

This is the Schedule 7 referred to in the A92 DBFO Project Agreement between Angus Council and Claymore Roads Limited

SCHEDULE 7: PAYMENT MECHANISM

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PART 1: CALCULATION OF UNITARY CHARGE

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1. Definitions

In this Schedule -

"Actual Usage Payment" is the payment calculated in accordance with paragraph 4.2 of Part 1 of this Schedule;

"Aggregate Provisional Payments" has the meaning given in paragraph 4.5 of Part 1 of this Schedule;

"Audited Heavy Vehicle Measurement Point Crossings" means the sum total of Heavy Vehicle traffic crossing in any direction over the Traffic Measurement Points in any Traffic Measurement Period audited and verified in accordance with Part 2 of Schedule 7;

"Audited Other Vehicle Measurement Point Crossings" means the sum total of Other Vehicle traffic crossing in any direction over the Traffic Measurement Points in any Traffic Measurement Period audited and verified in accordance with Part 2 of Schedule 7;

"Balancing Usage Payment" means the Balancing Usage Payment calculated in accordance with paragraph 4.5 of Part 1 of this Schedule;

"Band" means the Bands specified in Tables 2 and 3 to Part 1 of this Schedule;

"Band Cap" means the numbered Bands stipulating the maximum amount of Heavy Vehicle Annual Average Daily Traffic and Other Vehicle Annual Average Daily Traffic charged at the numbered Band Rate as specified in Tables 2 and 3 of Part 1 of this Schedule;

"Band Rate" means the Band Rates specified in Tables 2 and 3 to Part 1 of this Schedule;

"Base Monthly Payment" has the meaning given in paragraph 2.1;

"Breakdown Services" means any of The Automobile Association, The Royal Automobile Club or other organisation with objects similar to The Automobile Association or The Royal Automobile Club or other bona fide vehicle breakdown service;

"Breakdown Services Event" means any accident or other event on any part of the New A92 which the Breakdown Services attend which has not been caused by (i) the performance or non-performance by the Company or any of its subcontractors of any of the Company's obligations under this Agreement; and/or (ii) any other act or omission of the Company or its subcontractors;

"Connector Road" has the meaning given in DMRB Volume 6 Section 2 Part 1 TD22/92;

"Corresponding Day" means the day in the preceding Payment Year which fell on the same day of the week and that is nearest in date to the day on which the relevant Unavailability Event for which the calculation of

the LUC is being made occurred save that if either Party demonstrates to the other Party's reasonable satisfaction that the Daily Two Way Traffic on a day in the preceding Payment Year other than the Corresponding Day is more likely to be representative of the Daily Two Way Traffic on the day the Unavailability Event occurred had the Unavailability Event not occurred, that day shall be deemed to be the Corresponding Day;

"Daily Two Way Traffic" means on the New A92 the sum of Heavy Vehicle Annual Average Daily Traffic and Other Vehicle Annual Average Daily Traffic;

"Day" means a period of 24 hours commencing at 00.00hours;

"Deemed Unavailable" has the meaning given in paragraph 5.4 of Part 1 of this Schedule;

"Defective Equipment" means any Measuring Equipment which measures outside the measurement limits of accuracy;

"First Payment Month" has the meaning given in the definition of "Payment Month";

"First Payment Year" has the meaning given in the definition of "Payment Year";

"Heavy Vehicle Actual Usage Payment" means the Heavy Vehicle Actual Usage Payment for the Payment Year calculated in accordance with paragraph 4.3 of Part 1 of Schedule 7;

"Heavy Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 4.3 of Part 1 of Schedule 7;

"Heavy Vehicles" means vehicles greater than 5.2 metres in length;

"Indexation Factor" for a Payment Year means:-

(a) for the First Payment Year -

$$\left[1 + \left\{ \frac{d}{365} \times (IIF_a - 1) \right\} \right] \times IIF_b$$

where:

d is the number of Days from the Agreement Date to the end of the Indexation Year in which the Agreement Date falls (excluding in such computation the Agreement Date but including the date on which the Indexation Year ends)

IIF_a is the Indexation Increase Factor for the Indexation Year in which the Agreement Date falls; and

IIF_b is –

- (i) the Indexation Increase Factor for the Indexation Year; or
- (ii) the product of the Indexation Increase Factors for the Indexation Years if more than one,

between (and excluding both) the Indexation Year in which the Agreement Date falls and the Indexation Year in which the First Payment Year commences (being for example where the First Payment Year commences in February 2006, Indexation Year April 2005 to March 2006)

and

- (b) for each subsequent Payment Year “PY” –

$$IF_{PY-1} \times IIF_{PY-1}$$

where:

IF_{PY-1} is the Indexation Factor for the previous Payment Year; and

IIF_{PY-1} is the Indexation Increase Factor for the Indexation Year immediately preceding the commencement of Payment Year “py”;

“Indexation Increase Factor” for an Indexation Year “n” means –

- (i) 1.025; or
- (ii) if the RPI Increase for Indexation Year “n” is greater than 1.025 –

$$1.025 + [(RPIIncrease - 1.025) \times 0.2695]$$

where:

$$RPI \text{ Increase is } \frac{RPI_n}{RPI_{n-1}}$$

where:

RPI_n is the Retail Price Index for the month of February in Indexation Year “n”

RPI_{n-1} is the Retail Price Index for the month of February in the Indexation Year immediately preceding Indexation Year “n”;

"Indexation Year" means a period of 12 months ending on 31 March in any year (whether ending before or after the Agreement Date) and includes (for the avoidance of doubt) any Payment Year of 12 months;

"Lane Unavailability Charge" or **"LUC"** has the meaning given in paragraph 5.2 and paragraph 5.3 of Part 1 of Schedule 7;

"Measurement Limits of Accuracy" has the meaning given in paragraphs 5.1 – 5.3 of Part 2 of Schedule 7 in respect of Volumetric Traffic Measuring Equipment;

"Mobile Lane Closure" means any work on the New A92 equivalent to Type C Works as defined in Clause 2.1.1 of Column 1 Chapter 8 of the Traffic Signs Manual, 4th Impression (with amendments) 1997;

"Monthly Availability Payment" for a Payment Year means the Monthly Availability Payment calculated in accordance with paragraph 2.1 of Part 1 of Schedule 7;

"Monthly Availability Payments" means the Monthly Availability Payments set out in Table 1 to Part 1 of this Schedule;

"Monthly Lane Unavailability Charge" means the Monthly Lane Unavailability Charge (if any) calculated in accordance with paragraph 5 of Part 1 of Schedule 7;

"Monthly Performance Deduction" means the Monthly Performance Deduction (if any) calculated in accordance with paragraph 6 of Part 1 of Schedule 7;

"Monthly Report" has the meaning given in paragraph 1.2 of Part 7 of Schedule 4;

"Monthly Unitary Charge" means the Monthly Unitary Charge calculated in accordance with paragraph 2.1 of Part 1 of Schedule 7;

"Off-Peak Periods" means any period of time in any day other than between the hours of 7.00 am and 10.00 am and between the hours of 4.00 pm and 7.00 pm;

"Other Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 4.4 of Part 1 of Schedule 7;

"Other Vehicle Actual Usage Payment" means the Other Vehicle Actual Usage Payment for the Payment Year calculated in accordance with paragraph 4.4 of Part 1 of Schedule 7;

"Other Vehicles" means vehicles less than or equal to 5.2 metres in length;

"Payment Month" means each calendar month during the Full Service Period save for (i) the First Payment Month (which shall be the period beginning on the Permit to Use Date and ending on the last day of the

same calendar month) and (ii) the Final Payment Month (which shall begin on the first day of the month in which the Termination Date occurs and end on the Termination Date);

"Payment Month Days" has the meaning given in paragraph 3 of Part 1 of Schedule 7;

"Payment Year" means each period of 12 months ending on 31 March during the Full Service Period provided that:

- (a) the first Payment Year shall comprise the period from (and including) the Permit to Use Date up to the first 31 March following the issue of the Permit to Use (the **"First Payment Year"**); and
- (b) the final Payment Year shall be the period from (and including) 1 April immediately prior to the Agreement Expiry Date to the Agreement Expiry Date;

"Performance Failure Points" means the number of points ascribed to a performance failure as stipulated in Table 6 of Part 1 of Schedule 7, as appropriate;

"Periodicity of Accrual of Points" means periodicity of accrual of points relating to performance failures as stipulated in Table 6 of Part 1 of Schedule 7, as appropriate.

"Permitted Lane Closure" means:-

- (i) in the period between the Day after the 10th anniversary of the end of the First Payment Year and the 20th anniversary of the end of the First Payment Year an aggregate period of up to eight (8) weeks during which the Company is permitted to carry out works that make the New A92 Unavailable or Deemed Unavailable; and
- (ii) in the period between the Day after the 20th anniversary of the end of the First Payment Year until the Agreement Expiry Date the Company will be permitted to carry out works that make the New A92 Unavailable or Deemed Unavailable for an aggregate period of up to sixteen (16) weeks;

provided that:-

- (a) where during any period more than one part or section of the New A92 is Unavailable or Deemed Unavailable for the purpose of carrying out any such works, that period (notwithstanding that more than one part or section is affected) will count as a single period only for which a Permitted Lane Closure may be applied, subject to the Company carrying out the works in accordance with paragraph 7 of Part 2 of Schedule 4 (Restrictions on Lane Closures); and
- (b) if such works make the New A92 Unavailable or Deemed Unavailable for a period of less than 7 consecutive days they shall

be deemed for the purposes of this definition to have made the New A92 Unavailable or Deemed Unavailable for 7 consecutive days, or if the balance of days in the Permitted Lane Closure periods allowed for in this definition is less than 7 days, the greater of such balance of days and the number of days the New A92 is Unavailable or Deemed Unavailable; and

- (c) no more than 8 weeks' Permitted Lane Closures in total may be applied in any one Payment Year.

For the avoidance of doubt, in the period between the commencement of the First Payment Year and the 10th anniversary of the end of the First Payment Year there shall be no Permitted Lane Closures;

"Provisional Heavy Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 3 of Part 1 of Schedule 7;

"Provisional Heavy Vehicle Monthly Usage Payment" is the Provisional Heavy Vehicle Monthly Usage Payment calculated in accordance with paragraph 3.2 of Part 1 of Schedule 7;

"Provisional Monthly Usage Payment" is the Provisional Monthly Usage Payment calculated in accordance with paragraph 3 of Part 1 of Schedule 7;

"Provisional Other Vehicle Annual Average Daily Traffic" has the meaning given in paragraph 3 of Part 1 of Schedule 7;

"Provisional Other Vehicle Monthly Usage Payment" is the Provisional Other Vehicle Monthly Usage Payment calculated in accordance with paragraph 3.3;

"Relevant Emergency" means any accident or other event on any part of the New A92 which the emergency services attend which has not been caused by a failure of the Company to comply with its obligations under this Agreement;

"Relevant Performance Failure Points" means the number of Performance Failure Points calculated in accordance with (a) in the case of failure by the Company to comply with paragraph 7.1 of Part 1 of this Schedule during the Restricted Service Period, paragraph 7.3 of Part 1 of this Schedule; and (b) in all other cases paragraph 6.2 of Part 1 of this Schedule;

"Relevant Trigger" has the meaning given in proviso 2 of Table 6 to Part 1 of this Schedule 7;

"Remedy Period" means the periods set out in the column headed "Remedy Period" in Table 5, to Part 1 of Schedule 7;

"Restricted Service Period Monthly Performance Deduction" has the meaning given in paragraph 2 of Part 1 of Schedule 7;

"Road Section" means each of the 4 lengths of New A92 identified in Annex 1 to Part 2 of Schedule 7, the traffic flow in which is represented by that measured on the Measuring Equipment located at the Traffic Measurement Point lying within that Road Section;

"Traffic Flow Period" means any of the Traffic Flow Periods set out in Tables 4.1 to 4.3 to Part 1 of Schedule 7 being those periods during any given day falling between the times of day (stated in 24 hour clock) stipulated in those tables, the starting time only of each period to be included within that period;

"Traffic Measurement Period" means (a) in the case of the First Payment Year the period beginning on the Permit to Use Date and ending on 31 December which falls on or after the first anniversary of the Permit to Use Date; (b) in the case of each Payment Year thereafter other than the Final Payment Year each period of 12 months ending on 31 December during the Full Service Period; and (c) in the case of the Final Payment Year the period beginning on the last 1 January falling within the Full Service Period and ending on the Agreement Expiry Date;

"Traffic Measurement Period Days" has the meaning given in paragraph 4 of Part 1 of Schedule 7;

"Traffic Measurement Points" means the points on the New A92 or any one or more of them at which Volumetric Traffic Measuring Equipment are located as stipulated at Annex 1 to Part 2 of Schedule 7 or any other point or points at which such equipment is located following an Angus Council or Company Change as referred to in paragraph 2.1 and 15.1 of Part 2 of Schedule 7;

"Unavailable" has the meaning given in paragraph 5.3 of Part 1 of Schedule 7;

"Unavailability Event" means an event which results in all or part of the New A92 being Unavailable or Deemed Unavailable save that:

- (a) when two or more Unavailability Events occur during a single Traffic Flow Period without prejudice to the guidelines set out in chapter 8 of the Traffic Signs Manual, 4th impression (with amendments) 1997, Unavailability Events which start and finish within 4 kilometres of the start and finish of each other shall be treated as one Unavailability Event; and
- (b) each failure which causes any part of the New A92 to be Deemed Unavailable shall be deemed to be one Unavailability Event in the lane which it affects (irrespective of the extent to which it effects that lane);

"Verification" shall have the meaning given in paragraphs 9.1 to 9.3 of Part 2 of Schedule 7 in respect of Volumetric Traffic Measuring Equipment;

"Volumetric Traffic Measurement Equipment" has the meaning given in paragraph 3.1 of Part 2 of Schedule 7; and

"**Volumetric Traffic Measurement Point**" has the meaning given in paragraph 2.1 of Part 2 of Schedule 7.

