

This is the Schedule 4 referred to in the A92 DBFO Project Agreement between Angus Council and Claymore Roads Limited

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

**Schedule 4 : O & M Requirements**

**Part 1 : General Conditions**

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**Schedule 4 : O & M Requirements****Part 1 : General Conditions****1. Interpretation**

1.1 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. O&M Services**

2.1 Without prejudice to the other provisions of this Agreement (including, without limitation, Clause 9), the O&M Services shall be carried out:

- a) in accordance with and so as to comply with all provisions and requirements of this Schedule;
- b) in accordance with and so as to comply with all provisions and requirements of the Agreement;
- c) so as to meet the requirements of and be consistent with all statutory requirements and the Environmental Statement;
- d) in accordance with the Conceptual Operation and Maintenance Proposals (Schedule 5);
- e) in accordance with the Quality Plan; and
- f) in accordance with Good Industry Practice.

**3. Design**

3.1 The Company shall ensure that every Design in respect of any O&M Construction to which the Certification Procedure applies shall be sufficient to allow their construction and shall:

- a) comply with and be carried out in accordance with, the provisions and requirements of this Schedule;
- b) without prejudice to Clause 38 of this Agreement, meet the requirements of and be consistent with all Statutory Requirements and the Environmental Statement; and
- c) meet the requirements of the remainder of this Agreement.

3.2 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 4.

3.3 Not used.

3.4 Without prejudice to any other provision of this Agreement, any failure, by the Company or by any person for whom the Company is responsible for 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 obligations under this Agreement.

- 3.5 The Company shall not commence, or permit the commencement of, any part of the O&M Services in respect of which the Certification Procedure should apply until the relevant pre construction certificates shall have been submitted to Angus Council in accordance with the Certification Procedure. Design Data, the subject of a pre construction certificate which has been submitted to Angus Council in accordance with the Certification Procedure, shall not be departed from until the relevant pre construction certificate in respect of such departure shall have been submitted to Angus Council in accordance with the Certification Procedure.

#### **4. Construction**

- 4.1 Without prejudice to the other provisions of this Agreement, the Company shall ensure that all O&M Construction in respect of which the Certification Procedure applies are constructed and completed in accordance with -

- a) the Design prepared in regard thereto in accordance with Paragraph 3.1; and
- b) the requirements and provisions of this Schedule

and, without prejudice to Clause 38 of this Agreement, so as to be in all aspects consistent with, and meet the requirements of, all statutory requirements and the Environmental Statement and the remainder of this Agreement.

#### **5. Access to the Design, O&M Site and Inspections**

- 5.1 Angus Council and any person authorised by it shall at all times have access to every Design prepared in respect of the O&M Construction and to all workshops and places where any part of the O&M Services are being carried out (including preparation of a Design) or whence materials manufactured articles and machinery are being obtained for the O&M Services 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 such Design, workshops and places contained in this Agreement, comply with all requirements of any Insurance and with all generally applicable rules of the O&M Contractor applicable to the O&M Site which are provided to them from time to time.
- 5.2 The Company shall provide all reasonable assistance and facilities required by Angus Council, the Statutory Undertakers and their respective contractors pursuant to the execution of all works in connection with or ancillary to the O&M Services (including the execution of Diversionary Works (as defined in Appendix 1 to this Part of this Schedule)) or otherwise requiring to be carried out on the O&M Site.
- 5.3 The Company shall give Angus Council timely notice of any inspection to be conducted in accordance with this Schedule. Angus Council shall be entitled to attend any such inspection upon giving notice to the Company.

#### **6. Superintendence by Company**

- 6.1 The Company shall give or provide all necessary superintendence having regard to the Company's obligations under the Agreement during the execution of the O&M Services. 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 carrying out of the O&M Services.
- 6.2 The Company's Representative or a person authorised by him shall be working on the O&M Site throughout the Project Period and shall give his time whilst on the O&M Site to the superintendence of the same. The Company and (without prejudice to Clause 13.6 of this Agreement) the Company's Representative shall be responsible for the safety of all operations carried out as part of the O&M Services.

**7. Works Not to be Covered up Without Approval**

- 7.1 Where Angus Council requires (acting reasonably) to inspect or measure any part of the O&M Construction that part of the O&M Construction 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 any O&M Construction which are about to be covered up or put out of view and to examine foundations before any O&M Construction 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 such foundation.
- 7.2 The Company shall uncover any part or parts of the O&M Construction 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 the satisfaction of Angus Council. If any such part or parts have previously been covered up or put out of view after compliance with the requirements of Paragraph 7.1 and are subsequently found to have been executed in accordance with this Agreement, the direction by Angus Council to uncover or make openings in or through the appropriate part of the O&M Construction shall be a Compensation Event.

