducts;
- 1.12 changes to the capacity of attenuation measures;
- 1.13 changes to the type of material for drainage and service ducts;
- 1.14 changes in the diameter of culverts;
- 1.15 changes to the extent of the provision of culverts excluding the removal and/or addition of culverts;
- 1.16 changes to the type of material for culverts;
- 1.17 changes to the dimensions of elements of any structures; and
- 1.18 changes for buried foundations.

3. Construction

3.1 The Company shall construct the New Works in accordance with: -

- a) the Design;
- b) the requirements of this Schedule 2;
- c) the requirements of Schedule 9;
- d) the Quality Plan;
- e) Good Industry Practice; and
- f) the provisions of the Agreement;

4. Access to the Design and Project Sites

- 4.1 Angus Council and any person authorised by it shall at all times have access to the Design and Project Sites, and to all workshops and places where work is being carried out (including preparation of the Design) or whence materials manufactured articles and machinery are being obtained for the New Works and the Company shall afford every facility and assistance in or in obtaining the right to such access. Angus Council shall and shall procure that all persons authorised by it shall when exercising any right of access to the Design and Project Sites contained in this Agreement, comply with all requirements of any Insurance and with all generally applicable site rules of the New Works Contractor applicable to the Project Sites which are provided to them from time to time.
- 4.2 The Company shall provide all reasonable assistance and facilities required by Angus Council, the Statutory Undertakers, Relevant Authorities and their respective contractors pursuant to the execution of all works in connection with or ancillary to the New Works (including execution of the Diversionary Works (as defined in Appendix 1 of this part of this Schedule)) or otherwise requiring to be carried out on the Project Sites.

5. Superintendence by Company

- 5.1 The Company shall give or provide all necessary superintendence during the execution of the New Works. Such superintendence shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) as may be requisite for the satisfactory construction of the New Works.
- 5.2 The Company's Representative or a person authorised by it shall be working on the Project Sites during the execution of the New Works until New Works Final Completion and shall give his time whilst on the Project Sites to the superintendence of the same. The Company and (without prejudice to Clause 13.6) the Company's Representative shall be responsible for the safety of all operations.

6. Works not to be Covered up Without Approval

- 6.1 Where Angus Council requires (acting reasonably) to inspect or measure any part of the New Works, that part of the New Works shall not be covered up or put out of view without the Approval of Angus Council (not to be unreasonably withheld or delayed) and the Company shall afford full opportunity for Angus Council to examine and measure any part of the New Works which is about to be covered up or put out of view and to examine foundations before any New Works are placed thereon. Angus Council shall give due notice to the Company whenever Angus Council wishes to attend for the purpose of examining and measuring such work or of examining such foundations. The Company shall give reasonable notice to Angus Council when any such work or foundations is or are ready or about to be ready for the purpose of examining and measuring such work or of examining and measuring such foundations.
- 6.2 The Company shall uncover any part or parts of the New Works or make openings in or through the same as Angus Council may from time to time direct and shall reinstate and make good such part or parts to meet the requirements of the Agreement. If any such part or parts have been covered up or put out of view after compliance with the requirements of Paragraph 6.1 and are found to be executed in accordance with this Agreement the direction by Angus Council to uncover or make openings in or through the appropriate part of the New Works shall be a Compensation Event.

7. Removal of Improper Work, Materials or Employees

- 7.1 Angus Council shall during the progress of the New Works have power to order in writing:
- a) the removal from the Project Sites within such time or times as may be specified of any materials which are not in accordance with the provisions of this Agreement;
 - b) the substitution of materials which are not in accordance with the provisions of this Agreement within such time or times as may be reasonably specified; and
 - c) the removal and proper re-execution of any work which in respect of materials or workmanship is not in accordance with this Agreement within such time or times as may be reasonably specified.
 - d) the removal of any employee of any contractor (of any tier) acting in a manner prejudicial to safety in accordance with Clause 18.5 of the Agreement.
- 7.2 In case of default on the part of the Company in carrying out such order Angus Council shall be entitled to employ and pay other persons to carry out the same and all expenses properly and reasonably incurred as a result of such employment of a third party shall be borne by the Company and shall be recoverable from it by Angus Council or may be deducted by Angus Council from any monies due or which may become due to the Company.
- 7.3 The non-exercise by Angus Council of its rights under Paragraph 7.1 shall not prejudice the power of Angus Council subsequently to reject such work or materials in accordance with paragraph 7.1.