2. Monthly Unitary Charge

2.1 Subject to paragraph 2.2 and 2.3 of this Part 1 of Schedule 7, and to paragraph 13 of Part 2 of this Schedule 7, the Monthly Unitary Charge (MUC) for a Payment Month (PMn) shall be calculated as follows:–

$$\text{MUC}_n = [\text{BMP}_n - (\text{MLUC}_{n-1} + \text{MPD}_{n-1} + \text{RMPD})] \times \text{IF}$$

Where: -

BMP_n is the Base Monthly Payment being the aggregate of:

- (a) the Monthly Availability Payment for the Payment Year, in which PMn falls as set out in Table 1 to Part 1 of this Schedule; and
- (b) the Provisional Monthly Usage Payment (PMUP) for the Payment Year in which the PMn falls, calculated in accordance with paragraph 3 of this Part 1;

MLUC_{n-1} is the Monthly Lane Unavailability Charges (if any), for the Payment Month immediately preceding PMn calculated in accordance with paragraph 5;

MPD_{n-1} is the Monthly Performance Deduction (if any), for the Payment Month immediately preceding PMn calculated in accordance with paragraph 6;

RMPD is the Restricted Service Period Monthly Performance Deduction applicable during the first twelve Payment Months (if any) calculated in accordance with paragraph 7 of Part 1 of this Schedule; and

IF is the Indexation Factor for the Payment Year in which PMn falls.

2.2 Where the First Payment Month or Final Payment Month is less than a complete calendar month, for the purposes of calculating the Monthly Unitary Charge the Base Monthly Payment shall be reduced by multiplying it by the following factor:-

Number of Days in First/Final Payment Month divided by the Number of Days in calendar month in which the First/Final Payment Month Falls.

In determining the Monthly Unitary Charge for the Final Payment Month, in accordance with this paragraph there shall be deducted all Monthly Lane Unavailability Charges and Monthly Performance Deductions applicable to the Final Payment Month as well as to

the Payment Month immediately preceding the Final Payment Month and the Monthly Unitary Charge in respect of the Final Payment Month shall be invoiced within 90 Working Days of the Termination Date and shall be payable within 30 Working Days thereafter.

- 2.3 Where all or part of a PM_n falls during the period beginning three months after the Permit to Use Date and ending on the New Works Final Completion the Monthly Unitary Charge shall be reduced by the sum calculated as follows:-

$$\text{BMP} \times Y \times \frac{1}{10}$$

where:

- (a) $Y = 1$ where New Works Final Completion has not occurred by the Payment Month "n"; or
- (b) where New Works Final Completion occurs during Payment Month "n",

$$Y = \frac{\text{Number of Days in PM}_n \text{ prior to the date of New Works Final Completion}}{\text{Number of Days in PM}_n}$$

- 2.4 If the Monthly Unitary Charge as calculated in accordance with this paragraph 2 results in a negative amount Angus Council will deduct the negative amount from the Monthly Unitary Charge payable in respect of the two subsequent Payment Months only (and any remaining negative amount will be waived) provided that no negative amount shall be carried forward (and shall be disregarded):

- (a) to the extent arising as a consequence of a Force Majeure Event or a Relief Event; or
- (b) to the extent arising as a consequence of the application of this paragraph,

- 2.5 Monthly Lane Unavailability Charges or Monthly Performance Deductions for the Payment Month immediately preceding PM_n which are not included in the calculation under paragraph 2.1 for PM_n may be deducted from any of the six Monthly Unitary Charge payments immediately following the agreement or determination of such sums.

3. Calculation of Provisional Monthly Usage Payment

- 3.1 The Provisional Monthly Usage Payment (PMUP) shall be calculated as follows:-

$$\text{PMUP} = \text{PHVMUP} + \text{POVMUP};$$

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Where:-

PHVMUP is the Provisional Heavy Vehicle Monthly Usage Payment calculated in accordance with paragraph 3.2; and

POVMUP is the Provisional Other Vehicle Monthly Usage Payment calculated in accordance with paragraph 3.3.

3.2 The PHVMUP for any PMn shall be:-

(a) Where $PHVAADT \leq \text{Band 1 Cap}$:-

£0.00;

(b) Where $\text{Band 1 Cap} < PHVAADT \leq \text{Band 2 Cap}$:-

$PMD \times \text{Band 2 Rate} \times (PHVAADT - \text{Band 1 Cap})$;

(c) Where $\text{Band 2 Cap} < PHVAADT \leq \text{Band 3 Cap}$:-

$[PMD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] + [PMD \times \text{Band 3 Rate} \times (PHVAADT - \text{Band 2 Cap})]$;

(d) Where $\text{Band 3 Cap} < PHVAADT \leq \text{Band 4 Cap}$:-

$[PMD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] + [PMD \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] + [PMD \times \text{Band 4 Rate} \times (PHVAADT - \text{Band 3 Cap})]$;

(e) Where $\text{Band 4 Cap} < PHVAADT \leq \text{Band 5 Cap}$:-

$[PMD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] + [PMD \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] + [PMD \times \text{Band 4 Rate} \times (\text{Band 4 Cap} - \text{Band 3 Cap})]$

Where for the purpose of this paragraph 3.2:-

PMD = the Payment Month Days being the number of days in the PMn.

PHVAADT = the Provisional Heavy Vehicle Annual Average Daily Traffic for the New A92 being the HVAADT for the New A92 calculated in accordance with paragraph 4.3 for the Traffic Measurement Period immediately preceding the commencement of the Payment Year in which PMn falls save for any PMn which falls prior to three months after the end of the First Traffic Measurement Period where the PHVAADT shall be 1,425.

- 3.3 The POVMUP for any PMn shall be:-
- (a) Where $POVAADT \leq \text{Band 1 Cap}$:-
£0.00;
 - (b) Where $\text{Band 1 Cap} < POVAADT \leq \text{Band 2 Cap}$:-
 $PMD \times \text{Band 2 Rate} \times (POVAADT - \text{Band 1 Cap})$.
 - (c) Where $\text{Band 2 Cap} < POVAADT \leq \text{Band 3 Cap}$:-
 $[PMD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] +$
 $[PMD \times \text{Band 3 Rate} \times (POVAADT - \text{Band 2 Cap})]$.
 - (d) Where $\text{Band 3 Cap} < POVAADT \leq \text{Band 4 Cap}$:-
 $[PMD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] +$
 $[PMD \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] +$
 $[PMD \times \text{Band 4 Rate} \times (POVAADT - \text{Band 3 Cap})]$; and
 - (e) Where $\text{Band 4 Cap} < POVAADT \leq \text{Band 5 Cap}$:-
 $[PMD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] +$
 $[PMD \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] +$
 $[PMD \times \text{Band 4 Rate} \times (\text{Band 4 Cap} - \text{Band 3 Cap})]$

Where for the purposes of this paragraph 3.3:-

PMD = the Payment Month Days being the number of days in the PMn.

POVAADT = the Provisional Other Vehicle Annual Average Daily Traffic for the New A92 being the OVAADT for the New A92 calculated in accordance with paragraph 4.4 for the Traffic Measurement Period immediately preceding the commencement of the Payment Year in which PMn falls save for any PMn which falls prior to three months after the end of the First Traffic Measurement Period where the POVAADT shall be 15,826.

4. Usage Payment Reconciliation

- 4.1 As soon as practicable but in any event within 2 Months of the end of each Traffic Measurement Period the Company shall intimate to Angus Council the Actual Usage Payment calculation and the Balancing Usage Payment reconciliation for that Traffic Measurement Period.

- 4.2 The Actual Usage Payment (AUP) for a Traffic Measurement Period shall be calculated as follows:-

$$\text{AUP} = \text{HVAUP} + \text{OVAUP}$$

Where:-

HVAUP is the Heavy Vehicle Actual Usage Payment for the Traffic Measurement Period, calculated in accordance with paragraph 4.3; and

OVAUP is the Other Vehicle Actual Usage Payment for the Traffic Measurement Period, calculated in accordance with paragraph 4.4.

- 4.3 The HVAUP for a Traffic Measurement Period shall be:-

- (a) Where $\text{HVAADT} \leq \text{Band 1 Cap}$:-

£0.00;

- (b) Where $\text{Band 1 Cap} < \text{HVAADT} \leq \text{Band 2 Cap}$:-

$\text{TMPD} \times \text{Band 2 Rate} \times (\text{HVAADT} - \text{Band 1 Cap})$;

- (c) Where $\text{Band 2 Cap} < \text{HVAADT} \leq \text{Band 3 Cap}$:-

$[\text{TMPD} \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] +$
 $[\text{TMPD} \times \text{Band 3 Rate} \times (\text{HVAADT} - \text{Band 2 Cap})$];

- (d) Where $\text{Band 3 Cap} < \text{HVAADT} \leq \text{Band 4 Cap}$:-

$[\text{TMPD} \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] +$
 $[\text{TMPD} \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] +$
 $[\text{TMPD} \times \text{Band 4 Rate} \times (\text{HVAADT} - \text{Band 3 Cap})$]; and

- (e) Where $\text{Band 4 Cap} < \text{HVAADT} \leq \text{Band 5 Cap}$:-

$[\text{TMPD} \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] +$
 $[\text{TMPD} \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] +$
 $[\text{TMPD} \times \text{Band 4 Rate} \times (\text{Band 4 Cap} - \text{Band 3 Cap})$].

Where for the purposes of this paragraph 4.3:-

TMPD = the Traffic Measurement Period Days being the number of Days in that Traffic Measurement Period.

HVAADT = the Heavy Vehicle Annual Average Daily Traffic for the New A92 being:-

$$\frac{\text{AHVMPC}}{1460}$$

except for the last Traffic Measurement Period when AHVMPC shall be divided by four times the TMPD during that period.

AHVMPC = the Audited Heavy Vehicle Measurement Point Crossings on the New A92 during the period commencing on 1 January immediately preceding the last day of the Traffic Measurement Period and ending on the last day of the Traffic Measurement Period.

4.4 The OVAUP for a Traffic Measurement Period shall be:-

(a) Where $OVAADT \leq \text{Band 1 Cap}$:-

£0.00;

(b) Where $\text{Band 1 Cap} < OVAADT \leq \text{Band 2 Cap}$:-

$TMPD \times \text{Band 2 Rate} \times (OVAADT - \text{Band 1 Cap})$;

(c) Where $\text{Band 2 Cap} < OVAADT \leq \text{Band 3 Cap}$:-

$[TMPD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] + [TMPD \times \text{Band 3 Rate} \times (OVAADT - \text{Band 2 Cap})]$;

(d) Where $\text{Band 3 Cap} < OVAADT \leq \text{Band 4 Cap}$:-

$[TMPD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] + [TMPD \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] + [TMPD \times \text{Band 4 Rate} \times (OVAADT - \text{Band 3 Cap})]$;

(e) Where $\text{Band 4 Cap} < OVAADT \leq \text{Band 5 Cap}$:-

$[TMPD \times \text{Band 2 Rate} \times (\text{Band 2 Cap} - \text{Band 1 Cap})] + [TMPD \times \text{Band 3 Rate} \times (\text{Band 3 Cap} - \text{Band 2 Cap})] + [TMPD \times \text{Band 4 Rate} \times (\text{Band 4 Cap} - \text{Band 3 Cap})]$.