**8. Removal of Improper Work, Materials or Employees**

- 8.1 Angus Council shall during the Project Period have power to order in writing:-
- a) the removal from the O&M Site 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 the Agreement, within such time or times as may be reasonably specified;
  - c) the removal and proper re-execution of any work or materials which are not in accordance with this Agreement, within such time or times as may be reasonably specified; and
  - 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.
- 8.2 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.
- 8.3 The non-exercise by Angus Council of its rights under Paragraph 8.1 shall not prejudice the power of Angus Council subsequently to disapprove such work or materials in accordance with Paragraph 8.1.

**9. Urgent Repairs**

- 9.1 If, by reason of any accident or other event occurring to or in connection with the O&M Services at any time during the Project Period, any remedial or other work or repair shall in the reasonable opinion of Angus Council be urgently necessary and the Company is unable or unwilling at once to do such work or repair, then without prejudice to all other rights and remedies in regard thereto Angus Council may by its own or other workmen do such work or repair as Angus Council may consider necessary. If the work or repair so done is work or a repair which the Company was responsible for under this Agreement all reasonable costs and charges necessarily and demonstrably incurred by Angus Council in so doing shall, on demand, be paid by the Company to Angus Council or may be deducted by Angus Council

from any monies dues or which may become due to the Company. Angus Council shall as soon after the occurrence of such emergency as may be reasonably practicable notify the Company thereof in writing.

- 9.2 The undertaking of urgent work or repairs pursuant to paragraph 9.1 shall not relieve the Company of any of its obligations under this Agreement, and the Company shall not be entitled to any extension of time or additional payment except as otherwise provided for in this Agreement.

**10. Payment of Fees and Compliance with Requirements, Rules and Regulations of the Relevant Authorities**

- 10.1 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 O&M Services and by the requirements, rules and regulations of all Relevant Authorities whose property or rights are or may be affected in any way by the O&M Services.

- 10.2 Subject to Clause 38 of this Agreement, the Company shall ascertain and conform in all respects with the provisions of any statutory requirement which may be applicable to the O&M Services and with the requirements, rules and regulations of all Relevant Authorities

**11. Paragraph Not Used**

**12. New Road and Street Works Act 1991**

- 12.1 In respect of all O&M Services to be carried out, the provisions set out in Appendix 1 to this Part of this Schedule shall apply.

**13. Patents, Rights and Design Trade Marks**

- 13.1 Notwithstanding any other provision 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 O&M Services.

**14. O&M Services Traffic**

- 14.1 The Company shall use every reasonable means to prevent any of the roads or bridges connecting with or on the routes to the O & M Site 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 extraordinary traffic as will inevitably arise from the moving of construction plant and material or manufactured or fabricated articles from and to the O & M Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

- 14.2 Save insofar as this Agreement otherwise provides the Company shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any roads communicating with the O & M Site to facilitate the movement of construction plant equipment or temporary works or other items or vehicles required in the execution of the O&M Services 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.

- 14.3 Without prejudice to the foregoing provisions of this Paragraph 14 the Company shall comply with the requirements given in this Agreement for routeing 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 routeing requirements.

**15. Nuisance**

- 15.1 The Company shall at all times take all reasonable steps necessary to ensure that the O&M Services and any testing, investigation and surveys in connection therewith are carried out in such manner as to minimise nuisance, interference or material disturbances to proprietors of property adjacent to, or in the vicinity of, the O & M Site and without prejudice to the foregoing generality shall comply with all relevant statutory requirements.
- 15.2 All operations necessary for the performance of the O&M Services 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.
- 15.3 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 5 of this Schedule.
- 15.4 Subject and without prejudice to any other provision 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, lochs, ditches, reservoirs and the like to prevent:-
- a) any interference with the supply to or abstraction from such source;
  - 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.
- 15.5 The Company shall take all reasonable measures to prevent damage loss injury or nuisance caused by mud, dirt, stones or other material used or generated whilst carrying out the O&M Services. This shall include but not be limited to ensuring that no fuel or lubricant, mud, dirt, stones or other material is spilled or deposited on any road whether or not it is open to traffic.
- 15.6 The Company shall take all reasonable measures to prevent damage loss injury or nuisance caused by smoke or dust generated whilst carrying out the O&M Services.