8. Payment of Fees and Compliance with requirements, Rules and Regulations of the Relevant Authorities.

- 8.1 The Company shall give all notices and pay all fees required to be given or paid by any statutory requirement in relation to the execution of the New Works and by the requirements, rules and regulation of all Relevant Authorities whose property or rights are or may be affected in any way by the New Works.
- 8.2 Subject to Clause 38, the Company shall ascertain and conform in all respects with the provisions of any statutory requirement which may be applicable to the New Works and with the requirements, rules and regulations of all relevant Authorities.

9. Paragraph Not Used**10. New Roads and Street Works Act 1991**

- 10.1 In respect of the New Works the provisions set out in Appendix 1 to this Part of this Schedule shall apply.

11. Patents, Rights and Design Trade Marks

- 11.1 Notwithstanding any other provisions of this Agreement the Company shall obtain and maintain all necessary licenses or permissions to make use of all relevant patents, rights, design trademarks or names or other protected rights for the New Works.

12. Construction Traffic

- 12.1 The Company shall use every reasonable means to prevent any of the roads or bridges connecting with or on the routes to the Project Sites from being subjected to extraordinary traffic within the meaning of Section 96 of the Roads (Scotland) Act 1984 by any traffic of the

Company and in particular shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will arise from the moving of construction plant and material or manufactured or fabricated articles from and to the Project Sites shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

- 12.2 Save insofar as this Agreement otherwise provides the Company shall be responsible for and shall pay the costs of strengthening any bridges or altering or improving any road communicating with the Project Sites to facilitate the movement of construction plant, equipment or temporary New Works or other items or vehicles required in the execution of the New Works and the Company shall negotiate and pay all claims arising out of any damage to any roads or bridges caused by such movement without recourse to Angus Council.
- 12.3 Without prejudice to the foregoing provisions of this Paragraph 12 the Company shall comply with the requirements given in this Agreement for routing of their vehicles. Angus Council does not in specifying requirements warrant in any way that the route(s) will be available in full or in part for the whole or any part of the Project Period. The Company shall erect and maintain in good condition signs meeting the requirements of the Relevant Authorities giving effect to these routing requirements.

13. Nuisance

- 13.1 The Company shall at all times take all reasonable steps necessary to ensure that the New Works and any testing, investigation and surveys in connection therewith are carried out in such manner as to minimise nuisance, interference or material disturbance to proprietors or users of property adjacent to, or in the vicinity of, the Project Sites and without prejudice to the foregoing generality shall comply with all relevant statutory requirements.
- 13.2 All activities necessary for the execution of the New Works shall, so far as compliance with the requirements of this Agreement permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to or use or occupation of public or private roads and footpaths to or of properties whether in the possession of Angus Council or any other person.
- 13.3 All work shall be carried out without unnecessary noise and disturbance subject to and without prejudice to the provisions of Appendix 1/9 of Part 3 of this Schedule.
- 13.4 Subject and without prejudice to any other provisions of this Agreement the Company shall take all reasonable precautions and comply with all statutory requirements in connection with any underground water resources (including percolating water), rivers, streams, waterways, drains, watercourses, lakes, ditches, reservoirs and the like to prevent:
- a) any interference with the supply to or abstraction from such sources;
 - b) silting;
 - c) erosion of their beds or banks;
 - d) 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;
- in each case by an act or omission by the Company.
- 13.5 The Company shall take all reasonable necessary measures to prevent damage loss injury or nuisance caused by mud, dirt, stones or other material used or generated whilst carrying out the New Works.
- 13.6 The Company shall take all reasonable necessary measures to prevent damage loss injury or nuisance caused by smoke or dust generated whilst carrying out the new Works.

14. Paragraph not Used.

15. Hours of Work

15.1 Subject to any provision to the contrary contained in this Agreement none of the New Works shall be executed outwith the hours stated in Appendix 1/9 of the Specification without the permission in writing of Angus Council (which shall not be unreasonably withheld) save when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the New Works in which case the Company shall immediately advise Angus Council.