Where for the purposes of this paragraph 4.3:-

TMPD = the Traffic Measurement Period Days being the number of Days in that Traffic Measurement Period.

OVAADT = the Other Vehicle Annual Average Daily Traffic for the New A92 being:-

$\frac{AOVMPC}{1460}$

except for the last Traffic Measurement Period when AHVMPC shall be divided by four times the TMPD during that period.

AOVMPC = the Audited Other Vehicle Measurement Point Crossings on the New A92 during the period commencing on 1 January immediately preceding the last Day of the Traffic Measurement Period and ending on the last day of the Traffic Measurement Period.

4.5 The Balancing Usage Payment shall be the difference between the Actual Usage Payment for the relevant Traffic Measurement Period and the aggregate of the Provisional Monthly Usage Payments for that Traffic Measurement Period (the "Aggregate Provisional Payments").

4.6 Where the Actual Usage Payment for any Traffic Measurement Period exceeds the Aggregate Provisional Payments for that Period the difference shall be paid by Angus Council to the Company on the later of:

- (i) 20 Working Days after receipt by Angus Council of a VAT invoice for such amount; and
- (ii) the day which is the first day of the Payment Year which commences after the end of the Traffic Measurement Period.

4.7 Where the Aggregate Provisional Payments for any Traffic Measurement Period exceed the Actual Usage Payments for that period Angus Council shall be entitled to deduct such amount from any of the six immediately following payments of Monthly Unitary Charge due under this Agreement following the agreement or determination of such amount.

5. **Calculation of Monthly Lane Unavailability Charge**

5.1 The Monthly Lane Unavailability Charge (MLUC) shall be calculated in accordance with paragraph 5.2.

$$5.2 \quad MLUC = \sum_{n=1}^s LUC_n$$

Where:-

s represents the last Unavailability Event which occurs in the relevant Payment Month;

n represents an Unavailability Event which occurs in the relevant Payment Month;

LUC_n is the Lane Unavailability Charge for an Unavailability Event determined in accordance with Table 4.1 or 4.2 (as appropriate) but subject to the following:-

-
- (a) if the Unavailability Event results in:-
- (i) a lane closure on one carriageway of the New A92 (a lane being closed for this purpose if the lane is Unavailable) the LUC shall be determined by reference to Table 4.1; or
 - (ii) the closure of one or both carriageways of the New A92 the LUC shall be determined by reference to Table 4.2. For the avoidance of doubt (a) the closure of both carriageways of the same section of the New A92 shall be treated as two Unavailability Events and (b) where Table 4.2 applies to an Unavailability Event Table 4.1 shall not be applied to that same Unavailability Event.;
- (b) the relevant Traffic Flow Period shall be the Traffic Flow Period in which the Unavailability Event occurred save that:-
- i) subject to paragraph (ii) below if the Unavailability Event persists during more than one Traffic Flow Period for the avoidance of doubt the Unavailability Event shall be deemed to have occurred in each Traffic Flow Period during which it persists;
 - ii) if the Unavailability Event has been caused as a result of any part of the New A92 being Deemed Unavailable the Unavailability Event shall be deemed to have commenced at 07.00 hours on the Day on which the Deemed Unavailability Event occurred and finished at 19.00 hours on the Day on which the Deemed Unavailability Event finishes; and
 - iii) subject to paragraph 5.5 if the Unavailability Event has occurred as a result of a Mobile Lane Closure it shall be deemed to have commenced and finished in the Traffic Flow Period in which it first occurred;
- (c) the relevant Daily Two Way Traffic shall be the Daily Two Way Traffic on the Corresponding Day for the purpose of determining the LUC applicable to any Unavailability Event except where the Unavailability Event occurs during the first Traffic Measurement Period when the relevant Daily Two Way Traffic shall be deemed to be the figure for the Traffic Measurement Point corresponding to the Road Section in which the Unavailability Event occurred as specified in Annex 2 to Part 2 of this Schedule;
- (d) if the Unavailability Event has occurred as a result of:-
- (i) works required to be undertaken under the New Roads and Street Works Act 1991; or

- (ii) a failure to comply with the requirements set out in Item 3a of Table 5 (Deemed Unavailability);

the Lane Unavailability Charge which applies (determined in accordance with this paragraph 5.2) shall be reduced by 50%; and

- (e) for the purpose of calculating the New A92 Monthly Lane Unavailability Charge any reference to a carriageway shall be deemed to include the Connector Road to that carriageway.

5.3 Subject to paragraph 5.5, the New A92 (or any part thereof) shall be Unavailable at any time during which the New A92 (or any part thereof) is not available for use by Users as a public road within the meaning of the Roads (Scotland) Act 1984.

5.4 Subject to paragraph 5.5, the New A92 (or any part thereof) shall be Deemed Unavailable at any time during which the New A92 (or any part thereof) fails to meet those requirements of Schedule 4 (O&M Requirements) to the extent set out in Table 5 to this Part 1 of Schedule 7 for a period in excess of the Remedy Period (if any) as may be applicable set out in that Table.

5.5 The New A92 (or any part thereof) shall not be Unavailable or Deemed Unavailable to the extent that the Unavailability or Deemed Unavailability is due to:-

5.5.1 a Compensation Event or Notified Departure; or

5.5.2 implementation of an Angus Council Change or occurrence of a Qualifying Change in Law; or

5.5.3 Mobile Lane Closures which are carried out during Off-Peak Periods; or

5.5.4 the occurrence of a Relevant Emergency from the time of the occurrence of the Relevant Emergency until 1 hour after the Police have given clearance for the reopening to Users of that part of the New A92 which has been affected by the Relevant Emergency; or

5.5.5 the occurrence of a Breakdown Services Event from the time of the occurrence of the Breakdown Services Event until 1 hour after the Breakdown Services have vacated that part of the New A92 which has been affected by the Breakdown Services Event; or

5.5.6 a Permitted Lane Closure.

Where under this Clause the New A92 would be Unavailable or Deemed Unavailable but for the circumstances specified in 5.5.1 to 5.5.6 above, the relevant Daily Two Way Traffic shall be the

Daily Two Way Traffic on the Corresponding Day for the purpose of determining the Monthly Usage Payment. In these circumstances the Corresponding Day shall be determined (for the avoidance of doubt) as if the New A92 had been Unavailable or Deemed Unavailable on the day when the New A92 would have been Unavailable or Deemed Unavailable but for the circumstances in paragraphs 5.5.1 to 5.5.6 above.

6. Calculation of Monthly Performance Deduction during the Full Service Period

6.1 The Monthly Performance Deduction for a Payment Month shall be calculated as follows:-

$$\text{MPD} = \text{BMP} \times \text{PD}$$

Where:-

MPD is the Monthly Performance Deduction.

BMP is the Base Monthly Payment for the Payment Month, calculated in accordance with paragraph 2.1.

PD is the Performance Deduction Percentage calculated in accordance with Table 7a to this Part 1 of Schedule 7 which corresponds to the number of Relevant Performance Failure Points for that Payment Month.

6.2 The number of relevant Performance Failure Points for any Payment Month shall be the number of Performance Failure Points calculated in accordance with Table 6 and the provisos to that Table.

7. Accrual of Performance Failure Points during the Restricted Services Period

7.1 Notwithstanding any other provisions in this Schedule and subject to paragraph 7.2, Performance Failure Points shall accrue in respect of any failure by the Company during the Restricted Service Period:

(a) to take the action required for a Category 1 Defect as detailed in items 1.1 to 1.3 of Table 6; and

(b) to meet the other performance standards set out in Table 6 (in so far as the requirements they refer to apply during the Restricted Service Period).

7.2 The Restricted Service Period Monthly Performance Deduction for a Payment Month shall be calculated as follows:-

$$\text{RMPD} = \text{BMP} \times \text{PD}$$

Where:-

RMPD is the Restricted Service Period Monthly Performance Deduction.

BMP is the Base Monthly Payment for the Payment Month, calculated in accordance with paragraph 2.1.

PD is the Performance Deduction Percentage calculated in accordance with Table 7b to this Part 1 of Schedule 7 which corresponds to the number of Relevant Performance Failure Points incurred during the Restricted Services Period.

The Restricted Service Period Monthly Performance Deduction shall apply for the first 12 months immediately following the Permit To Use Date.

- 7.3 The number of Relevant Performance Failure Points for any Payment Month shall be the number of Performance Failure Points calculated in accordance with Table 6 and the provisos to that Table.
- 7.4 Performance Failure Points accrued during the Restricted Services Period will not be taken into account in the accrual of Performance Failure Points for an Operations Failure Event.

Table 1 to Part 1 of Schedule 7

The Monthly Availability Payment for each Payment Year is £312,797

Table 2 to Part 1 of Schedule 7 The band rates are stated in pence per vehicle per day to a maximum of one decimal place of pence

Payment Year	Band 1			Band 2			Band 3			Band 4			Band 5	
	From	To	Rate	From	To	Rate	From	To	Rate	From	To	Rate	From	To
1	0	406	0	407	1,352	0.00	1,353	1,428	0.00	1,429	1,454	0.00	1,455	-
2	0	408	0	409	1,361	0.27	1,362	1,442	0.51	1,443	1,468	1.50	1,469	-
3	0	411	0	412	1,369	0.27	1,370	1,455	0.48	1,456	1,483	1.41	1,484	-
4	0	413	0	414	1,378	0.27	1,379	1,469	0.46	1,470	1,498	1.34	1,499	-
5	0	416	0	417	1,387	0.27	1,388	1,482	0.44	1,483	1,513	1.27	1,514	-
6	0	419	0	420	1,396	0.26	1,397	1,496	0.42	1,497	1,529	1.20	1,530	-
7	0	422	0	423	1,405	0.26	1,406	1,510	0.40	1,511	1,544	1.14	1,545	-
8	0	424	0	425	1,415	0.26	1,416	1,524	0.38	1,525	1,561	1.09	1,562	-
9	0	427	0	428	1,424	0.26	1,425	1,539	0.36	1,540	1,577	1.04	1,578	-
10	0	430	0	431	1,434	0.26	1,435	1,554	0.35	1,555	1,594	0.99	1,595	-
11	0	433	0	434	1,444	0.25	1,445	1,569	0.33	1,570	1,611	0.95	1,612	-
12	0	436	0	437	1,453	0.25	1,454	1,584	0.32	1,585	1,628	0.90	1,629	-
13	0	439	0	440	1,462	0.25	1,463	1,598	0.31	1,599	1,644	0.86	1,645	-
14	0	441	0	442	1,470	0.25	1,471	1,612	0.29	1,613	1,660	0.82	1,661	-
15	0	444	0	445	1,479	0.25	1,480	1,626	0.28	1,627	1,676	0.79	1,677	-
16	0	446	0	447	1,488	0.25	1,489	1,641	0.27	1,642	1,693	0.76	1,694	-
17	0	449	0	450	1,496	0.25	1,497	1,655	0.26	1,656	1,710	0.72	1,711	-
18	0	451	0	452	1,504	0.25	1,505	1,669	0.25	1,670	1,726	0.69	1,727	-
19	0	454	0	455	1,512	0.24	1,513	1,683	0.24	1,684	1,743	0.66	1,744	-
20	0	456	0	457	1,519	0.24	1,520	1,697	0.23	1,698	1,759	0.63	1,760	-
21	0	458	0	459	1,527	0.24	1,528	1,711	0.23	1,712	1,775	0.61	1,776	-
22	0	461	0	462	1,535	0.24	1,536	1,725	0.22	1,726	1,792	0.59	1,793	-
23	0	463	0	464	1,543	0.24	1,544	1,739	0.21	1,740	1,809	0.57	1,810	-
24	0	465	0	466	1,551	0.24	1,552	1,753	0.21	1,754	1,826	0.54	1,827	-
25	0	468	0	469	1,559	0.24	1,560	1,768	0.20	1,769	1,844	0.52	1,845	-

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Schedule 7 – Payment Mechanism
Part 1: Calculation of Unitary Charge

26	0	470	0	471	1,567	0.24	1,568	1,782	0.19	1,783	1,861	0.51	1,862	-
27	0	472	0	473	1,575	0.23	1,576	1,797	0.19	1,798	1,878	0.49	1,879	-
28	0	475	0	476	1,583	0.23	1,584	1,812	0.18	1,813	1,897	0.47	1,898	-
29	0	477	0	478	1,591	0.23	1,592	1,827	0.18	1,828	1,914	0.45	1,915	-
30	0	480	0	481	1,599	0.23	1,600	1,842	0.17	1,843	1,933	0.44	1,934	-
31	0	482	0	483	1,605	0.23	1,606	1,854	0.17	1,855	1,946	0.43	1,947	-

Table 3 to Part 1 of Schedule 7 The band rates are stated in pence per vehicle per day to a maximum of one decimal place of pence.