**16. Hours of Work**

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

**17. Fossils and Antiquities**

- 17.1 The Company shall have no entitlement to any fossils and antiquities which may be found on, in or under the O & M Site or in connection with the O&M Services. The Company shall immediately 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 O&M Services 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 concerning the object and its examination, excavation and removal.

## **18. Health and Safety**

- 18.1 The Company shall ensure that all the requirements of the Health and Safety at Work etc. Act 1974 are met under the Agreement.
- 18.2 In this Paragraph 18 “the Client” and “the Executive” have the same meaning as in the CDM Regulations.
- 18.3 The Company shall throughout the Project Period have full regard for the health and safety of all persons entitled to be upon the O & M Site (including Users) and shall keep the O & M Site in an orderly state appropriate to the avoidance of danger to such persons and shall inter alia in connection with the O&M Services provide and maintain at the Company’s own cost 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 O&M Services or for the safety and convenience of the public or others.
- 18.4 Without prejudice to Paragraph 18.3 of this section, within 5 Working Days of the Permit to Use 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 O&M Services 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 and shall not seek to withdraw, terminate or in any manner derogate from its declaration that it will act as, and its acceptance of its responsibilities as, the client for all the purposes of the Regulations.
- 18.5 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 or principal contractor for whom the Company is responsible pursuant to the terms of Clause 10.1 of the Agreement: arising under the CDM Regulations in connection with the O&M Services; and
  - b) any relevant 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.

## **19. Company’s Employees**

- 19.1 The Company shall employ or cause to be employed in and about the execution of the O&M Services and in the superintendence thereof only such persons as:-
  - 19.1.1 are careful, skilled and appropriately experienced (having regard to the function which they are fulfilling) in their several trades and callings;
  - 19.1.2 are properly trained and adequately supervised; and
  - 19.1.3 have all skills required for the performance of the O&M Services.

19.2 Angus Council shall be at liberty to object to and require the Company to remove from the O&M Services 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.

19.3 The Company shall ensure that there shall at all times be a sufficient number of such persons engaged in the provision of the O&M Services.

**20. Clearance of Project Sites on Completion**

20.1 On the completion of any O&M Services 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 works of every kind associated therewith and leave the whole of the O&M Site clean and in 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 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 works involving the alteration, 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 interests of safety;
  - b) so as to minimise the inconvenience to persons using the Project Road, 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 carrying out the O & M Services and otherwise performing the Operations, the Company shall 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 Diversionary Works and the Company will be responsible for all relevant costs recoverable under the 1991 Act, and shall make all payments in respect thereof 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) 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 of this Agreement.
- 3.5 Subject to Paragraph 3.6 of this Appendix, Angus Council will and shall procure that 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.
- 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 Sections 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 Scottish road works registers or equivalent 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 shall 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.

#### **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) identify measures and settle specifications with Statutory Undertakers in connection with Diversionary Works;
- b) notify Angus Council (to the extent that the relevant charge has not already been specified in any applicable regulations and subject to Angus Council's statutory obligations, Angus Council will have regard to the costs and expenses incurred and loss of revenue suffered by the Company as a result of such occupations of the Project Roads) 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), 133(3) and 133(4) of the 1991 Act and subject to paragraph 5.1 of this Part, give such notices, consents or directions to Statutory Undertakers as Angus Council may instruct the Company to issue in regard thereto;
- c) seek to recover directly from Statutory Undertakers, the costs incurred by the Company in connection with obtaining any orders pursuant to the Road Traffic Regulation Act 1984;
- d) if Section 133 of the 1991 Act is brought into force, and then subject to any applicable regulations, 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) 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, notify Statutory Undertakers, persons to whom Apparatus belongs and the Road Works Authorities for roads adjacent to the Project Roads of any proposed Major Works for Roads Purposes or Works for Road Purposes;
- f) carry out such inspections or investigation 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;
- g) 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 seek to recover directly from Statutory Undertakers any costs reasonably incurred;
- h) notify Angus Council of any works which may be required pursuant to Sections 124(5) and 125(4) of the 1991 Act and 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) 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, 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 seek to recover directly from Statutory Undertakers any costs reasonably incurred;

- j) if instructed by Angus Council participate in or conduct any conciliation or arbitration under the 1991 Act;
  - k) notify Angus Council of any unauthorised Apparatus in the Project Roads and remove same if instructed to do so by Angus Council; and
  - l) 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 carry out such works, operations or actions as instructed by Angus Council.
- 4.2 Without prejudice to Paragraphs 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 Licences 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 The Company shall note that :-
- 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 he 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) 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 refused to recognise or 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 of 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 to, 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 all meetings to the Company; and
- g) make available to the Company any respective 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.