16. Fossils and Antiquities

16.1 The Company shall have no entitlement to any fossils and antiquities which may be found on, in or under the Project Sites or in connection with the New Works. The Company shall immediately when an object which is or might be a fossil or antiquity is discovered:

- a) not further disturb the object and cease work if to continue the New Works would further endanger the object or impede its excavation or removal;
- b) take all steps which may be necessary to preserve the object in the exact position and condition in which it was found; and
- c) inform Angus Council and Historic Scotland of such discovery and precise location of the object.

The Company shall comply with the requirements of Historic Scotland including those set out in Part 6 of this Schedule concerning the object and its examination, excavation and removal.

17. Health and Safety

17.1 The Company shall ensure that all the requirements of the Health and Safety at Work etc. Act 1974 are met under the Agreement.

17.2 In this Paragraph 17 “the Client” and “the Executive” have the same meanings as in the CDM Regulations.

17.3 The Company shall throughout the progress of the New Works have full regard for the safety of all persons entitled to be upon the Project Sites and shall keep the Project Sites and the New Works in an orderly state appropriate to the avoidance of danger to such persons and shall inter alia in connection with the New Works provide and maintain at the Company's own costs all lights, guards, fencing, warning signs and watching when and where necessary or required by Angus Council or by any Relevant Authority for the protection of the New Works of for the safety and convenience of the public or others.

17.4 Without prejudice to Paragraph 17.3, within 5 Working Days of the Agreement Date the Company shall make and serve on the Executive a declaration pursuant to and in the form (if any) required by Regulation 4 that the Company will act as the Client in relation to the Operations for all the purposes of the CDM Regulations. The Company shall forthwith send a copy of the declaration to the Designer and upon receipt of notice from the Executive that it has received the declaration the Company shall send a copy of such notice to the Designer. During the Project Period the Company shall not withdraw, terminate or in manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the Client for all purposes of the CDM Regulations.

- 17.5 The Company shall observe, perform and discharge and shall procure the observance, performance and discharge of:
- a) all the obligations, requirements and duties of any agent, Client, contractor, designer, developer, domestic client, planning supervisor and principal contractor for whom the Company is responsible pursuant to the term of Clause 10.1 of the Agreement arising under the CDM Regulations in connection with the Operations; and
 - b) any Code of Practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the CDM Regulations.

18. Company's Employees

- 18.1 The Company shall employ or cause to be employed in and about the execution of the New Works and in the superintendence thereof only such persons as:-
- 18.1.1 are careful, skilled and appropriately experienced (having regard to the function which they are fulfilling) in their several trades and callings;
 - 18.1.2 are properly trained and adequately supervised; and
 - 18.1.3 have all appropriate and necessary qualifications and registrations.
- 18.2 Angus Council shall be at liberty to object to and require the Company to remove from the New Works Site anyone who in the opinion of Angus Council misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety which may be set out in the Agreement or persist in any conduct which is prejudicial to safety or health and such persons shall not be again employed upon the Operations without the permission of Angus Council.

19. Clearance of Project Sites on Completion

- 19.1 On New Works Final Completion the Company shall within a reasonable time period to be agreed by Angus Council and the Company (both acting reasonably) clear away and remove from the Project Sites all construction plant, surplus material, rubbish and the temporary New Works of every kind and leave the whole of the Project Sites clean and in a workmanlike condition to the reasonable satisfaction of Angus Council.

Appendix 1

New Roads and Street Works Act 1991

1. Definitions and Interpretation

For the purposes of this Appendix:

- 1.1 "Apparatus" means all apparatus (including apparatus as defined in the 1991 Act) located in, on, under, over, across or along the New Works Site or in the O&M Site;
- 1.2 "Codes of Practice" means the codes of practice issued from time to time pursuant to Part IV of the 1991 Act;
- 1.3 "Diversionary Works" means work involving the diversion, change in level, protection or removal of Apparatus;
- 1.4 "Major Works for Roads Purposes" means both major works for roads purposes as defined in Section 145(3) of the 1991 Act and major bridge works as defined in Section 147(2) of the 1991 Act;
- 1.5 "the Regulations" means regulations issued pursuant to Part IV of the 1991 Act;
- 1.6 "Road Works Authority" has the meaning given in Section 108(1) of the 1991 Act;
- 1.7 "Sample Inspections" has the meaning given to it in the Code of Practice entitled Code of Practice for Inspections;
- 1.8 "Traffic Authority" has the meaning given in Section 121A of the Road Traffic regulation Act 1984;
- 1.9 "Works for Road Purposes" has the meaning given in Section 145(2) of the 1991 Act;
- 1.10 "1991 Act" means the New Roads and Street Works Act 1991;
- 1.11 "1984 Act" means the Roads (Scotland) Act 1984; and
- 1.12 "affected" or "affecting" shall be regarded as including the meaning given to "affected" in Section 164(4) of the 1991 Act.