Payment Year	Band 1			Band 2			Band 3			Band 4			Band 5		
	From	To	Rate	From	To	Rate	From	To	Rate	From	To	Rate	From	To	Rate
1	0	4,513	0	4,514	15,043	0.00	15,044	15,888	0.00	15,889	16,167	0.00	16,168	-	
2	0	4,570	0	4,571	15,232	0.25	15,233	16,129	0.48	16,130	16,424	1.40	16,425	-	
3	0	4,620	0	4,621	15,402	0.25	15,403	16,351	0.46	16,352	16,665	1.31	16,666	-	
4	0	4,672	0	4,673	15,573	0.25	15,574	16,576	0.43	16,577	16,909	1.24	16,910	-	
5	0	4,724	0	4,725	15,745	0.24	15,746	16,805	0.41	16,806	17,159	1.17	17,160	-	
6	0	4,776	0	4,777	15,920	0.24	15,921	17,037	0.39	17,038	17,412	1.10	17,413	-	
7	0	4,828	0	4,829	16,093	0.24	16,094	17,268	0.37	17,269	17,663	1.04	17,664	-	
8	0	4,877	0	4,878	16,255	0.24	16,256	17,491	0.35	17,492	17,907	0.99	17,908	-	
9	0	4,926	0	4,927	16,420	0.23	16,421	17,716	0.33	17,717	18,154	0.94	18,155	-	
10	0	4,976	0	4,977	16,585	0.23	16,586	17,945	0.32	17,946	18,406	0.89	18,407	-	
11	0	5,026	0	5,027	16,753	0.23	16,754	18,177	0.30	18,178	18,660	0.85	18,661	-	
12	0	5,072	0	5,073	16,906	0.23	16,907	18,395	0.29	18,396	18,905	0.81	18,906	-	
13	0	5,104	0	5,105	17,015	0.23	17,016	18,568	0.28	18,569	19,104	0.77	19,105	-	
14	0	5,137	0	5,138	17,124	0.22	17,125	18,743	0.27	18,744	19,302	0.74	19,303	-	
15	0	5,170	0	5,171	17,233	0.22	17,234	18,920	0.26	18,921	19,502	0.71	19,503	-	
16	0	5,203	0	5,204	17,343	0.22	17,344	19,098	0.25	19,099	19,707	0.68	19,708	-	
17	0	5,232	0	5,233	17,440	0.22	17,441	19,262	0.24	19,263	19,900	0.65	19,901	-	
18	0	5,248	0	5,249	17,492	0.22	17,493	19,381	0.23	19,382	20,047	0.62	20,048	-	
19	0	5,263	0	5,264	17,544	0.22	17,545	19,501	0.22	19,502	20,195	0.59	20,196	-	
20	0	5,279	0	5,280	17,597	0.22	17,598	19,622	0.21	19,623	20,342	0.57	20,343	-	
21	0	5,295	0	5,296	17,650	0.22	17,651	19,743	0.21	19,744	20,491	0.55	20,492	-	
22	0	5,311	0	5,312	17,702	0.22	17,703	19,864	0.20	19,865	20,640	0.53	20,641	-	
23	0	5,325	0	5,326	17,752	0.22	17,753	19,985	0.19	19,986	20,786	0.51	20,787	-	
24	0	5,340	0	5,341	17,801	0.22	17,802	20,105	0.19	20,106	20,939	0.50	20,940	-	

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25	0	5,355	0	5,356	17,851	0.22	17,852	20,227	0.18	20,228	21,093	0.48	21,094	-
26	0	5,370	0	5,371	17,901	0.22	17,902	20,349	0.18	20,350	21,243	0.46	21,244	-
27	0	5,385	0	5,386	17,951	0.21	17,952	20,472	0.17	20,473	21,398	0.45	21,399	-
28	0	5,400	0	5,401	18,001	0.21	18,002	20,596	0.17	20,597	21,557	0.43	21,558	-
29	0	5,416	0	5,417	18,052	0.21	18,053	20,721	0.16	20,722	21,710	0.42	21,711	-
30	0	5,431	0	5,432	18,102	0.21	18,103	20,846	0.16	20,847	21,874	0.40	21,875	-
31	0	5,442	0	5,443	18,140	0.21	18,141	20,941	0.15	20,942	21,988	0.39	21,989	-

Table 4 to Part 1 of Schedule 7

Lane Unavailability Charge

Table 4.1 – Lane closure on one carriageway of New A92 (per 4 km closure or part thereof)

Daily Two Way Traffic	Traffic Flow Period			
	1900-0700	0700-1000	1000-1600	1600-1900
	£	£	£	£
≤11,000	0	400	400	600
11,001-12,000	0	450	450	675
12,001-13,000	0	500	500	750
13,001-14,000	0	550	550	825
14,001-15,000	0	600	600	900
15,001-16,000	0	670	670	1000
16,001-17,000	0	740	740	1100
17,001-18,000	0	810	810	1200
18,001-19,000	0	880	880	1300
19,001-20,000	0	950	990	1425
20,001-21,000	0	1030	1030	1550
21,001-22,000	0	1120	1120	1680
22,001-23,000	0	1210	1210	1815
23,001-24,000	0	1300	1300	1950
24,001-25,000	0	1400	1400	2000
25,001-26,000	0	1500	1500	2200
26,001-27,000	0	1610	1610	2400
27,001-28,000	0	1730	1730	2600
28,001-29,000	0	1860	1860	2800
29,001-30,000	0	2000	2000	3000
30,001-31,000	0	2075	2075	3125
≥31,001	0	2150	2150	3250

Table 4.2 – Closure of one carriageway of New A92 (per 4km closure or part thereof)

Daily Two Way Traffic	Traffic Flow Period				
	2400-0700	1900-2400	0700-1000	1000-1600	1600-1900
	£	£	£	£	£
≤11,000	0	500	800	800	1200
11,001-12,000	0	550	900	900	1350
12,001-13,000	0	625	1000	1000	1500
13,001-14,000	0	700	1100	1100	1650
14,001-15,000	0	800	1200	1200	1800
15,001-16,000	0	900	1325	1325	1975
16,001-17,000	0	1000	1450	1450	2150
17,001-18,000	0	1100	1600	1600	2325
18,001-19,000	0	1200	1750	1750	2500
19,001-20,000	0	1300	1900	1900	2700
20,001-21,000	0	1440	2050	2050	2925
21,001-22,000	0	1580	2200	2200	3175
22,001-23,000	0	1720	2350	2350	3450
23,001-24,000	0	1860	2550	2550	3725
24,001-25,000	0	2000	2750	2750	4000
25,001-26,000	0	2140	2975	2975	4300
26,001-27,000	0	2280	3190	3190	4625
27,001-28,000	0	2420	3410	3410	4975
28,001-29,000	0	2560	3630	3630	5375
29,001-30,000	0	2700	3850	3850	5800
30,001-31,000	0	2850	4150	4150	6250
≥31,001	0	3000	4450	4450	6700

Table 5 to Part 1 of Schedule 7

Deemed Unavailability

Item	Description	Remedy Period	Percentage of LUC applying
1	Failure to inspect, make safe and return to normal operating standard the Project Road (or any part thereof) following an emergency in accordance with paragraph 1.8 b) of Schedule 4 Part 2.	N/a	100
2	Failure to deploy resources when conditions so dictate in accordance with paragraphs 3.4 of Schedule 4 Part 2.	N/a	100
3a	Failure to rectify Defects where the minimum performance levels are not achieved in accordance with paragraph 4.4 of Schedule 4 Part 2 (road pavement performance criteria).	90 Days of failure to achieve minimum performance levels	50
3b	Failure to remedy such Defects as have increased in severity or extent such that there is a risk to Users in accordance with paragraph 4.4 of Schedule 4 Part 2 (road pavement performance criteria).	28 Days after the earlier of:- (i) the Company becoming aware of the risk to Users' (ii) A User, Relevant Authority or other third party notifying the Company or an agent or employee of the Company of the risk; (iii) the time a Contractor carrying out inspections in accordance with paragraph 2.3 of Schedule 4 Part 2 would have been aware of such risk	100

4	Failure to prevent surface water ponding on or adjacent to the carriageway and cycleway/footway to the extent that it affects safety in accordance with paragraph 2.7e) of Schedule 4 Part 2.	N/a	100
5	Failure to rectify damaged or missing gullies, gratings, covers, frames or boxes or parts thereof to the extent that it affect safety in accordance with paragraph 2.7c) of Schedule 4 Part 2.	N/a	100
6	Failure to remove any debris, including dirt and spillages, from on or adjacent to the carriageway to the extent that it affects safety in accordance with paragraph 2.7q) of Schedule 4 Part 2.	N/a	100

Table 6 to Part 1 of Schedule 7

Proviso

- (1) Subject to paragraph 7 of Part 1 of this Schedule with respect to the Restricted Services Period, and paragraph 5 of this proviso Performance Failure Points shall be incurred by the Company for each failure to meet the performance standards set out in Table 6 in the column headed "Performance Standards" except if:-
 - (i) the failure is an Unavailability Event; or
 - (ii) the failure is remedied by the Company within the time period referred to in the "Performance Standard" column or "Periodicity of Accrual of Points" column (if any) from the Relevant Trigger; or
 - (iii) the failure is due to any of the events listed in paragraphs 5.5 (with the exception of paragraph 5.5.3).
- (2) The Relevant Trigger shall be the earliest of:-
 - (a) the Company becoming aware of the failure; or
 - (b) a User, Relevant Authority or other third party notifying the Company (by whatever reasonable means) of the failure; or
 - (c) the time from which the Company should have been aware of the failure if it had been carrying out inspections in accordance with paragraph 2.3 of Schedule 4 Part 2.
- (3) Subject to proviso 1 the number of Performance Failure Points specified in Table 6 shall accrue in respect of each failure at the rate set out in the column headed "Periodicity of Accrual of Points" and shall apply in the Payment Month in which they are first accrued and the eleven months thereafter.
- (4) In the case of a Category 1 Defect in respect of which a temporary repair has been completed Angus Council may in its absolute discretion agree to that Defect being treated as a Category 2 Defect for the purpose of this Schedule.
- (5) Where a breach by the Company of an obligation under this Agreement results in a failure by the Company to meet more than one performance standard then only the performance standard which would cause the highest number of penalty points to be incurred as a result of such breach will apply.

Table 6 - Performance Failures

1. Category 1 Defects and Category 2 Defects

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
1.1	Failing to make a Category 1 Defect safe, by taking such measures as may be required to protect Users from harm, (which measures may include displaying warning signs, coning or fencing off) as soon as reasonably practicable, but any event within one hour from the Relevant Trigger.	8	Per 24 hour period until the Category 1 Defect is made safe.
1.2	Failing to complete repairs of a Category 1 Defect of a temporary or permanent nature within 24 hours from the Relevant Trigger.	6	Per 24 hour period until the temporary or permanent repair is completed.
1.3	Failing to complete permanent repairs of a Category 1 Defect within 28 Days from Relevant Trigger.	4	Per 28 day period until the permanent repair is completed.
1.4	Failure to complete temporary repair of a Category 2H Defect within 5 days of the Relevant Trigger in accordance with paragraph 2.5 of Part 2 of Schedule 4 (Safety Inspection Requirements).	4	Per week until temporary repair completed

1.5	Failure to complete the permanent repair of a Category 2H Defect within 28 days of the Relevant Trigger in accordance with paragraph 2.5 of Part 2 of Schedule 4 (Safety Inspection Requirements).	3	Per month until permanent repair completed
1.6	Failure to complete a repair of a Category 2M Defect within 28 days of the Relevant Trigger in accordance with paragraph 2.5 of Part 2 of Schedule 4 (Safety Inspection Requirements).	2	Per month until permanent repair completed
1.7	Failure to complete repair of a Category 2L Defect within 28 days of the Relevant Trigger as may be assigned by the Company in its RMMS.	2	Per month until permanent repair completed

2. General

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.1	Failure to comply with certification requirements of Schedule 2 Part 4 (Certification) and Schedule 4 Part 6 (Certification).	3	Per event
2.2	Failure to properly record the occurrence and remediation of service failures in accordance with the Performance Deductions regime.	11	Per event
2.3	Failure to maintain or update any records as required by paragraph 2 of Schedule 2 Part 5 (Records) and Schedule 4 Part 7 (Reports, Information and Records).	3	per reporting period/ or per quarter
2.4	Failure to make any records available for inspection in accordance with paragraph 2 of Schedule 2 Part 5 (Records) and Schedule 4 Part 7 (Reports, Information and Records).	6	per request

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.5	Failure to comply at any time with all instructions of the Police in respect of the Project Road in accordance with Schedule 2 Part 3 Appendix 1/17 (Traffic Safety and Management) and Schedule 4 Part 2 Section 7 (Roadworks Management).	6	Per event
2.6	Commencing or permitting the commencement of any aspect of the Operations in breach of Schedule 2 Part 4 (Certification) and Schedule 4 Part 6 (Certification).	3	Per event
2.7	Failure to use an accredited laboratory in accordance with Appendix 1/5 of Schedule 2 Part 3 (Testing to be Carried out by the Company) and Appendix 1/5 Schedule 4 Part 5 (Testing to be Carried out by the Company).	3	Per event
2.8	Failure to maintain a Project Quality Director in accordance with Schedule 6 (Quality Assurance).	3	Per month

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.9	Failure to retain records in accordance with Schedule 2 Part 5 (Reports, Information and Records) and Schedule 4 Part 7 (Reports, Information and Records).	10	Per event
2.10	Failure to comply with any directions given in accordance with Schedule 2 Part 1 (General Conditions) and paragraph 7.2 Schedule 4 Part 1 (Works Not to be Covered up Without Approval).	3	Per event
2.11	Failure to give any notification in accordance with Schedule 2 Part 1 (General Conditions) and paragraph 6.2 (Superintendence by Company) and Appendix 1 (New Road and Street Works Act 1991 – Scotland) Schedule 4 Part 1.	3	Per event

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.12	Taking any action mentioned in Schedule 2 Part 1 (General Conditions) and paragraph 4 (Superintendence by Company) and Appendix 1 (New Road and Street Works Act 1991 – Scotland) Schedule 4 Part 1 without the prior written Approval of Angus Council in relation to Management of Operations Affecting Apparatus.	3	Per event
2.13	Failure to provide access for Angus Council's Representative for inspection and auditing in accordance with Schedule 2 Part 1 (General Conditions), paragraph 5 of Schedule 4 Part 1 (Interpretation) and Schedule 7 Part 2 (Traffic Measurement Requirements).	3	Per event
2.14	Failure to allow any examination of books and records in accordance with Schedule 2 Part 5 (Reports, Information and Records) and Schedule 4 Part 7 (Reports, Information and Records).	3	Per event

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.15	Failure to notify and/or keep Angus Council's Representative informed of all third party claims and incidents in accordance with Schedule 2 Part 5 (Reports, Information and Records) and Schedule 4 Part 7 (Report, Information and Records).	1	Per event
2.16	Failure to notify Angus Council in accordance with Clause 48.2 (Insurance Proceeds).	3	Per event
2.17	Failure to notify Angus Council's Representative in accordance with paragraph 1.3 of Schedule 2 Part 5 (Report, Information and Records – Further Information) and paragraph 1.1 c) of Schedule 4 Part 7 (Report, Information and Records - Further Information).	1	Per event
2.18	Failure to provide As-Built Records in accordance with Schedule 2 Part 5 (Report, Information and Records) and Schedule 4 Part 7 (Reports, Information and Records).	5	Per month following date of issue of appropriate Final Completion Certificate

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.19A	Failure at any time to comply with the reasonable safety requirements of the Relevant Authorities to the extent the Company is required to do so in accordance with Schedule 2 Part 6 (Relevant Authorities and Interested Parties) and Schedule 4 Part 8 (Relevant Authorities and Interested Parties).	6	Per event
2.19B	Failure at any time to comply with the reasonable requirements of the Relevant Authorities other than in respect of safety to the extent the Company is required to do so in accordance with Schedule 2 Part 6 (Relevant Authorities and Interested Parties) and Schedule 4 Part 8 (Relevant Authorities and Interested Parties).	3	Per Event
2.20	Failure to comply with the requirements of Clause 39.3 (Company's Records).	3	Per Request
2.21	Failure to comply with the requirements of Clause 43 (Value for Money) with respect to submission of	6	Per missed review or submission period required in terms of Clause 43 and every quarter thereafter until requirement satisfied

	methodology, undertaking review and reporting findings.		
2.22	Failure to undertake a PEIRR Calculation or to notify AC of such calculation at the prescribed times in accordance with Clause 44 (IRR Clawback) or to issue any consequential agreed credit note at the prescribed time.	6	Per missed calculation date or notification issue period in terms of Clause 44 and every quarter thereafter until requirement satisfied

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
2.23	Failure to provide financial and other information in accordance with the requirements of Clause 58 (Provision of Financial and Other Information).	3	Per month that the information is late
2.24	Failure to provide such labour returns as may be required by Angus Council in accordance with Clause 62.3 (Returns).	3	Per request

3. Construction Related

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
3.1	Failure to submit a programme in accordance with paragraph 3.1 (e) of Schedule 2 Part 5 (Progress Reports).	2	Per event /per month
3.2	Failure to maintain the New Works Site as required by paragraphs 5.1, 5.2, 7.1(d), 8.2, 12.1, 17.1, 17.2, and 17.5 of Schedule 2 Part 1 and paragraph 2.1 of Appendix 1 of Schedule 2 Part 1 (General Conditions).	5	Per week
3.3	Failure to maintain the New Works Site as required by Schedule 2 Part 1 (General Obligations) other than those paragraphs specified in item 3.2.	3	Per week

4. O&M Related ([to apply only post the Permit To Use Date])

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.1	Failure to maintain a register and customer contact telephone number in accordance with paragraph 7.7 of Schedule 4 Part 2 (Driver Information).	2	Per month
4.2	Failure to erect user information signs in accordance with paragraph 7.7 of Schedule 4 Part 2 (Driver Information).	2	Per month
4.3	Failure to provide report in accordance with paragraph 2.2 of Schedule 4 Part 3 (Renewal Programme).	2	Per event
4.4	Failure to register all incidents and report fatal injuries in accordance with paragraph 1.4 of Schedule 4 Part 7 (Accident Reports).	3	Per month
4.5	Failure to undertake Road Safety Audits in accordance with paragraph 1.7 Schedule 4 Part 6 (Road Safety Audit) or implement findings within 12 months.	10	Per year

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.6	Failure to carry out Safety Inspections and identify Defects in accordance with paragraph 2.5 of Schedule 4 Part 2 (Safety Inspection Requirements).	8	Per event
4.7	Failure to plan a programme and undertake Service Inspections and undertake Service Inspections of the Project Road in accordance with paragraph 2.6 of Schedule 4 Part 2 (Safety Inspection Requirements).	3	Per event
4.8	Failure to monitor the water quality of outfall discharges and, where necessary, investigate and implement remedial measures in accordance with paragraph 2.9 of Schedule 4 Part 2 (Pollution Control Monitoring).	3	Per event
4.9	Failure to control the accumulation of litter in accordance with paragraph 2.7 q) of Schedule 4 Part 2 (Particular Requirements).	3	Per month

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.10	Failure to provide a winter maintenance decision making facility in accordance with paragraph 3.4 a) of Schedule 4 Part 2 (Winter Maintenance).	3	Per week
4.11	Failure to meet the response times specified in paragraph 3.4 b) of Schedule 4 Part 2 (Winter Maintenance).	3	Per event
4.12	Failure to comply with the requirements for de-icing materials in accordance with paragraph 3.4 c) of Schedule 4 Part 2 (Winter Maintenance).	3	Per event
4.13	Failure to spread salt before ice forms or snow settles in accordance with paragraph 3.4 d) of Schedule 4 Part 2 (Winter Maintenance).	3	Per event
4.14	Failure of spreading vehicles to meet the requirements of paragraph 3.4 of Schedule 4 Part 2 (Winter Maintenance).	3	Per vehicle/Per week

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.15	Failure to survey the skid resistance on the Project Road in accordance with paragraph 4.3 of Schedule 4 Part 2 (Maintenance Assessment Survey).	10	Per event
4.16	Failure to undertake surveys to assess the ride quality and rutting on the Project Road in accordance with paragraph 4.3 of Schedule 4 Part 2 (Maintenance Assessment Survey).	10	Per event
4.17	Failure to undertake visual condition surveys in accordance with paragraph 4.3 of Schedule 4 Part 2 (Maintenance Assessment Survey).	3	Per event
4.18	Failure to undertake any other pavement surveys in accordance with paragraph 4.3 of Schedule 4 Part 2 (Maintenance Assessment Survey).	3	Per event

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.19	Failure to prepare input sheets for any new Structures after substantial completion in accordance with paragraph 5.2 of Schedule 4 Part 2 (Maintenance of Structures).	2	Per quarter
4.20	Failure to update the structures database in accordance with paragraph 5.2 of Schedule 4 Part 2 (Maintenance of Structures).	2	Per quarter
4.21	Failure to plan, carry out and report on Principal Inspections in accordance with paragraph 5.3 b) of Schedule 4 Part 2 (Maintenance of Structures).	5	Per structure/Per annum
4.22	Failure to plan, carry out and report on General inspections in accordance with paragraph 5.3 c) of Schedule 4 Part 2 (Maintenance of Structures).	3	Per annum
4.23	Failure to carry out any special inspections in accordance with paragraph 5.3 d) of Schedule 4 Part 2 (Maintenance of Structures).	4	Per inspection period

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.24	Failure to undertake traffic management measures in accordance with Chapter 8 Of the Traffic Signs Manual and relevant Regulations and Codes of Practice as required by paragraph 7.2 of Schedule 4 Part 2 (Roadworks Management).	6	Per event
4.25	Failure to meet the access needs and safety of pedestrians and other users in accordance with paragraph 7.2b) of Schedule 4 Part 2 (Roadworks Management).	5	Per event
4.26	Failure to appoint a traffic safety and control officer and in undertaking the specified duties in accordance with paragraph 7.2c) of Schedule 4 Part 2 (Roadworks Management).	2	Per month
4.27	Failure to meet Lane Occupation arrangements in accordance with paragraph 7.3 of Schedule 4 Part 2 (Roadworks Management).	5	Per day

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.28	Failure to cover all conflicting route signs and the provision of signs for alternative routes in accordance with paragraph 7.4 of Schedule 4 Part 2 (Roadworks Management).	2	Per week
4.29	Failure to provide a free vehicle recovery service in accordance with paragraph 7.5 of Schedule 4 Part 2 (Roadworks Management).	5	Per week
4.30	Failure to ensure that any of the obligations in respect of Recovery Vehicles are adhered to as required by paragraph 7.5 of Schedule 4 Part 2 (Roadworks Management).	3	Per week
4.31	Failure to provide advance publicity and up to date information in accordance with paragraph 7.6 of Schedule 4 Part 2 (Roadworks Management).	2	Per event

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.32	Failure to prevent surface water ponding on or adjacent to the carriageway and cycleway/footway in accordance with paragraph 2.7e) of Schedule 4 Part 2 (see also Table 5) (Particular Requirements).	6	Per event
4.33	Failure to provide appropriate signing where flooding occurs in accordance with Section 7 of Schedule 4 Part 2 (Roadworks Management).	3	Per day
4.34	Failure to ascertain the cause of flooding within one month of a flood event or to take measures to permanently relieve flooding problems where these are attributable to inadequate infrastructure within three months of a flood event in accordance with paragraph 2.7o) of Schedule 4 Part 2 (Particular Requirements).	5	Per event per response period