2. Primary Duty of Co-ordination

- 2.1 The Company undertakes to Angus Council to use its reasonable endeavours to co-ordinate the execution of works of all kinds affecting the Project Roads and to comply with all relevant Codes of Practice;
 - a) in the interest of safety;
 - b) so as to minimise the inconvenience to persons using the Project Roads and the surrounding road network having regard in particular to the needs of people with disabilities;
 - c) so as to protect the structure of the Project Roads and the integrity of Apparatus;
- 2.2 Save to the extent inconsistent with the express provisions of this Agreement (including but not limited to this Schedule), the Company shall use all reasonable endeavours to comply with such directions as to co-ordination of works of all kinds, including the co-ordination of works on

roads other than the Project Roads as Angus Council may give from time to time provided the same are consistent with Good Industry Practice.

3. The 1991 Act

- 3.1 In constructing the New Works and otherwise performing the Operations, the Company shall take all reasonable steps to comply with the 1991 Act, the Regulations, the Codes of Practice and any requirements of Statutory Undertakers where the same are notified to the Company by the Statutory Undertakers or Angus Council pursuant to the 1991 Act.
- 3.2 The Company shall notify Angus Council of all proposed Major Works for Road Purposes, Diversionary Works and Works for Road Purposes necessary in connection with the Operations and except where otherwise agreed between the Company and the appropriate Statutory Undertaker, the Company shall make arrangements with the appropriate Statutory Undertaker in respect of the Diversionary Works and the Company will be responsible for all relevant costs recoverable under the 1991 Act, and shall make all payments due to, Statutory Undertakers in connection with Diversionary Works.
- 3.3 In the event that any Statutory Undertaker declines to make arrangements with the Company in respect of any of the Diversionary Works (including provisions as to cost sharing which reflect the provisions of the Regulations), Angus Council shall (and/or where appropriate, shall procure that Dundee City Council shall), at the request of the Company make arrangements with the appropriate Statutory Undertaker and the Company shall reimburse to Angus Council (and or Dundee City Council, as appropriate) on demand the sums paid or payable under such contract.
- 3.4 Neither the arrangements made between the Company and any Statutory Undertaker, nor the entering into of any such arrangements by Angus Council or Dundee City Council (even where the Statutory Undertaker delays in performing such contract or performs same negligently) shall relieve the Company of any of its obligations under this Agreement except as expressly set out in this Agreement and the Company shall not be entitled to any extension of time or additional payment other than in accordance with Clause 25 and/or Clause 27.
- 3.5 Subject to Paragraph 3.6 of this Appendix, Angus Council will and shall procure Dundee City Council will pay to the Company within 20 Working Days of receipt any monies actually received by it (whether received in the form of credits or otherwise) from any Statutory Undertaker in respect of the Project Roads pursuant to any provision of the 1991 Act, the Regulations or the Codes of Practice, other than fees relating to Sample Inspections or Defect Inspections.
- 3.6 If a contribution is made to Angus Council pursuant to Section 137 of the 1991 Act then payment will only be made to the Company if the contribution relates to costs actually incurred or likely to be incurred by the Company during the Project Period and the Company shall pay to Angus Council any contribution received by the Company if the contribution relates to costs incurred or likely to be incurred prior to the Agreement Date and after the Agreement Expiry Date.
- 3.7 At the request of the Company, and subject to an indemnity for all reasonable costs, including administrative costs, Angus Council will endeavour to recover all possible charges, fees, contributions and costs due to Angus Council as Road Works Authority in respect of the Project Roads pursuant to the 1991 Act, the Regulations or Codes of Practice.
- 3.8 The Company shall provide to such person as may be nominated from time to time by Angus Council such information as may be prescribed pursuant to Section 112 and 113 of the 1991 Act and such other information of which it becomes aware which is eligible for registration and shall make such payment or payments to such party as Angus Council may require pursuant to Section 112(5) of the 1991 Act. The Company shall maintain at all times a computer linked to the road works register for the purposes of giving and receiving notices and information affecting the Project Roads and the surrounding road network.