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.35	Failure to rectify damaged gullies, gratings, covers, frames or boxes or parts thereof in accordance with paragraph 2.7c) of Schedule 4 Part 2 (see also Table 5) (Particular Requirements).	4	Per event
4.36	Failure to remove any debris including dirt form on or adjacent to the carriageway in accordance with paragraph 2.7q) of Schedule 4 Part 2 (see also Table 5) (Particular Requirements).	4	Per event
4.37	Erecting any sign on the Project Road without compliance with paragraph 3.9 of Schedule 4 Part 4 (Traffic Signs, Road Markings and Studs).	1	Per event
4.38	Failure to provide a report on proposed developments to Angus Council in accordance with paragraph 1.16 of Schedule 4 Part 2 (Development Control).	3	Per week thereafter

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
4.39	Failure to observe and comply with the terms and conditions of any access restrictions relating to the O & M Site as detailed in paragraph 5 of Schedule 4 Part 1 (Proposed method of Construction).	3	Per event
4.40	Failure to provide monthly and annually reports in accordance with paragraph 1.2. and 1.3 of Schedule 4 Part 7 (Monthly Reports/ Annual Reports).	2	Per month/ per quarter (as appropriate)
4.41	Failure to install any notification sign in accordance with Schedule 4 Part 2 Section 7. (Roadworks Management)	1	Per event
4.42	Failure to place or remove any Traffic Sign as required by Angus Council in accordance with Schedule 4 Part 2 Section 7 (Roadworks Management).	2	Per event

5 Other Obligations

Item	Performance Standard	Performance Failure Points	Periodicity of Accrual of Points
5.1	Any failure by the Company to comply with its obligations under this Agreement not covered in Parts 1-4 of Table 6	1	Per event

Table 7a to Part 1 of Schedule 7
Performance Deduction Calculation – Full Service Period

No of Relevant Performance Failure Points	Performance Deduction
0-30	0.000%
31-35	0.075%
36-40	0.150%
41-45	0.225%
46-50	0.300%
51-55	0.375%
56-60	0.450%
61-65	0.525%
66-70	0.600%
71-75	0.675%
76-80	0.750%
81-85	0.825%
86-90	0.900%
91-95	0.975%
96-100	1.050%
101-105	1.125%
106-110	1.200%
111-115	1.275%
116-120	1.350%
121-125	1.425%
126-130	1.500%
131-135	1.600%
136-140	1.700%
141-145	1.800%
146-150	1.900%
151-155	2.000%
156-160	2.100%
161-165	2.200%
166-170	2.300%
171-175	2.400%
176-180	2.500%
181-185	2.600%
186-190	2.700%
191-195	2.800%
196-200	2.900%
201-205	3.000%
206-215	3.450%
216-225	3.900%
226-235	4.350%
236-245	4.800%
246-255	5.250%
256-265	5.700%
266-275	6.150%
276-285	6.600%
286-295	7.050%
296+	7.500%

Table 7b to Part 1 of Schedule 7
Performance Deduction Calculation – Restricted Services Period

No of Relevant Performance Failure Points	Performance Deduction
0 - 77	0.000%
78 - 90	0.075%
91 - 103	0.150%
104 - 116	0.225%
117 - 129	0.300%
130 - 142	0.375%
143 - 155	0.450%
156 - 167	0.525%
168 - 180	0.600%
181 - 193	0.675%
194 - 206	0.750%
207 - 219	0.825%
220 - 232	0.900%
233 - 245	0.975%
246 - 258	1.050%
259 - 271	1.125%
272 - 284	1.200%
285 - 297	1.275%
298 - 310	1.350%
311 - 322	1.425%
323 - 335	1.500%
336 - 348	1.600%
349 - 361	1.700%
362 - 374	1.800%
375 - 387	1.900%
388 - 400	2.000%
401 - 413	2.100%
414 - 426	2.200%
427 - 439	2.300%
440 - 452	2.400%
453 - 465	2.500%
466 - 477	2.600%
478 - 490	2.700%
491 - 503	2.800%
504 - 516	2.900%
517 - 529	3.000%
530 - 555	3.450%
556 - 581	3.900%
582 - 607	4.350%
608 - 632	4.800%
633 - 658	5.250%
659 - 684	5.700%
685 - 710	6.150%
711 - 736	6.600%
737 - 762	7.050%
763+	7.500%

PART 2: TRAFFIC MEASUREMENT REQUIREMENTS

Contents

Traffic Measurement Requirements for Payment Purposes

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Annex 1 : Location of Traffic Measuring Points

Annex 2 : Deemed Annual Average Daily Traffic (Two Way) in First Year of operation

Traffic Measurement Requirements for Payment Purposes

1. Measurement Requirements

- 1.1 At all times from and after the Permit to Use Date in respect of the New A92, the traffic using the New A92 shall be continuously measured by the Company at each Volumetric Traffic Measurement Point using the Volumetric Traffic Measuring Equipment.

2. Measurement Points

- 2.1 Each of the following shall be a Volumetric Traffic Measurement Point for the purposes of this Agreement:
- (a) each of the Traffic Measurement Points so designated in Annex 1; and
 - (b) if as a result of any Angus Council Change or Company Change, the Volumetric Traffic Measurement Points specified in paragraph 2.1.(a) of this Part shall be insufficient or inadequate to measure accurately all traffic using the New A92, such other point or points as necessary to measure such traffic accurately.
- 2.2 If there is any dispute between the Company and Angus Council as to the need for or location of any Volumetric Traffic Measurement Point referred to in paragraph 2.1.(b) of this Part such dispute shall at the request of either, be submitted to the Disputes Resolution Procedure.

3. Measuring Equipment

- 3.1 The Company shall provide and install the following Volumetric Traffic Measuring Equipment:
- (a) eight (one per carriageway at each of four locations) sets of vehicle detection/counting equipment meeting the requirements set out in this Part for the collection of volumetric traffic data; and
 - (b) all other measurement and Verification equipment necessary to detect, record, transmit, analyse and store securely the required information on traffic passing each Volumetric Traffic Measurement Point.
- 3.2 The precise locations of the Volumetric Traffic Measurement Points requires the prior approval of Angus Council.
- 3.3 The Volumetric Traffic Measuring Equipment shall include such alternative facilities as may reasonably be required to ensure that failure or withdrawal for maintenance or adjustment of any individual component does not materially affect the measurement of traffic by the Volumetric Traffic Measuring Equipment. The Volumetric Measuring Equipment shall be considered as being materially affected when the specified Measurement Limits of Accuracy cannot be verified.
- 3.4 Prior to the installation or replacement of any component of Volumetric Traffic Measuring Equipment which may materially affect the accuracy of measurement of such Volumetric Traffic Measuring Equipment, the Company shall notify Angus Council of the design and type of such equipment and such notice shall be dealt with under the Review Procedure.

- 3.5 Without limitation to paragraph 3.3 of this Part, the Company shall install, maintain, repair, replace and operate all Volumetric Traffic Measuring Equipment in accordance with Good Industry Practice.
- 3.6 Angus Council shall be entitled at any time and from time to time to install and operate (at their own expense and risk and under appropriate supervision from the Company) at any Volumetric Traffic Measurement Point:
- (a) measuring equipment to check the measurement of the traffic at such Volumetric Traffic Measurement Point; and/or
 - (b) equipment linked directly to the Volumetric Traffic Measuring Equipment; and/or
 - (c) to provide at Angus Council's premises independent confirmation and/or direct readings of the measurement of the traffic at such Volumetric Traffic Measurement Point,
- 3.7 Any equipment installed by Angus Council pursuant to paragraph 3.6 of this Part shall be compatible with and shall not interfere with the use or operation of the Volumetric Traffic Measuring Equipment.
4. **Data Collection Requirements**
- 4.1 The Volumetric Traffic Measuring Equipment shall be capable of:
- (a) providing a continuous count of the number of vehicles per hour in each lane;
 - (b) providing a continuous count of the total number of vehicles per hour in each direction, classified either as Heavy Vehicle or Other Vehicles defined in Part 1 of this Schedule 7.
5. **Measurement Limits of Accuracy**
- 5.1 For the purpose of determining the Traffic Payment, the Volumetric Traffic Measuring Equipment shall measure to the following accuracy:
- a) for the two year period commencing from the Permit to Use Date:
 - i) the count of the total number of Heavy Vehicles in each direction shall be accurate to plus or minus three percent over every period of 12 hours at ninety five percent confidence interval, without bias to under-recording or over-recording; and
 - ii) the count of the total number of Other Vehicles in each direction shall be accurate to plus or minus two percent over every period of 12 hours at ninety five percent confidence interval, without bias to under-recording or over-recording.
 - b) following the two year period commencing from the Permit to Use Date:

- i) the count of the total number of Heavy Vehicles in each direction shall be accurate to plus or minus two percent over every period of 12 hours at ninety five percent confidence interval, without bias to under-recording or over-recording; and
- ii) the count of the total number of Other Vehicles in each direction shall be accurate to plus or minus one and a half percent over every period of 12 hours at ninety five percent confidence interval, without bias to under-recording or over-recording..

5.2 The Measurement Limits of Accuracy specified in paragraph 5.1 of this Part shall be Verified by the Company in accordance with the Verification procedures set out in paragraph 9.3 to 9.5 inclusive of this Part.

6. **Operational Availability**

6.1 Subject to paragraph 12.1 of this Part, the Volumetric Traffic Measuring Equipment at each Volumetric Traffic Measurement Point shall operate continuously in accordance with the Measurement Limits of Accuracy specified in this Part.

6.2 Should the Volumetric Traffic Measuring Equipment fail to record traffic volumes for two or more hours within any 24 hour period commencing at 00:00 hours the data for that day shall become invalid. In these circumstances the daily traffic volume used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be derived in accordance with paragraph 13.3 of this Part from the opposite carriageway of the same Road Section reduced by one percent.

7. **Transmission of Data**

7.1 Where appropriate data from the Volumetric Traffic Measuring Equipment shall be transmittable by public service telephone network, or other communications network subject to the Approval of Angus Council, in a format compatible with that from time to time used or specified by Angus Council for the collection, storage and analysis of data from Volumetric Traffic Measurement Points.

8. **Avoidance of Tampering**

8.1 The Volumetric Traffic Measuring Equipment shall include sufficient devices and appropriate measures to prevent persons tampering or interfering with it.

9. **Verification**

9.1 The Company shall undertake a video survey as described in paragraph 9.2 (or by another means as approved by Angus Council) of vehicles passing the Volumetric Traffic Measurement Points on each carriageway of each Road Section at no greater intervals than three calendar months to Verify that the Volumetric Traffic Measuring Equipment is operating within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part. A single video survey for each carriageway of a Road Section shall be acceptable if the video provides an accurate record of vehicles at both Volumetric Traffic Measurement Points on that carriageway.

9.2 The video survey shall:

- (a) be continuous and of at least three hours duration and contain at least eighteen ten minute periods where more than 80 vehicles pass the Measurement Points in each period;
- (b) be carried out within that part of the 12 hour period between 7:00 am and 7:00 pm in which there is daylight;
- (c) include a continuous record of the date and time (hours and minutes) of the survey which should be synchronised with the date and time of the Measuring Equipment being Verified;
- (d) be recorded from a suitable location to provide a clear view in daylight of vehicles in all Lanes of the carriageway with minimum masking of vehicles by other vehicles; and
- (e) allow the identification of each vehicle passing the Volumetric Traffic Measurement Points in each Lane for direct comparison with the information obtained from the Volumetric Traffic Measuring Equipment.

9.3 Within ten Working Days of the video survey, the Company shall undertake the following to Verify that the Volumetric Traffic Measuring Equipment is operating within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part:

- (a) count the number of vehicles in each Lane passing the Measurement Points in each consecutive ten minute period by analysing the video survey and compare the results of this analysis with the corresponding traffic flow information obtained from the associated Volumetric Measuring Equipment for the same consecutive ten minute time periods;
- (b) calculate the percentage difference of the traffic flow obtained from the Volumetric Traffic Measuring Equipment relative to the traffic flow obtained from the analysis of the video survey for the first eighteen 10 minute periods where more than 80 vehicles passed the Measurement Points by subtracting the traffic flow obtained from the video survey from the traffic flow obtained from the Volumetric Traffic Measuring Equipment and dividing the result by the traffic flow obtained from the video survey;
- (c) the Company shall ensure that there is no bias to under-recording or over-recording by ensuring that the 95% confidence interval of the mean percentage difference includes zero. If \bar{x} and S are the mean and sample standard deviation of the n observed percentage differences x_i ($i=1..n$), i.e.:

$$S = \sqrt{\frac{\sum (x_i - \bar{x})^2}{n - 1}}$$

then the 95% confidence interval of the mean percentage difference is given by:

$$\bar{x} \pm \frac{t_{(0.025, n - 1)} \times S}{\sqrt{n}}$$

where $t_{(0.025, n-1)}$ is the t-statistic for 5% (2½% at either end) with n-1 degrees of freedom. When n=18, $t_{(0.025, n-1)} = 2.11$.

- (d) the Company shall ensure that 95% of the deviations can be expected to lie within the Measurement Limits of Accuracy specified within paragraph 5.1 of this part. The range which encloses 95% of the population of percentage deviations is given by:

$$\bar{x} \pm S \times t_{(0.025, n-1)}$$

$$\bar{x} \pm 2.11S \text{ when } n=18$$

- (e) the Company shall submit to the Review Procedure the procedures to be applied to relate the results from the three hour Verification survey to the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part.

- 9.4 Where the results of the Verification specified in paragraph 9.1 to 9.3 inclusive of this Part indicate that the Volumetric Traffic Measuring Equipment is not operating within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part, the Company shall notify Angus Council within three Working Days.
- 9.5 The Company shall give to Angus Council five Working Days notice of the date and time of any Verification pursuant to paragraph 9.1 to 9.3 inclusive of this Part or any adjustment to the Volumetric Traffic Measuring Equipment pursuant to paragraph 12.1 of this Part and Angus Council shall be entitled to attend and witness any such Verification or adjustment.
- 9.6 Angus Council may require the Company to Verify any Volumetric Traffic Measuring Equipment at any other time. Angus Council shall bear the costs of any additional Verification made at the request of Angus Council if the Verification indicates that the Volumetric Traffic Measuring Equipment is found to be operating within the Measurement Limits of Accuracy.
- 9.7 The video tapes of each of the video surveys shall be stored securely and retained by the Company as a record of the Verifications for a period of five years after the Verification survey and, if requested, thereafter returned to Angus Council.

10. Reporting of Data

10.1 The Company shall report the source traffic data, any processed traffic data and the results of all Verifications to Angus Council in the Monthly Report in a format Approved by Angus Council.

11. Inspection and Auditing

11.1 Angus Council, acting reasonably, shall be entitled to inspect:-

- (a) any Volumetric Traffic Measuring Equipment;
- (b) any charts or other measurement or data relating to the Volumetric Traffic Measuring Equipment; and
- (c) any video tapes, data, charts or analyses relating to the Verification of the Volumetric Traffic Measuring Equipment,

12. Correction of Defects

As soon as practicable after having identified the existence of Defective Equipment the Company shall adjust the Defective Equipment to read within such limits or (if that is not possible) shall replace it with serviceable equipment which satisfies the requirements set out in this Part. In any event, the Company shall correct the Defective Equipment within 4 weeks from the time that the equipment became defective.

13. Derivation of Volumetric Traffic Flows for Payment Purposes

13.1 The volume of traffic on each carriageway of each Road Section in each period of 24 hours commencing at 00.00 hours to be used for the purpose of calculating the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge, shall be determined in accordance with the procedures set out in paragraph 13.2 to 13.12 inclusive of this Part.

13.2 Where the percentage difference described in paragraph 9.3 of this Part is within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part, the daily traffic volume used to calculate the Provisional Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be taken as the volume measured by the Volumetric Traffic Measurement Equipment.

13.3 Where the percentage difference described in paragraph 9.3 of this Part is more than the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part or where the Volumetric Traffic Measuring Equipment on that carriageway of that Road Section is not operational the daily traffic volume used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be derived in accordance with paragraph 13.2 of this Part from the opposite carriageway of the same Road Section on the same day reduced by three percent. This procedure shall only apply where:

- (a) the percentage difference described in paragraph 9.3 of this Part for the Volumetric Traffic Measuring Equipment on the carriageway for which the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge is being calculated was more than the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part on any day during the previous three days; and

- (b) the percentage difference described in paragraph 9.3 of this Part for the Volumetric Traffic Measuring Equipment on the opposite carriageway of the same Road Section and on the same day is within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part.
- 13.4 If the condition described in paragraph 13.3.(a) of this Part is satisfied, but the Volumetric Traffic Measuring Equipment on the opposite carriageway is not operating within the Measurement Limits of Accuracy, the daily traffic volume used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be derived on the basis of information obtained from the Volumetric Traffic Measuring Equipment from the adjacent measurement point to the east, except in the case of the Nether Kelly site in which case the information shall be obtained from the Balmachie Site reduced by four percent where that Volumetric Traffic Measuring Equipment is operating within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part.
- 13.5 Where the percentage difference described in paragraph 9.3 of this Part has been more than the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part for a period of three consecutive days (including where the Volumetric Traffic Measuring Equipment on that carriageway of that Road Section has not been operational), the daily traffic volume used for each day thereafter to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be taken as the traffic volumes at the Measurement Points on the opposite carriageway of the same Road Section reduced by two percent. Where the percentage difference described in paragraph 9.3 of this Part has been more than the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part for a period of more than seven consecutive days, the traffic volume used for each day thereafter to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge will be reduced by a further three percent and there shall be a further such reduction of three percent for each and every subsequent and consecutive seven day period that this situation exists up to a maximum total reduction of fifteen percent. This procedure shall only apply where the percentage difference described in paragraph 9.3 of this Part for the Volumetric Traffic Measuring Equipment on the opposite carriageway of the same Road Section and on the same day is within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part.
- 13.6 Where the percentage difference described in paragraph 9.3 of this Part has been more than the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part for a period of three consecutive days (including where the Volumetric Traffic Measuring Equipment on that carriageway of that Road Section has not been operational) and the percentage difference described in paragraph 9.2 of this Part for the Volumetric Traffic Measuring Equipment on the opposite carriageway of the same Road Section and on the same day is not within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part, the daily traffic volume used for each day thereafter to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be derived on the basis of information obtained from the Volumetric Traffic Measuring Equipment on whichever of the two adjacent Road Sections contains the lower volume of traffic flows where that Volumetric Traffic Measuring Equipment is operating within the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part reduced by three percent. Where the percentage difference described in paragraph 9.3 of this Part has been more than the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part for a period of more than seven consecutive days, the

traffic volume used for each day thereafter to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge will be reduced by a further three percent and there shall be a further such reduction of three percent for each and every subsequent and consecutive seven day period that this situation exists up to a maximum total reduction of fifteen percent. .

- 13.7 Where insufficient information is available from Volumetric Traffic Measuring Equipment to derive an estimate of traffic flow on a Road Section in accordance with clauses 13.2 to 13.6, the daily traffic volume used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be derived on the basis of the previous years information providing that it meets the Measurement Limits of Accuracy specified in paragraph 5.1 of this Part, subject to the reductions specified in paragraph 13.6 of this Part.
- 13.8 Where the results of the Verification surveys specified in paragraphs 9.1 to 9.3 inclusive of this Part indicate that the Volumetric Traffic Measuring Equipment on any carriageway of a Road Section is measuring with bias whether the Volumetric Traffic Measuring Equipment is defective or not, then:
- (a) the daily traffic volumes used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge for that carriageway of that Road Section shall be retrospectively corrected to adjust for such bias from the time when such bias occurred or where that time is not apparent from the time of the last Verification carried out in accordance with paragraph 9.1 to 9.3 inclusive of this Part; and
 - (b) from a period commencing three days after the Verification surveys specified in paragraphs 9.1 to 9.3 inclusive of this Part having identified that the Volumetric Traffic Measuring Equipment is defective until such time as the Company can demonstrate that the Volumetric Traffic Measuring Equipment is operating within the specified Measurement Limits of Accuracy, the subsequent daily traffic volume obtained from the Defective Equipment and used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be reduced by one percent and the daily traffic volume shall be reduced by a further one percent after seven days with a further reduction of one percent for each and every subsequent and consecutive seven day period.
- 13.9 Where the Volumetric Traffic Measuring Equipment is found to be measuring with bias, the retrospective adjustment to the daily traffic volumes used to calculate the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge shall be made on the assumption that such bias has occurred on a regular and gradual basis since the last Verification has taken place unless otherwise apparent from the traffic data.
- 13.10 Where adverse weather conditions are such that the Company is unable, using Good Industry Practice, to repair or replace the Defective Equipment, any percentage reduction derived in accordance with paragraph 13.3 to 13.8 inclusive of this Part shall remain constant until such time as the adverse weather subsides.
- 13.11 Angus Council shall be entitled to object to the traffic flow derived in accordance with this Part for the purpose of calculating the Monthly Usage Payment, Actual Usage Payment or the Monthly Lane Unavailability Charge for any carriageway of any Road Section where the Volumetric Traffic Measuring Equipment on that carriageway of that Road Section fails to operate within the Measurement Limits of

Accuracy specified in this Part, should it consider that the derived traffic flow is an unreasonable estimate of actual traffic flow. In such circumstances, Angus Council shall give notice to the Company of their estimate of the traffic flow on the Road Section and, taking account of any appropriate percentage reduction, estimate of the traffic flow for the purposes of calculating the Monthly Usage Payment or Actual Usage Payment or Monthly Lane Unavailability Charge. Within seven days of receipt of such notice, the Company may either:

- (a) accept the traffic flows contained in the notice; or
- (b) reject the traffic flows contained in the notice.

13.12 If the Parties are unable to reach agreement within forty days of the notice being received by the Company, then either Party may refer the matter for resolution in accordance with the Disputes Resolution Procedure.

ANNEX 1 TO SCHEDULE 7: PART 2

Location of Traffic Measurement Points

Site Number	Description	Chainage (m)	Road Section
T1	Balmossie	2640	Claypotts – Ardestie
T2	Balmachie	9600	Upper Victoria – Muirdrum
T3	Nether Kelly	15750	Muirdrum – Elliot
T4	Travebank	8000	Ardestie – Upper Victoria

ANNEX 2 TO SCHEDULE 7: PART 2

Deemed Traffic Flows for New A92

Annual Average Daily Traffic (Two Way) of New A92 in first year of operation.

	Balmossie	Travebank	Balmachie	Nether Kelly	Average
Other Vehicles	23,638	14,643	13,086	11,937	15,826
Heavy Vehicles	1,735	1,399	1,347	1,219	1425
Total	25,373	16,042	14,433	13,156	17,251

PART 3: CHANGE ADJUSTMENT

1. Where pursuant to this Agreement a Change Adjustment is to be made, the Unitary Charge (or any component part or parts of the Unitary Charge (including numbers of Heavy Vehicles or Other Vehicles in each Band shown in Tables 2 and 3 to Part 1 of this Schedule 7 (Payment Mechanism) as may be appropriate having regard to paragraph 2 of this Part 3 of Schedule 7)) shall be adjusted with effect from the commencement of the Payment Month following the Payment Month in which the adjustment is calculated such that following the Change Adjustment:-
 - (a) the Equity IRR remains the same as the Equity IRR would have been but for the financial consequences of the Change for which the Change Adjustment is to be made; and
 - (b) the Senior Loan Life Cover Ratios and the Senior Annual Debt Service Cover Ratios (for each calculation period) are not less than they were in the Financial Model immediately prior to the Change Adjustment.

2. In adjusting the Unitary Charge:-
 - (a) adjustments shall be restricted to the Monthly Availability Payment except to the extent that the financial consequences of the event in respect of which the Change Adjustment (which for this purpose shall include an adjustment made as a result of the occurrence of a User Paid Toll Event or Congestion Charging Event) is made will be dependent on the volume of Heavy Vehicles/Other Vehicles;
 - (b) regard shall be had to the timing of the financial consequences and to the date from which the Change Adjustment shall take effect and in the case of an adjustment made as a result of the occurrence of a User Paid Toll Event or Congestion Charging Event, payments referred to in Clause 2.2 of Part 5 of this Schedule.

3. Where the Change Adjustment arises as a consequence of Change in respect of which either –
 - (a) the Capital Expenditure is less than £1,000,000 (Index Linked); or
 - (b) the Recurrent Cost Increase is less than £100,000 (Index Linked) per annum; or
 - (c) a combination of (a) and (b) would equate to a commuted sum over a period of ten years or until the Agreement Expiry Date (if earlier) of less than £1,000,000 (Index Linked),

the Parties shall, acting in good faith, seek to agree the Change Adjustment (either permanently or provisionally as appropriate having regard to the circumstances) without recourse to running the Financial Model.