- 3.9 The Company shall notify Angus Council of any possible offence committed or likely to be committed by a Statutory Undertaker under the 1991 Act of which the Company is or should reasonably be aware and shall provide such information within its possession and/or control relating to such offence as may be specified by Angus Council.
- 3.10 The Company will at all times assist and facilitate Angus Council in carrying out, and shall take all reasonable steps necessary to ensure that Angus Council is able to comply with, its duties under the 1991 Act, the Regulations and the Codes of Practice.
- 3.11 The Parties have entered into this Agreement on the assumption that the Company shall be entitled to the benefit of the standard cost sharing principle (borne by the Statutory Undertaker) available to Angus Council in respect of works to be carried out by Statutory Undertakers and in accordance with the terms of s.143 of the 1991 Act along with the Diversionary Works Code of Practice and The Road Works (Sharing of Costs) (Scotland) Regulations 1992 (SI 1992/1672) made thereunder. If having used reasonable endeavours to obtain such cost sharing the Company are unable to do so on any particular occasion they shall notify Angus Council in writing. If Angus Council are unable to procure that the Company obtain such cost sharing within 30 Working Days of such notification, Angus Council shall reimburse such cost sharing to the Company PROVIDED THAT IN THAT EVENT Angus Council may at its option pursue all legal remedies on the Company's behalf, with the cooperation of the Company, to recover such reimbursed cost sharing from the relevant statutory undertaker and, if successful, Angus Council shall be entitled to retain any such sums recovered.

4. Management of Operations affecting Apparatus

- 4.1 Subject to Paragraph 4.2 of this Appendix but without prejudice to its obligations under Paragraph 3 of this Appendix, the Company shall manage any works in respect of or affecting Apparatus and in particular on behalf of Angus Council:
- a) to identify measures and settle specifications with Statutory Undertakers in connection with Diversionary Works;
 - b) to notify Angus Council of the need for any notices, consents or directions to Statutory Undertakers which may be required pursuant to Sections 113(4), 115(1), 117(1), 117(5), 120(1), 121(2), 121(4), 122, 123, 124(2), 125(3), 131(3) and 133(3) and 133(4) of the 1991 Act and to give such notices, consents or directions to Statutory Undertakers as Angus Council may instruct the Company to issue in regard thereto;
 - c) to seek to recover directly from Statutory Undertakers, the costs incurred by the Company in connection with obtaining any orders pursuant to the Road Traffic Regulations Act 1984;
 - d) if Section 133 of the 1991 Act is brought into force, and then subject to any applicable regulations, to seek to recover directly from Statutory Undertakers any charge specified by Angus Council for the occupation of the Project Roads where works carried out by Statutory Undertakers have been unreasonably prolonged;
 - e) to notify Angus Council in reasonable detail of all Major Works for Roads Purposes and Works for Road Purposes affecting the Project Roads and, subject to paragraph 5.1 of this Appendix 1, where instructed to do so by Angus Council to notify Statutory Undertakers, persons to whom Apparatus belongs and the Road Works Authorities both for roads adjacent to the Project Roads of any proposed Major Works for Roads Purposes or Works for Road Purposes;
 - f) to carry out such inspections or investigatory works on the Project Roads as may be necessary to ascertain whether Statutory Undertakers have complied with their duties under the 1991 Act; provided always that no charge will be made for any Sample Inspections, or Defect Inspections;