PART 4: CALCULATION SCHEDULE

Payment Month	
Payment Year	

Unitary Charge Calculation

1. Monthly Availability Payment (from Table 1 to Part 1)	(1)	£
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2. Provisional Monthly Usage Payment

2.1 Heavy Vehicles

PHVAADT for Payment Year	
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Band Ranges {from Table 2 to Part 1}	Traffic in Band (A)	Band Rate (pence) (B)	(A x B) x PMD (pence)
Band 1 [0] to [a]	x ₁ vehicles		
Band 2 [a + 1] to [b]	x ₂ vehicles	p ₁	
Band 3 [b + 1] to [c]	x ₃ vehicles	p ₂	
Band 4 [c + 1] to [d]	x ₄ vehicles	p ₃	
Band 5 [>d]	x ₅ vehicles		
Total Monthly Usage Payment for Heavy Vehicles (C)			[total]

2.2 Other Vehicles

POVAADT for Payment Year	
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Band Ranges {from Table 3 to Part 1}	Traffic in Band (D)	Band Rate (pence) (E)	(D x E) x PMD (pence)
Band 1 [0] to [a]	x ₁ vehicles		
Band 2 [a + 1] to [b]	x ₂ vehicles	p ₁	
Band 3 [b + 1] to [c]	x ₃ vehicles	p ₂	
Band 4 [c + 1] to [d]	x ₄ vehicles	p ₃	
Band 5 [>d]	x ₅ vehicles		
Total Monthly Usage Payments for Other Vehicles (F)			[total]

Provisional Monthly Usage Payment [Total C and F]/100	(2)	£ [total]
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Notes: For Sections 2.1 and 2.2 of this Calculation Schedule:

- ❖ PMD means Payment Month Days
- ❖ a, b, c and d represent the Band Caps for the Heavy Vehicles/Other Vehicles
- ❖ x₁ to x₅ represent the number of vehicles lying within the respective Band for Heavy Vehicles/Other Vehicles.
- ❖ p₁ to p₃ represent the respective Band Rate for Heavy Vehicles/Other Vehicles.

3. Monthly Lane Unavailability Charge

New A92 Monthly Lane Unavailability Charge	(G)	£(x) [per Support A]
Monthly Lane Unavailability Charge (G)	(3)	£(x) [(total)]

4. Monthly Performance Deduction [per Support B and C]

	Support	
	B	C
Performance Failure Points (PFPs) brought forward (see Note 1)	y ₁ [points]	y ₁ [points]
Less PFPs expiring in current Payment Month	(y ₂) [points]	
New PFPs for current Payment Month	y ₃ [points]	
PFPs carried forward [y ₁ - (y ₂) + y ₃]	[total]	[total]

Performance Deduction % [per Table 7a to Part 1] for Support B	z% (H)
Performance Deduction % [per Table 7b to Part 1] for Support C	z-1% (I)

Monthly Availability Payment [From Table 1 to Part 1]	(1)	£ x
Total Provisional Monthly Usage Payment	(2)	£ x
Base Monthly Payment (before deductions)		£ [total] (J)

Monthly Performance Deduction % [per Tables 7a and 7b to Part 1] [Performance deduction %] x [Unitary Charge before deduction]		£ [(H%)+(I%)] x (J)
	(4)	£[(total)]

5. Summary

Monthly Availability Payment [From Table 1 to Part 1]	(1)	£ z ₁
Provisional Monthly Usage Payment	(2)	£ z ₂
Less Monthly Lane Unavailability Charge	(3)	£(z ₃)
Less Monthly Performance Deduction	(4)	£(z ₄)
Total		£ [total] (K)

Indexation Factor (as agreed at start of each payment year)	%
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Indexed Total [(K) x Indexation Factor]	£ [total]
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Note:

- See paragraph 7 of Part 1 and proviso (3) of Table 6 to Part 1

Support of Calculation Schedule – Support A

New A92 Monthly Actual Unavailability Charge										
Date of Unavail.	Corresponding Day	Time of Unavailability		Daily Two Way Traffic from Corres. Day	Location (inc. chainage)	Reason for Unavailability	Gross Lane Unavailable Charge Ex Table 4.1	Gross Lane Unavailable Charge Ex Table 4.2	Abatement % (See Note 1)	Net Lane Unavailable Charge
		From	To							
Total New A92 Monthly Actual Unavailability Charge (AA)										

New A92 Monthly Deemed Unavailability Charge										
Date of Deemed Unavail.	Corresponding Day	Time of Deemed Unavailability		Daily Two Way Traffic from Corres. Day	Location (inc. chainage)	Reason for Deemed Unavailability (refer to Table 5)	Gross Lane Unavailable Charge Ex Table 4.1	Gross Lane Unavailable Charge Ex Table 4.2	Abatement % (See Note 1)	Net Lane Unavailable Charge
		From	To							
Total A92 Monthly Deemed Unavailability Charge (BB)										

TOTAL NEW A92 MONTHLY LANE UNAVAILABILITY CHARGE (AA)+(BB)										
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Note:

1. Abatement – see paragraph 5.2(d) of Part 1

Support of Calculation Schedule – Support B
Performance Failure Points from Previous Payment Month

PD Item ref from Schedule 7:Part 1 Table 6	Defect or performance standard not met	Date of Failure Event	Start date of Performance Deduction	Expiry Date of Performance Deduction	Performance Failure Points
Performance Failure Points from previous payment month					

Performance Failure Points Expiring in Current Payment Month

PD Item ref from Schedule 7:Part 1 Table 6	Defect or performance standard not met	Date of Failure Event	Start date of Performance Deduction	Expiry Date of Performance Deduction	Performance Failure Points
Performance Failure Points expiring in current payment month					

Performance Failure Points in Current Payment Month

PD Item ref from Schedule 7:Part 1 Table 6	Defect or performance standard not met	Date of Failure Event	Start date of Performance Deduction	Expiry Date of Performance Deduction	Performance Failure Points	Failure
Performance Failure Points in current payment month						

PART 5: USER PAID TOLLS AND CONGESTION CHARGING

1. Definitions

In this Schedule –

“Congestion Charging” means the legislative charging for or prohibition from using (including, for the avoidance of doubt, legislation limiting the use of vehicles carrying only one person) or keeping of motor vehicles on the New A92 or any part thereof or on any Connecting Road (whether or not for fixed periods on each day) for the purpose of directly or indirectly easing traffic congestion on roads whether payable in cash or by any electronic or mechanical means and whether payable at the time of passage or at any other time and regardless of the recipient of the consideration;

“Congestion Charging Event” means the occurrence of any of the following:

- (a) the introduction of Congestion Charging which the Company demonstrates to the reasonable satisfaction of Angus Council will directly result in a decrease in the annual volume of traffic on the New A92 of not less than 3%; and
- (b) an increase or decrease in the rate of Congestion Charging of more than 25% (excluding changes in RPI) in any one year or a cumulative increase or decrease in the rate of Congestion Charging of more than 80% (excluding changes in RPI) in any four consecutive years which in the case of an increase the Company demonstrates to the reasonable satisfaction of Angus Council will directly result in a decrease in the annual volume of traffic on the New A92 of not less than 3% and in the case of a decrease Angus Council demonstrates to the reasonable satisfaction of the Company will directly result in an increase in the annual volume of traffic of not less than 3% ; and
- (c) the withdrawal of Congestion Charging which Angus Council demonstrates to the reasonable satisfaction of the Company will directly result in an increase in the annual volume of traffic of not less than 3%.

“Connecting Road” means:-

- (a) any public road in the local authority areas of Angus or Dundee with the exception of the A92; and
- (b) the A92 north of, and including, Dundee;

“Change Date” has the meaning given in paragraph 2.2 of Part 5 to this Schedule 7;

“Deemed Heavy Vehicle Flow” for each Payment Year during a Transition Period (a “Relevant Payment Year”) means –

$$HV \times (1 + A)^n$$

where –

HV is the Heavy Vehicle traffic flow on the New A92 for the Payment Year immediately preceding the Payment Year in which the Transition Period commences.

A is either:

- (a) the average of the year on year increases or decreases in the annual volume of Heavy Vehicles using the New A92 between each of the 4 Payment Years immediately prior to the earliest of the Relevant Payment Years expressed as a percentage; or
 - (b) if the User Paid Toll Event occurs prior to the expiry of 4 Payment Years after the Permit To Use Date, the average of the increases or decreases in the Median NRTF Factor for Heavy Vehicles for each of the 4 Preceding Years expressed as a percentage; provided that, where the User Paid Toll Event occurs between the Agreement Date and the end of the First Payment Year, then A shall be the best estimate of the increase in the annual volume of Heavy Vehicles using the New A92 either as agreed between the Parties acting reasonably and in good faith or, failing agreement within 20 Working Days of being called upon to so agree by either Party, as determined by reference to the Dispute Resolution Procedure, the Adjudicator acting as an expert for that purpose.
- n is: (i) 1 for the first Payment Year in the Transition Period; (ii) 2 for the second Payment Year during the Transition Period; and (iii) 3 for the third Payment Year during the Transition Period, if applicable.

“Deemed Other Vehicle Flow” for a Payment Year during a Transition Period (a “Relevant Payment Year”) means –

$$OV \times (1 + A)^n$$

where –

OV is the Other Vehicle flow on the New A92 for the Payment Year immediately preceding the Payment Year in which the Transition Period commences.

A is either:

- (a) the average of the year on year increases or decreases in the annual volume of Other Vehicles using the New A92 between each of the 4 Payment Years immediately prior to the earliest of the Relevant Payment Years expressed as a percentage or;
- (b) if the User Paid Toll Event occurs prior to the expiry of 4 Payment Years after the Permit To Use Date, the average of

the increases or decreases in the Median NRTF Factor for Other Vehicles for each Preceding Year expressed as a percentage; provided that, where the User Paid Toll Event occurs between the Agreement Date and the end of the First Payment Year, then A shall be the best estimate of the increase in the annual volume of Other Vehicles using the New A92 either as agreed between the Parties acting reasonably and in good faith or, failing agreement within 20 Working Days of being called upon to so agree by either Party, by reference to the Dispute Resolution Procedure, the Adjudicator acting as an expert for that purpose.

- n is: (i) 1 for the first Payment Year in the Transition Period;
- (ii) 2 for the second Payment Year during the Transition Period; and (iii) 3 for the third Payment Year during the Transition Period, if applicable.

“Median NRTF Factor” means the median figure between the low traffic growth and central traffic growth factors for Great Britain published as the National Road Traffic Forecasts by HM Government (Department for Transport).

“Preceding Year” means each of the 4 periods of 12 months occurring prior to the Permit to Use Date and beginning either (in the case of the first Preceding Year) on the day 48 months prior to the Permit to Use Date or (in the case of each other Preceding Year) on each succeeding anniversary of that last-mentioned date.

“Transition Period” means the period of two calendar years commencing with the date of occurrence of a User Paid Toll Event.

“User Paid Toll” means any consideration paid or payable for the right of vehicular passage along or crossing any point on the New A92 or any part thereof or on any Connecting Road whether payable in cash or by any electronic or mechanical means and whether payable at the time of passage or at any other time and regardless of the recipient of the consideration.

“User Paid Toll Event” means the occurrence of either of the following:

- (a) the introduction of a User Paid Toll; and
- (b) an increase or decrease in the rate of User Paid Tolls of more than 25% (excluding changes in RPI) in any one year or a cumulative increase or decrease in the rate of User Paid Tolls of more than 80% (excluding changes in RPI) in any four consecutive years; and
- (c) the withdrawal of a User Paid Toll;

2. User Paid Toll Events/ Congestion Charging Events

If a User Paid Toll Event or Congestion Charging Event occurs the following provisions shall apply:-

- 2.1 for the purposes of calculating the Actual Usage Payment for each Payment Year in which the Transition Period falls wholly or partly:
- (a) the Heavy Vehicles Annual Average Daily Traffic for each Traffic Measurement Period during the Transition Period shall be the Deemed Heavy Vehicle Flow for the Payment Year in which the Traffic Measurement Period falls divided by 365; and
 - (b) the Other Vehicles Annual Average Daily Traffic for each Traffic Measurement Period during the Transition Period shall be the Deemed Other Vehicle Flow for the Payment Year in which the Traffic Measurement Period falls divided by 365
- 2.2 With effect from the day after the end of the Transition Period (the “**Change Date**”) a Change Adjustment shall be calculated so that taking account of the Actual Usage Payment calculated under paragraph 2.1, the Company shall be in the same financial position as it would have been in but for the occurrence of the User Paid Toll Event or Congestion Charging Event.