- g) to carry out any necessary remedial works required either for the reinstatement of the Project Roads following works by Statutory Undertakers or for the emergency maintenance of Apparatus and to seek to recover directly from Statutory Undertakers any costs reasonably incurred;
- h) to notify Angus Council of any works which may be required pursuant to Sections 124(5) and 125(4) of the 1991 Act to carry out any works necessary pursuant to said Sections as may be instructed by Angus Council and seek to recover directly from Statutory Undertakers any costs reasonably incurred;
- i) to notify Angus Council of any obstructions to the Project Roads by Statutory Undertakers or Apparatus and, subject to paragraph 5.1 of this Appendix 1, to give such notices as may be instructed by Angus Council requiring Statutory Undertakers to mitigate or discontinue obstructions to the Project Roads, take any steps instructed by Angus Council if Statutory Undertakers fail to comply with such notices and to seek to recover directly from Statutory Undertakers any costs reasonably incurred;
- j) if instructed by Angus Council to participate in or conduct any conciliation or arbitration under the 1991 Act;
- k) to notify Angus Council of any unauthorised Apparatus in the Project Roads and to remove same if instructed to do so by Angus Council; and
- l) to notify to Angus Council of any necessary works, operations or actions in respect of or affecting Apparatus as are ancillary to the general management of the Project Roads and to carry out such works, operations or actions as may be instructed by Angus Council.

4.2 Without prejudice to Paragraph 3 and 4 of this Appendix, the Company shall not make arrangements with, enter into binding commitments with, compromise with, give a notice of intention to proceed to, impose obligations upon, issue licenses or permissions to, permit the placing of Apparatus in the Project Sites or to seek to recover costs from Statutory Undertakers or carry out works affecting Statutory Undertakers unless instructed so to do by Angus Council.

- 4.3 a) Any instructions issued to the Company in terms of this Appendix shall not be deemed to be equivalent to an Angus Council Change, and
- b) where it is provided in this Appendix that the Company is to seek to recover costs, it shall have no right of recovery against Angus Council in the event it is unable to recover such costs (without prejudice always to Paragraph 3.5 of this Appendix).

4.4 If works are necessary to the Project Roads as a consequence of an event described in Section 141(2) of the 1991 Act then the Company shall, at its own cost (without prejudice however to Paragraph 3.5 of this Appendix), carry out and complete all such works and that in such manner as shall be consistent with its other obligations under the Agreement.

5. Angus Council's Responsibilities

5.1 Angus Council shall:

- a) at the request of the Company notify Statutory Undertakers that the Company will be managing the Project Roads on the terms and conditions set out in this Appendix and request Statutory Undertakers to accept notices, consents or directions from the Company on behalf of Angus Council or Dundee City Council and otherwise to deal with the Company (including negotiating compensation arrangements) as if it were Angus Council or Dundee City Council;
- b) notify the Company promptly of any Statutory Undertakers' requirements or notices or any notices from Road Works Authorities which it receives pursuant to the 1991 Act, the Regulations or the Codes of Practice;

- c) take all steps and, where necessary, procure that Dundee City Council takes all steps reasonably required and at the request of the Company to ensure that the New Works are treated for all purposes under the Regulations as having been initiated by a roads authority, and that the costs of any measures referred to in Section 143(1)(a) of the 1991 Act are shared in accordance with the Regulations, subject to the Company meeting all the costs reasonably incurred by Angus Council or Dundee City Council in taking action under this sub-paragraph;
- d) to the extent that any Statutory Undertaker refuses to recognise to take instructions, notices, consents or directions from the Company, at the request of the Company, serve (on its behalf and/or on behalf of Dundee City Council, as appropriate) such instructions, notices, consents or directions on the relevant Statutory Undertaker as the Company (acting reasonably) considers necessary to give effect to this Appendix 1 or Part 1 of Schedule 2, subject to the Company meeting all the costs reasonably incurred by Angus Council or Dundee City Council in taking action under this sub-paragraph;
- e) give the Company not less than 10 Working Days notice of any proposed grant by Angus Council of a Licence or permission under Section 109 of the 1991 Act or Section 61 of the 1984 Act to carry out works in, on or under the Project Roads;
- f) notify the Company of all local roads authority/undertaker co-ordination meetings relevant to the Project Roads of which Angus Council or Dundee City Council is made aware and arrange for the extension of Angus Council's or Dundee City Council's right to attend such meetings to the Company; and
- g) make available to the Company any inspection facilities afforded to Angus Council or Dundee City Council by Statutory Undertakers under Section 127(1) of the 1991 Act in respect of Statutory Undertakers' apparatus in, on or under the Project Roads to the extent made available to Angus Council or Dundee City Council.